



Group of States against Corruption  
Groupe d'États contre la corruption



Adoption: 23 March 2018  
Publication: 11 April 2018

Public  
Greco-AdHocRep(2018)2

**Ad hoc Report on ROMANIA  
(Rule 34)**

Adopted by GRECO  
at its 79<sup>th</sup> Plenary Meeting  
(Strasbourg, 19-23 March 2018)

## I. INTRODUCTION

1. In 2017, a series of reforms were initiated concerning Romania's justice system, prompting a wave of unprecedented public protests and concerns expressed by nearly half of the country's judges and prosecutors, as well as by several countries and international institutions, about the consequences of the intended reforms for the independence of judges and prosecutors. A number of constitutional challenges have been filed and the Parliament is currently reviewing the draft provisions. This occurred in parallel with the on-going compliance procedure in GRECO's Fourth Evaluation Round (covering, *inter alia*, corruption prevention in relation to judges and prosecutors).

2. Against this background GRECO decided at its 78<sup>th</sup> Plenary Meeting (4-8 December 2017), when it adopted the Fourth Evaluation Round Compliance Report<sup>1</sup>, to apply Rule 34 of its Rules of Procedure in respect of Romania. This Rule provides for an *ad hoc* procedure which can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe. In its decision, GRECO requested additional information concerning the draft legislative amendments currently before the parliament concerning the judiciary. The information was submitted by the Romanian authorities on 15 January 2018.

3. Because of the complexity of the issues at stake and the on-going nature of the reform process, an on-site visit was approved by the Romanian authorities. Ms Panagiota VATIKALOU (Greece) and Ms Vita HABJAN BARBORIČ (Slovenia) were appointed as rapporteurs for this *ad hoc* evaluation, assisted by Christophe SPECKBACHER from the GRECO Secretariat. This *ad hoc* GRECO Evaluation Team (hereinafter the GET) held a series of meetings and interviews in Romania on 21 and 22 February 2017. The GET met with the Minister of Justice and other representatives of this ministry, members of Parliament, the Office of the President, the Superior Council of Magistracy, and the Prosecutors Office. The GET also met with civil society and professional organisations (NGOs, associations of judges and prosecutors), and representatives of international institutions (European Commission) and countries.

4. The current *Rule 34 ad hoc* report, drawn up by the rapporteurs, contains a summary description of the legislative and other measures planned by Romania within the context of the judicial reform and in connection with the functioning of the criminal justice system as a whole. It also describes a number of reactions to these intended amendments from national institutions and professional organisations of judges and prosecutors, the European Commission and others. The report contains an analysis of the particular impact the intended legislation would have in respect of the corruption prevention standards developed by the Council of Europe and GRECO.

---

<sup>1</sup> See paragraph 91 of the report

## II. CONTEXT AND BACKGROUND INFORMATION

5. The proposed legislative amendments described above must be seen in the broader context. In parallel to the amendments concerning three justice laws (Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on judicial organisation and Law no. 317/2004 on the Superior Council of Magistracy), a process was initiated shortly after the GRECO plenary meeting of 4-8 December, to amend the criminal procedure, reportedly to implement the EU Directive on the presumption of innocence. Around the same period, a further series of three laws were registered in Parliament which contain, *inter alia*, amendments to the incriminations of bribery and trading in influence, and to the offence of abuse of office, which are relevant to the functioning of the criminal justice system as a whole and its response to corruption specifically. These various draft proposals concerning procedural and substantive criminal law are a further source of controversy and concerns<sup>2</sup>. Last but not least, the activity of the National Anti-Corruption Directorate (DNA - the specialist anti-corruption prosecutor's office) has also been questioned and potentially affected by statements directed towards both the institution and its head (often emanating from persons actually prosecuted by the DNA or closely connected to them)<sup>3</sup>.

### The legislative process concerning the three laws on the judiciary and other amendments

6. In 2015 and 2016, a series of consultations were held with bodies representing the judges and prosecutors of Romania, including the Supreme Council of Magistracy (CSM) on various judicial reform initiatives. The Ministry of Justice elaborated a *Draft law amending and supplementing Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on judicial organisation and Law no. 317/2004 on the Superior Council of Magistracy* (the "draft Law").

7. On 23 August 2017, the Minister of Justice eventually presented the objectives of the reform by means of a press conference and a PowerPoint presentation<sup>4</sup>. The on-site discussions

<sup>2</sup> <https://www.romania-insider.com/tens-thousands-join-first-big-protest-year-romania/>;  
<https://www.irishtimes.com/news/world/europe/romanian-ngos-demand-halt-to-judicial-and-anti-graft-overhaul-1.3339127>

<sup>3</sup> See for instance <http://www.romaniajournal.ro/ghita-makes-new-accusations-against-anti-corruption-head-kovesi-intelligence-general-coldea-european-arrest-warrant-issued-against-ex-deputy/>;  
<http://www.romaniajournal.ro/update-cnatd-cu-general-council-verdict-laura-codruta-kovesi-has-not-plagiarised-reactions-and-contestations/>;  
<http://www.romaniajournal.ro/dnas-kovesi-notifies-csm-regarding-the-statements-made-by-senate-speaker-tariceanu/>

<sup>4</sup> See <http://www.just.ro/principalele-modificari-propuse-la-legile-justitiei-legea-nr-3032004-legea-nr-3042004-si-legea-nr-3172004/>. The press release stated that the main amendments concern the conditions of access to the magistracy, the career of magistrates, including the conditions of promotion to a higher or specialised court or prosecutor's office and the abolition of "on-the-spot" promotions, modifications of the terms of mandates of senior functions, the suspension of functions (as a judge or prosecutor) during the mandate as a member of the Superior Council of Magistracy (CSM), a greater separation between judges and prosecutors in the CSM's decision-making process regarding careers, the procedure for appointment to senior positions at the High Court of Cassation and Justice (HCCJ) and in the prosecution services, the magistrates' