

Central & Eastern European Judicial Exchange Network
Webinar Spotlight Series: Judiciaries in Peril in Central and Eastern Europe

Spotlight #4:

JUDICIARY IN PERIL: ROMANIAN CASE STUDY

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Transcript Speakers:

1. Judge Andrea Chiș, Judge at Cluj Appellate Court, Member of the Romanian Superior Council of Magistracy
2. Ramona Strugariu, Member of the European Parliament
3. Laura Ștefan, Executive Director Expert Forum

Background: The Romanian judiciary has gone through major turmoil in the past years. Controversial legislation bringing into question judicial independence has been adopted on short notice without any meaningful consultation with stakeholders. Street protests and reactions coming from within the judiciary prompted criticism from the European Commission, GRECO, and the Venice Commission. While some of the most harmful legal proposals have been dropped, others made their way through the Parliament and have now entered in effect. The years to come place a serious challenge before political decision makers who face regular prompts from the European Commission to address shortcomings identified in areas such as judicial reform and fighting corruption. These are part of the EU 'Cooperation and Verification Mechanism' agreed at accession in 2007 and which successive Governments have been keen to bring to an end without necessarily following through with recommended reforms. In addition, significant challenges remain for Romania regarding how to rebuild the trust between state powers and foster a judiciary that is independent, reliable, efficient, and accountable.

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Chris Lehmann, CEELI Executive Director (CL): This is one of our core, like one of the core parts of our mission at CEELI, we are committed to support for independent judiciaries across this region as it is fundamental to the rule of law. We're delighted with the panel that we have here today. It's appropriate in celebration of International Women's Day that we have a panel of all women, but that was not put together for Women's Day. I think it's really just a reflection of the fact that women are front and foremost in all aspects of judging and politics and, and policy across the region. So what is a nice coincidence, I think really also is a is an important tribute to the meaning of International Women's Day. So I don't want to cut into our speakers time. We are delighted with this program. And we look forward to continuing this series in the coming months as we look at other countries across the region. So Freda, I will pass it back to you.

Freda Grealy, CEELI Senior Program Manager (FG): Thanks so much, Chris. So as Chris said, we've got three excellent speakers. We are very pleased tonight to introduce them to you. Firstly, we have judge Andrea Chiș, she's from the Cluj Appellate Court. Her career spans more than 20 years in the Romanian courts, and since 2017, she's elected for a six-years term as a member of the Superior Council of Magistracy of Romania. With transparency as a personal goal, she has focused her energy on projects related to communication and independence of the judiciary. Among her achievements, she drafted launched and coordinated the integrated communication project on the Romanian judicial system. She was an organizer, speaker and expert in the 2019/ 2020 European Judicial Training Network projects and trainings on communication and the rule of law. She participated in UNODC projects on

communication on the social use of social media within the judiciary. She's a promoter and supporter of various initiatives of NGOs and professional associations on the rule of law and judicial independence.

Then we will have Ramona Strugariu who is a member of the European Parliament for the Freedom, Unity and Solidarity party before she was elected. She was the Parliamentary Assistant and Chief of Staff over Romanian MEP which contributed to the political activities of numerous committees and working groups in the European Parliament, including the Committee on Civil liberties, Justice and Home Affairs, and the Working Party on the Rule of Law and the Fight Against Corruption. Ms. Strugariu is a graduate of the Faculty of Law at Alexandru Ioan Cuza University, where she also earned her master's degree in European Law.

Thirdly, we're delighted today to have Laura Ștefan on the panel. She's Executive Director of Expert Forum, and Chairperson of the Regional Anti-Corruption Initiative, and she is a former Director in the Romanian Ministry of Justice. She is a leading anti-corruption expert and an international expert on rule of law with the European Commission, the World Bank UNDP, and the Council of Europe. Ms. Ștefan graduated from the Bucharest School of Law and the master's program at Cambridge University. Between 2005 and 2007, she was Director within the Ministry of Justice and was responsible for anti-corruption policies. She drafted and advocated for anti-corruption legislation, elaborate programs for civic awareness and works to reform the public prosecutor's office. So that's our panel for you, ladies and gentlemen. And Judge Chiș will go first, and she will address you in English and Ramona will also address when English and Laura will present in Romanian. Each speaker will talk for about 10 to 15 minutes and the discussion and Q&A will follow at the end. A reminder again to ask any questions you have in the questions and answer feature at the bottom of the screen and any other comments you can make in the chat function. So I will hand over now to Judge Chiș. You have the floor.

Judge Andrea Chiș (AC): Hi, everyone! Good afternoon! Thank you CEELI Institute for inviting me in this very special day, celebrating Women's Day, also in this very special panel with two wonderful women, two great speakers, discussing about this topic of utmost importance. Being a judge, I will try to present this topic from my viewpoint as probably my colleagues will do from their perspective as a politician or as a representative of the civil society. I will try to divide my presentation in three main parts. In the first part, I will try to review the period of time between 1989 and 2017. A short history of the development of the Romanian judiciary, the progresses we've registered, right before I became a member of the Council. The second part will be about the last years starting from 2017, because, in my opinion, this was a shifting point. And I will tell you why. In the last part, I will try to explain the present moment and speak about some future plans.

I've been a judge for more than 25 years, being the first generation of law students and judges after the Romanian 1989 Revolution. I went through this process from a communist regime to a democratic one. I was there when we adopted a new Constitution in 1991, followed by a new Law on the Judiciary in 1992. Of course, most of the attributions related to the career of judges and prosecutors and also the administrations of courts were still in the hands of the Minister of Justice that time, but according to this law we established a Judicial Council. That Council did not represent all of the judges, because its members were appointed by the Parliament in a united session of its Chambers, based on the proposals made just by the appellate courts and the High Court and the prosecutorial offices attached to them.

When Romania decided to become a member of the European Union and implement the *aquis communautaire*, we changed some provisions in our Constitution in 2003. According to them, we

changed the laws on the judiciary, in number of three in 2004. One was on the statute of judges and prosecutors (because in Romania, judges and prosecutors have a similar statute -not an identical one, but a similar one), another law on judicial organization, and the third one on the Judicial Council.

It was a long road, but we had a judicial council, a very modern one, actually one of the best, at least on paper, comparing with other judicial councils. I'm saying this because my council has 19 members, nine judges elected by our peers, representing all the courts: basic courts, district courts, appellate courts and the High Court. I'm one of the representatives of the appellate courts. There are also five prosecutors, and three *ex officio* members: the President of the High Court, the General Prosecutor of Romania and the Minister of Justice, and two representatives of the civil society appointed by the Romanian Senate.

From 2004, the Judicial Council is in charge with the career of judges and prosecutors and with the appointment of the presidents of the courts. The Judicial Inspectorate was attached to the Judicial Council until 2017. The Chief Inspector and the Deputy Chief Inspector were appointed by the Judicial Council. The Judicial Council adopted the regulation of the Judicial Inspectorate (comparing with the first law which provision said that the Judicial Inspectorate was functioning *under the umbrella* of the Minister of Justice). The chief prosecutors were appointed based on the attributions divided between the Minister of Justice, the Judicial Council- *the division for the prosecutors*, and the president of the country. Two specialized prosecutorial offices were created, you know very well one of them: the National Anticorruption Directorate.

It was a long process. We became independent. We fought against corruption and until 2017, I think we became an equal power with the other two branches of government. I think it was the first time in our history when we can speak about such a balance between the three branches of powers.

What happened in 2017? And why all those things happened?

I think this was because the National Anticorruption Directorate had many successes in its activity. We speak about corruption cases against members of other branches of powers and also judges and prosecutors. But, you know, somebody who works a lot could make mistakes too. Before speaking about mistakes, I am going to speak about the results: we had final convictions against representatives of other branches of governments, against a former Prime Minister, members of the parliament's, even a President of the Chambers of Deputies. Somehow it was natural for the other branches of power to try to fight back.

In 2017, we had a general election, we had a new parliament, we had a new executive, and we had a new Judicial Council. I was elected as a member of my Council in 2017.

We started our mandate with a real challenge because the executive tried to pass an emergency ordinance to change some provisions in the Criminal Code and in the Criminal Procedural Code. Because of this high corruption cases, they were trying actually to decriminalize some provisions related to the fight against corruption. They did not succeed, even though they tried it again somewhere in 2019, because the law was dismissed, being considered unconstitutional by our Constitutional Court on procedural grounds. The other branches of government tried to control somehow the judiciary, because they didn't manage to decriminalize some criminal offences related to corruption cases. That is the reason for we speak about an assault against the judiciary starting from 2017. I cannot explain to you, in 15 minutes, everything about all the provisions related to these changes, but I am going to speak about two very important ones.

The first one is about the creation of the so-called *Special Section*. It is a Section for investigating criminal offenses committed by judges and prosecutors. It is a prosecutorial office with no precedent in any country of the world. Probably you have read a lot about the disadvantages of creating this new section. From my viewpoint, it's never a solution to try to solve a problem by creating a new institution. At first, we should try to reform those which already exist. But the legislator did not do that, so he created this special section. And the fight against corruption was somehow stopped. And that happened because in high corruption cases most of the defendants tried to file complaints against a judge or a prosecutor and that automatically moved the case from the National Anticorruption Directorate to this special section. This section was functioning with just five prosecutors out of 15 (how it is provided by the law), with no results at all. Actually, everything that was reproached to the National Anticorruption Directorate, this special section did from the very beginning. First of all, it solved very few cases. Still, all of its indictments were finalized with acquittals in the court. They started to persecute, not just prosecute, some important members of the judiciary, including members of the present Judicial Council - prosecutors and one of the judges. You already know the case against the former general prosecutor of the National Anticorruption Directorate, who is now the chief prosecutor of the European Public Prosecutor's Office. And this new prosecutorial office, the special section, also leaked some information in the press, the same thing that was berated to the National Anticorruption Directorate.

What this *Special Section* has done was an epic failure. The establishment of this section was sustained by a part of judges, because most of the prosecutors were against it. This is the reason for just five prosecutors were appointed for working in this section, because there were very few applicants for this new position. The majority of judges expressing their voices in the general assemblies of the courts and the prosecutors in the general assemblies of the prosecutorial offices rejected the new laws. Still, we had some professional association and some very famous judges who sustained this new created institution. Why was that? It is difficult, but not impossible to explain. Because, as I said before, unfortunately, with a lot of work, some mistakes can be made. Probably the National Anticorruption Directorate made some mistakes, because we can mention the acquittals in case of some judges of the High Court, some of them occupying now high positions in the judiciary, because after their acquittal they were reinstalled in their previous positions. We can also mention the case of a president of a judges and prosecutor's association. Thus, it is difficult not to understand their position in sustaining some changes related to the prosecutorial process against judges. So, we had two parties/groups within the judiciary: a minority sustaining this new institution and the majority opposing it.

We had some troubles with the Judiciary Inspectorate as well, and that was *the second important topic* I intended to present. But, because of the time limitation and because in this matter, in the present moment, the majority of us agree that there is room for improvement, I will not insist on presenting the problems related to this institution.

The *apple of discord* in this moment is this *Special Sections*, which leads me to the third part of my presentation regarding the future of this institution.

This section cannot exist anymore. It has done only mistakes since it was created. But it is not possible to turn back in time as we were in 2017, because we had these cases I was speaking about, cases in which judges were prosecuted by the National Anticorruption Directorate and acquitted. We have to meet somewhere in the middle and try to find some guarantees/safeguards for those who need them. There are a few solutions. We can discuss them if you want. I proposed one of them: an advisory opinion of the Judicial Council in case of the indictment of a prosecutor or of a judge. Some of our professional associations said that in such a way the Council could block certain investigations and I

propose a solution for this too: to have an appeal on point of law before the panel of five judges of the High Court. But there could be other options as well.

To conclude, I think we had our great times from 1989 to 2017. We registered a lot of progresses. In 2017 it was a backslide. We started to ask if these progresses were or were not irreversible, as the European Commission asked itself in the Cooperation and Verification Mechanism (CVM). I think we did not stop that progresses. We had debates on this special section and on other provisions regarding the new laws within the Judicial Council, but these debates within the judiciary had their roles, just as the dissenting opinion does in a judgment. And this role was to highlight the issues we should address, we should sort together and to highlight the weak points of this new laws. And speaking about *trust*, I think it was increased by the way we reacted to this assault on our independence, because we reached out the general public, we explained the new provisions, we explained why they were a danger. We explained why the independence of the judge is important, because it is not for the judge, it is for those who come before the judge.

I think we did a good job after all and our model is a model of success. If we want to look to the future, I think we should not wait to address our weak points, we should not wait for the other branches of powers to solve our problems, to come after us, instead we should address them ourselves. In this way, we can prevent future actions trying to undermine our independence and to undermine the rule of law in our country, in our countries actually.

FG: Thank you so much, Judge Chiş for that very interesting overview of some of the challenges that are facing the judiciary in Romania. And as you said, there has been a lot of progress made, but more to do. And I'm sure we come back to some of those issues in the discussion part of today. So I'm now I'm delighted to hand you over to Ramona Strugariu MEP. You have the floor Ramona, thank you.

Ramona Strugariu (RS): Thank you very much for the invitation. And I must say that it is an honour to discuss about the judiciary and the justice system in Romania in such a company. I, myself have an overview of the system, basically, and of the history of this progress that Romania made. But from the European perspective, let's say, where the different milestones and different let's say recommendations that we had on this path, are a bit of where we are today, looking at the 2004 predictions precession movement until the 2020 picture of the rule of law report.

And I'm kindly asking you to bear with me throughout the process and try it I'll try to move as fast as I can through this various points. But maybe it is important to mention those key moments because probably the relevant for the later on discussion as well.

So basically, we did have in December 2004 this political confirmation of the closure of negotiations for joining the EU and there was this impetus for reform with the perspective of joining the European Union and then we had this adoption of the strategy and action plan 2005, 2007 to reform the justice system. We did have the revision of the three rules package on the justice reform.

And then also, at the time, guarantees for the magistrates personal and institutional independence, competitive examinations for management goals and courts and prosecutors' offices, accountability — and that was an important word at the time — accountability of General Prosecutor NPN, a prosecutor for the results of their institutions. And then of course, drafting of new criminal and criminal procedure codes. And then in September 2005, the creation of the TNA structure, replacing basically the former PMA.

The red flag on corruption was at the time the most serious situation that we were confronted with. That it was deemed to bring a delay on our membership to the European Union. And that was fixed I will say through some rapid action from the Romanian judiciary with a lot of political pressure at the time. At that time, the political pressure was as probably on quick achievements.

And then in 2006, Romania was praised by the European Union for its progress, especially for the high level corruption investigations. Famous cases like Ariana Sansa with Georgia Corpus, we had the first conditions of high level politicians in our anti-corruption fight and history, I would say. Then, we had the first CBM reports that Romania ever had noted this need for irreversible and effective reforms. Setting up of course sustainable structures and for investigating corruption enforcing the measures in place at the time. And the four benchmarks with the judiciary reform integrity agency, which had significant progress at the time as well. Tackling high level corruption and then of course, fight fighting corruption within local government, and things went well for a while.

But moving from one CVM report to the other. One could notice that the first backtracking came into our reporting since 2009. And they're in the CVM report, we already, on the one hand, have received the praise of the European institutions and of Commission for the anti-corruption fight, on the other hand, they signal that many of the investigations were blocked, basically by the European Parliament, by the Romanian parliament, and there were also attempts to restrict the rights of the prosecution. And this lack of political will was basically noted in the CVM reports in the upcoming years. Also with the mentioned that more was needed in terms of judiciary accountability, and asset recovery.

The key moment, the turning point, I would I would say in this progress was probably 2012/2013, the beginning of the contract governments and also in 2013, more specifically the due date for appointing the new Prosecutor General rather, the new DNA Chief Prosecutor. And there was a highly political interference as perceived by the European institutions as well into this matter, resulting in basically a deal between the President at the time and the Prime Minister for the nomination of a Prosecutor General close to the Prime Minister at the same time, keeping our [inaudible] as the head of the DNA. Strong criticisms coming in the CBM report on this matter later on in 2014.

Then, also sensitivity was underlined in that report in relation to two senior appointments of prosecutors and the commission pointed out the need for long term political commitment. Then 2017 was the year of two CVM reports as contradictory as basically sky and earth. The first one at the beginning of the year, noting some progress under the technical government, the commitment from the government to change and improve things. The second one in November 2017, noting basically the all of the backsliding generated after the first month of socialist governance. But then 2017 basically started with the emergency ordinance 13.

And with all of the legislative changes following this emergency ordinance, the very strong reaction of the of the civil society and Romanian population overall in defending justice, taking to the streets to defend the justice system. Probably the letter signed by over 4000 judges at the time, signalling the legislative changes and passing a very strong message for the protection of the judiciary, of the Romanian judiciary, became famous in Europe, for sure, and probably they reached worldwide as well.

In this context, basically, the reaction of the European institutions were extremely powerful as well. And also those institutions dedicated into the fight against corruption. We had the GRECO reporting in 2018. And then the Venice commission reporting in later on in July 2018. Actually, 2018 was the year of two GRECO reports, asking basically the Romanian authorities to re-examine all drafts concerning justice laws. Especially appointment and dismissal procedures and magistrates. Calling for maintaining the precedent in the procedure, discussing lack of transparency and prosperous procedures, serious concern over independent prosecutors and so on.

You are probably aware also of the powerful reaction of the European Parliament with a resolution that we drafted in November 2018 on the rule of law in Romania. And then the most dramatic CVM reports that Romania ever had in 2019. Mentioning briefly, because we started in 2014, because I mentioned 2004 and those benchmarks at the beginning of my presentation, that we are in the situation of failure to comply with recommendations under benchmark one — judicial independence and traditional reform — that efficient institutions such as DNA and ANI were weakened losing certain competence and particularly, we gave a record of the legal framework of ANI. We are also and there are also serious concerns and risk backtracking on benchmark too. And then we also, due to pressure, high level courts are at risk of not fulfilling a benchmark three any longer.

So we are 15 years later, according to delay the CBM, well the 2019 CBM report. back to square one. At least this is what one could see from the European reporting perspective. Judging on how things evolved in the Romanian justice system. Well, there were a few maybe nuances here or comments that I would like to make, before passing the floor to my colleague, because I took already probably most of the time for my presentation.

First of all, I must admit that I do not believe looking also from the perspective of a member of the European Parliament now and what happens around us on the rule of law. I do not believe there is such thing as an irreversible reform in the justice system or in the judiciary overall. And this fight for having a balanced justice system and having a balanced judiciary, in having the right checks and balances is a day by day fight.

So I am not sure how realistic was at the time. The European Commission very ambitious, it's true, but how realistic it was from the European Commission to ask for irreversible reforms. But we do need for sure, as also underlined by all of the monitoring reports so far, the political will to change or improve a system. Because in all of these years, there was this huge question mark, noted by the European institutions as well, whether the politicians the same board, well, not the same politicians. But what various, let's say compositions of the Parliament and government truly wanted a judiciary, a well-functioning judiciary. And I think this is not only a question for Romania, but it is overall a question for any political system in any of the member states which are confronted with, let's say, periods of backsliding or periods where democracy is at risk.

Then a third and last remark would be that I would not go back to that point where we were in 2004. And since we do have the draft legislation on the table, reflecting having a possibility to reflect everything that happened in the judiciary in these years, maybe it is about time to look with a lot of honesty and a lot of ambition as well as at the functionality of the judiciary. What are the voice? What do the voices in the system say about harm about their needs, but also performance, but also a space for improvement. About the resources of the system has in order to perform well, today. And then since we can almost 20 years later come up with this fresh air in for, for the judiciary and for the justice system to do by meeting somewhere in the middle. Because I like what Andrea said earlier that yes, I fully agree we need to meet somewhere in the middle. I don't think that any abrupt and historical perspective on what on what the justice system should look like is upheld for any of the actors participating in this process be judiciary, or governors or civil society as well. Because luckily, we're past those moments where handcuffing was a national pleasure. And everybody was simply delighted to see rows and rows of politicians with their handcuffs in front of the DNA. It is important to have high level prosecutors, but it is more important to enter a normality and a functional system where judges do their job, politicians do their job. And well ideally, this is how a democratically and functioning rule of law system should look like. Thank you very much.

FG: Thank you so much, Ramona, for those that hugely interesting presentation on those insights. And now finally, over to Laura, Stefan, you have the floor, Laura,

Laura Ștefan (LS): Thank you, very much. I will speak in Romanian. And I would start by saying that many of the points I wanted to touch have already been listed or emphasized by the previous speakers. And this is very helpful for me because I no longer need to go through the analysis of all events that happened in Romania, but I only need to build on what they've already mentioned. You know that when we speak of the Romanian justice, we spoke of anti-corruption that's unavoidable.

And then we wonder why this connection, this link, always between these two very important, very sensitive areas in the Romanian public debate. And I would say, we see an increased intrinsic connection, because when the implementation of an anti-corruption, high level anti-corruption policies starts, we see the limitations of the system. And I'm not only talking about the judiciary, but also about the political system and here is when the society undergoes an earthquake.

And I think Romania is a very good example of what happens, what is very likely to happen in a society going through the transition between post-communism to a society based on the rule of law and separation of powers and we see an earthquake in society. And this was completely predictable because if we speak of high level anti-corruption, those who have something to lose are very important people who have important resources, who have the mechanisms to influence public decision and there are people who won't hesitate to use all of these mechanisms they have available to defend themselves against what they perceive as probably being an unfair look upon them by the Justice. Because so far, I have never heard someone to say, I am held accountable for what I did. I am held accountable for what, because I made a mistake, I was holding a public position and probably I went further than the law allowed.

They all have the same rhetoric, I'm being punished because I had someone upset. I'm being punished because the system doesn't want me and here we get to the elephant in the room and this has not been greatly discussed in Romania. But I do hope we are going to discuss this in the next few years. And this is the actual independence of justice come against other powers in this state, because justice does not simply exist there in a bubble. It is connected to other powers of the state. Whether we speak of the political powers or about, you know, the connections with the intelligence services. And I believe it's not casual that in the report of the Venice commission when analyzed when they analyze what happened in Romania, which was quite shocked for Europe. They attempt to amend the Criminal Code and the Criminal Proceedings Code, the attempts to amend the laws on justice which turn into reality. So there is, there are opinions that suggesting a very serious analysis between the connections and interdependence between justice and law enforcement and intelligence services. Why is this important? Because, as you know, there is a thing in view, it's not enough to make justice, it is important to be to appear to make justice in an honest and impartial manner.

So these polarized discussions in the Romanian society. Because we are talking about a very hot topic which is separating people into sides — makes people take sides this has been quite strong. And in the past year, we need to see good discussion about the valid viewpoints of all those around the table. Indeed, there was a very strong reaction from the Romanian society when they cried the decriminalization of certain corruption acts, actually they when they try to wipe the anti corruption, no results in the past two years, we had very strong reactions and the highest level of protest in the streets after the revolution.

And this showed that Romanians care. They care about justice and about the rule of law. Obviously, we won't see the nuances in the street. We cannot expect protesters to bring about subtle nuances of imperfections or system improvement. But I will give you a very recent example. We're running the

risk of seeing even more agitation, such as street protests culminated on the 10th of August when we all witness very tough intervention by the Gendarmerie against protesters in the street. People who are there to define justice and case political interference and recently had the decision by Romanian courts to end this case, maintaining that there is no criminal act. The straight reaction and reaction of the judiciary. So this, you can see there is no situation where we see general satisfaction and the illusion that we reach perfection in the Romanian society. And I believe that here it is important for the judiciary as one of the three powers of the state to get used to criticism, because criticism in the right amount does not kill. And it has to be informed criticisms.

One of the problems in Romania is that the motivations, the justification of the court comes very late usually. We haven't spoken about it. But we have cases where we have a person who gets convicted, goes to prison gets out of the prison, and then only then you see the justification of the judge the seal of the court decision and this is not normal. I know there is work overload, but these methods should find an answer in terms of court management, judges workloads, maybe employ more people to help drafting these documents. But this is unacceptable to receive the call to judgment, justification after having served your penalty.

Now, I would allocate a few minutes to the question, how come we survived? Because I believe Romania survived during these past years. And survived with minimum damage because in my viewpoint, the key of these assaults against the judiciary was the amendment of the Criminal Code and the Criminal Procedures Code and these documents failed before the Constitutional Court. And I think this is this is where I find the answer to the survival. M

More specifically that you need to develop within your country, sufficient bodies. So with that you can resist the interference, so that you can resist the earthquake, not just to keep what you think is right. Because some things will be lost in any negotiation, stop, you lose some and you win some. But the question is, how can you maintain the mechanism so that you can move on and still function in an acceptable manner because we see this gap in the society but also in the judiciary.

We're talking about the voices in the judiciary, which rather favoured the setting up of a special section. Because they said, DNA had too much power and that's not healthy. Actually, we also have some comments in here in the chat on this topic. So we cannot avoid forever these discussions. We can avoid them for a while. But at some point, you need to turn your attention there. And I would say there are a few topics which need serious discussion.

One of them is the responsibility and accountability of the judiciary for their actions. And whenever you say accountability or responsibility, someone will say this is a breach of my independence ending these. I don't think we have a simple solution. You know, we are people and we like simple solutions. But when problems are complex, then the answer might be just this complex. A simple solution about how you set up an accountability system, which should not only need the functional independence of judges. You see, there are lots of discussions about this special section, about the judiciary inspection as accountability, as imperfect accountability mechanisms, as a mechanisms which probably can be improved. Ms. Chiş was also saying earlier, it's obvious we cannot stay as we are today, but it's obviously cannot get back to where we were before. So obviously there is a need for dialogue and for compromise which can be accepted by everybody.

I looked at the opinion of the general advocate and the opinion said there are no sufficient independence safeguards for this section in this special sections. If I look at the results, well in some years, they do not provide too much safeguards. But what can we do if I look at the law I'm thinking what can we do to guarantee the independence of this section? So as I always say, people are very important because the law might be just great. But if it is implemented or enforced for personal

interests, then it will be with bad results. The actual independence of the judiciary, we already tackled today. We also need at some point to discuss the efficiency of the judiciary because it's very much about DNA. Recently, we started thinking, talking about the court as well. As you know, Romania holds a shameful positioning in Europe in terms of human trafficking and it's difficult to get there without some help from the state. Because we are talking about people being trafficked, we need to talk about success, but also by about failure. And we need to see what we can do for the prosecutor's offices to be to have high performance everywhere, not only in just a few places. Which are this cost and we then forget about everything else. And another thing which I find very important is the prompt drafting of court decisions, justifications. It's difficult to accept in a European country, that it may take months, even years for a person to receive the justification of a court decision.

So the good news is Romania survived with noise, with tensions, with fights. But I believe that's candour is good, actually. I think an indicator of disaster is when you stop hearing anything from our country, and the fact that we yell at one another, it doesn't mean that some are always right, and others are always wrong. I think that truth is different. I think there are bits and pieces of truth and justice everywhere. And we should try to build the puzzle and sit down and choose the topics we actually can debate because it is just possible that we are not prepared to discuss some of them. And reach the relevant point for Romanian Society [inaudible].

CBM and what it brings to Romania, I will only give you one example where they speak about the predictability of court decisions. We made the test, we went to courts across the country, the object of the case was a request for public information. And we have in the first instance, we have 50/50 solutions. 21 courts believe like us and 20 courts believe different. And one of them gave us a first hearing, or scheduled the first hearing nine months after we submitted we filed our application. And it's just the same in different matters, it's just the same with the Courts of Appeal. So well, we are talking about a very old law, it's been enforced for 20 years. So if at this level, we have such differences in the judiciary, in the in the judicial practice, then what happens in very complex matters. This is just an example because I believe that at some point, we should start the discussion about this and stop hiding behind the general excuses — like there is no case file is like the other. Yes, they are we have unfortunately the court overloaded with identical cases, repetitive cases, and I think we should tackle this in the future. So Romania survived, Romania is trying to get her act together and build a better system maybe than the yesterday's system, and maybe the conflict and this candour are good.

54:30

FG: Thank you so much for that, Laura. So that's the end of part one. So for those who could only join us for the first part, thank you so much. Now we're going to move on to part two.

So the way we're going to deal with this is as follows. I've noticed in the chat that there has been a lot of activity and some of the panelists are replying back and that's great. Now my colleague, Marek, he's got one or two questions that he's also going to put to the panel. But I understand Ramona, you may be in a time difficulty. So I wanted to give you an opportunity now, if you wanted to touch upon any of the points that some of the other speakers made, or if there's any other item that you wish to address.

RS: Yes, thank you very much I unfortunately need to run in in a few minutes. But I did look in the chat at the various comments regarding this the opportunity of this special section, regarding the interference of intelligence services in the system, regarding a lot of the things that were mentioned here. And I fully agree with Laura, that we also have to look at that, speaking about the role that the intelligence should have in a state and this the several mechanisms, that we can activate in order to balance this kind of power, because it is dangerous. And yes, we didn't speak enough about it.

But I think that we were so busy putting out fires, at least for a number of years, and we were also in a very complicated political context that we did not find a moment of opportunity and of quieter times where we can sit down and discuss about all of these things. Which again, do not only happen in Romania, or do not only happen to Romania. Look at our neighbours in Bulgaria, which also were doing progress, which had a great CBM report about a year ago, and are now taking to the streets and in a situation of serious political capture of all of the justice, on almost all of the justice and anti-corruption institutions. And the signals coming from there are very, very complicated ones. And I would say that, you know, things have reversed in in less than a year, looking at the situation in Romania and the situation in Bulgaria.

So we are not, we are not in a desperate context or in a desperate situation. But I think we are in a moment, talking about the political shift as well. Talking about the for the first time, you know, number of years, the political majority in the parliament. A more balanced one, I would say. Let's say that the way that the political will looks today is in favour of such a discussion. But then also looking at those things that we did not have the courage, the courage to talk about until today — such a debate is necessary.

And I would not, I don't think that politicians should continue to use popular populism as a tool when it comes to such serious things as the anti-corruption fight, or the way that the functioning system should look like, or how we should continue to praise a lot of a lot of results, or turning people into Gods without criticism, and without also looking at the less than less functioning parts of the system — because we are hurting the system. And because there's nothing, that there's something that I keep saying about the way we look like as a society, there's no such thing as gods in just in the justice system, gods in the political system or gods in the economy or the society overall who will save us overnight. There is no such thing, a state, a functional state, is a state which is actually working even if these gods disappear tomorrow. And of course, people are important in leading institutions. Yes, they are very important and we have seen it as well. But apart from that the functional system comes from the understanding of proper functioning of the legislature of the law enforcement system and of the citizens themselves. And that's how we should probably talk about the changes in the justice system as well for the next years.

Thank you again, with apologies that I need to run. It was a pleasure to be part of the discussion and I'm happy maybe to answer in writing questions that may come afterwards. Thank you so much.

FG: Thank you so much, Romana. I really appreciate your time today. So I'm just going to call on my colleague Marek, who may have had a chance to look at some of the questions that we've had in the Q&A feature?

Marek Svoboda, CEELI Director of Programs (MS): Yes, it was kind of difficult to follow up for me because there was a there was a lot of questions both in the chat and in the, in the Q&A section and all in Romanian. So, I beg your pardon and ask for your understanding and I will rely on the speakers actually to correct me if I'm wrong. But maybe to start with the with one of the more recent concrete questions. There is a question from [inaudible], in which, again, I'm translating from Google Translate. So you can find it in the in the in the in the Q&A. But the question is, is to be in the idea of concrete debates whether she can ask the opinion of the three panelists regarding the registration of the DNA prosecutors from which it simply resolved that they were plotting to intimidate the judiciary. It's the last question.

AC: My colleague from the Oradea Appellate Court is asking about a pending case. I cannot speak about a pending case; nobody can speak about pending cases. It was a complaint filed against those prosecutors. They have been indicted and the court will say if they committed a criminal offense or not. But I do not really think that we should speak about individual cases, we should speak in general terms about what happened in the case of the National Anticorruption Directorate and about what happened in the case of the Special Section for investigating judges and prosecutors. The reproaches related to the activity of these two institutions were similar, but made by different parts of the judiciary.

I have noticed that my colleagues who supported the legislation introduced after 2017 are present, and try to explain why this special section was necessary. It is their opinion and I respect that. It was embraced by a minority of judges, rejected by most of them and by the vast majority of the prosecutorial offices that time. I do not remember very well, Ramona or Laura, has already said that almost 4000 judges and prosecutors undersigned an open letter against the draft law which proposed the creation of this institution. The Judicial Council itself gave a negative opinion on it when it was proposed by the executive. After that, the executive gave up, and did not go further with this proposal, but the Parliament created a special commission for debating the new laws and the colleagues in the chat were invited by that commission and supported the new institution. They had these arguments they wrote down in the comments and I have already answered them.

Of course, we can debate this many hours. We did that in Romania. But I think the general opinion within the judiciary is that this *apple of discord* (the Special Section) has to go because it has no results. It does not solve the corruption within the judiciary. It does not solve the corruption cases brought before this prosecutorial office just because a complaint was filed against a judge in a high corruption case. And last but not least, all of their cases finalized with indictments received acquittals in the courts. If the National Anticorruption Directorate (NDA) had such results, I cannot imagine their reactions. I am not saying that there were not acquittals in some cases of NDA too, some of the colleagues in the chat unfortunately experienced this, and I understand them, I regret that and I think that it is important to address that issue. But the solution is definitely not solved by creating something which is even worse, because this section is the worst thing we can imagine. Because it has jurisdictions on any judge or prosecutor in Romania, can investigate any crime, not just offenses related to our duties in the office, but any criminal offenses. If we corroborate this with the activity of the Judicial Inspectorate (I had not time to speak about it), who was subordinated to just one person, the Chief Inspector being the only one who can adopt the regulation of this Inspectorate, the only one able to organize the competitions for the inspectors, the only one who can exercise disciplinary actions against judges and prosecutors, these two institutions together can weaken the independence of the judiciary.

These two very important tools, the criminal liability and the disciplinary liability can weaken and has weakened actually the independence of the judiciary. I know that my colleagues said that the chief prosecutor, the deputy chief prosecutor, and the prosecutors in this Special Section were appointed by the Plenum of the Judicial Council. But if you check, you will see that those persons were supported by the executive as well, because, for instance, the first prosecutor nominated as chief prosecutor for the Special Section was the former Deputy Chief Inspector whose mandate was prolonged by a questionable emergency ordinance contested before the European Court of Justice. This person preferred by the executive was appointed eventually by the Judicial Council, and now he is a member of the Constitutional Court, nominated by the Chamber of Deputies of the former Parliament.

After the vacancy of the position, the second nomination as chief prosecutor for the special section was made by the former Minister of Justice (who revoked Laura Codruta Kovesi from her office). After

being rejected by the President of the state as the new chief prosecutor for the National Anticorruption Directorate, subsequently the Council tried to appoint that prosecutor as a chief prosecutor for the Special Section. It was a strong opposition within the Council, I was part of that opposition, and eventually the nominee gave up this attempt to become the chief prosecutor of the Special Section.

You can see that *those who were preferred by the executive and the legislator were nominated or appointed in high positions in this new Special Section*. So just saying that the examination Commission for appointing these prosecutors is compounded mostly by judges is not enough to assure the independence of this new organism, because if you look at those people specifically, you will see that they are related to the executive and the legislator in the way I have already explained.

LS: If I may also make a point on this one. You know, I think if we extrapolate this, you see that there's no magic formula to judicial independence. Because on paper, the section is selected and appointed in the most independent way possible. And some of our viewers argue that they also behave independently. Yet you see these links with political parties and political people that then forward you in your career. So, again, I think we have a very difficult task before us to understand that, as good as they may look on paper, procedures are just as good as the people implementing them.

And also to understand that even judicial councils are not a general solution are not a panacea for all our problems. And that, you know, the views in the society are equally reflected inside the institutions. And in this case inside the sphere Council of Magistracy, inside the judiciary. As you can see from the lively debate on the chat, and people care deeply about these things because they truly believe that their position is the right one. Yeah? Whether they're for or against this special section.

Now, I'm, personally, unable to see how the creators of this session imagine that it can ever perform efficiently its function. Just because they put all the all the crimes committed by judges and prosecutors there. So how can you possibly think that the handful of people in Bucharest could investigate all the allegations against judges and prosecutors throughout the country?

We know that judges and prosecutors are particularly targeted individuals in all these complaints, and that 90% of them or even more are superfluous and they are motivated by, by other reasons, then criminal grounds. So yeah, I think this is a discussion to be held and on safeguards with seen a lot of acquittals. When cases were weak, we had acquittals from judges. That, for me, is an indicator of strength of the judiciary — meaning that they don't take all the cases that come to them and they simply act as a notary public stamping them and agreeing with the prosecutors.

We've seen a lot of acquittals, not only for the special section, but also in DNA cases. Also in the [inaudible] cases, and you know, it's easy at the associated level to say, yeah, it's, it's always the judges fault. But I think we are beyond that already. And I think people are starting to understand that — it's not always the judges fault. And if you truly believe in traditional independence, you should accept it also, when you don't like the solution. Yeah? So maybe there was not much to the case to be honest. Maybe the crime that was investigated was not found to be a crime in yet. So there are many reasons why you could get, you could get an acquittal. And I think, because of the lively debate on these topics, in recent years, Romanians have become Doctors of Law — at least in their minds. All thinking that they can understand these things, but definitely the idea that it may not be the judge, it may actually be that the judge is doing his job correctly, you know? Yeah.

And then we get to the question of accountability and responsibility, which is a tough one. So yes, in general, if you're not guilty and you got an acquittal, everything is fine. Except for you. Because your

life has been impacted in a big way. Yeah. Maybe you lost your job? Maybe you lost your health? Maybe you lost your family and friends? So at what point should we bring into question the idea of responsibility? And as I said, whenever we say that the immediate response is that would impede in on traditional independence. And, yeah, here we are.

AC: Reading the comments, I understand the rage of some of my colleagues. And this was the reason for I said that we cannot stay or stick with our opinions saying we are right, and the others are wrong. I said that in my presentation. I don't think that it is right to say that what was before was perfect. But it also is not right to say what is now is perfect. So, we have to meet somewhere in the middle, and try to find other safeguards than those existing now or those which existed before.

FG: Absolutely, I was just going to come back to one issue and as you say, Laura, and Andrea. And we can see the comments as well in the chat so thank you all very much participants, I understand that it might be a little bit frustrating for you that you don't have a chance to speak in this particular format. It's clear that there are a lot of issues there and I think all three panelists have said that it is good to talk. So it's clear that there's a lot more talking that needs to go on and there are a lot of complex issues too. But I just want to bring up one point and that's the perception of the public towards the judiciary. So it's clear there are a lot of complex issues that are here, but I think in one of the latest reports from the EU, they noted that the level of public trust in the judiciary was decreasing. And perhaps they themselves have questions about judicial independence. So I just wanted to ask Laura and Judge Chiş maybe, quickly if you might be able to address this — like what can the judiciary do in order to try and to change that perception within the public?

AC: I think it is necessary to explain those solutions which are of great interest for the general public, for instance explain cases like the one called *10th of August*. The Judicial Council has already taken measures at my request, because we have asked the Judicial Inspectorate to investigate what happened in that case. And after we have the report of the Judicial Inspectorate, we will explain the solution to the general public. We cannot do that without having the motivation of the judgment.

Another thing is to try to change the law and motivate our decisions before pronouncing them, especially prolonging the term for motivating our judgments and maybe finding other solutions such as standardizing procedural documents, or trying to limit the number of characters because, in the 21st century, we do not have time for drafting and reading very long procedural documents. In high corruption cases, we can talk about judgments written on hundreds, maybe thousands of pages. It is very difficult for a judge to deliver such a difficult and long judgment even in three months as the law allows him or her to do. So, this is what we should do: try to explain everything which is of interest to the general public, try to deliver our judgments in a short time, because justice delayed is justice denied, and try to reach out the general public in as many ways as we can.

FG: Very good and Laura then from your perspective, the NGO perspective.

LS: The moment you start talking, and you start testing the judiciary, you start seeing also things that you don't like to see. But that doesn't mean that those things were not there to begin with. It's just that now you have more transparency, and more outspoken positions on key issues that are trying to the judiciary. So, again, yes, it's the same with high level corruption, the moment you start fighting it, people start understanding that this is a threat in their society, and the perception raises, it doesn't decrease or it doesn't decrease immediately. The same with the judiciary, you talk about it, you start seeing flaws in the system, you're shocked at the beginning, because you thought that here there was this ideal system that operated somehow perfectly in a country.

Also I think the debate is, is wider than that. There's a lot of discussion right now about the special pensions of various categories of people, one of which is judges and prosecutors. And you know, this is easily taken home by people because they see the large disparities in terms of retirement age, and also the value of the retirement as such. So I think probably 80% of the decrease comes from actually people finding out how the justice system operates with its with flaws, and its imperfections and it's not pretty. But I think it's better than having this idealistic image about the justices.

So again, I see the glass half full. So I see the good part of the of the story, which means that people are more aware of the imperfections and will demand more of the justice system. Not just of the politicians, but also of the justice system. Because let me conclude by saying that, you know, you hear a lot about the DNA is bad or the special section is that they have political connections and so on. Let me just bring to you the fact that they are all prosecutors or magistrates. So if magistrates are so politically independent, and impartial, how can we complain about these two groups that are basically proposed of prosecutors?

So again, maybe it's a wakeup call and I hope that also a starting point for a more meaningful discussion.

FG: Very good. And on that positive note, and I have my eye on the clock, it's time for us to complete this session. I just want to thank you all. And I want to thank our interpreters. I also want to thank all of our participants. Thank you for the comments that you made and thank you for your participation. Also to the panelists, we really appreciate your time for this event and the time that you spend preparing. So judge Andrea Chiş, to Ramona Strugariu, MEP, and to Laura Ştefan from expert forum. That was incredibly informative, I'm sure. And we hope that you will join us at the end of May and in June, where we will have further sessions on spotlights on Hungary and Ukraine. And there will also be a recording of this session available on our website in two weeks. So stay well and stay healthy everybody. And thanks again for your time.

[TRANSCRIPT ENDS]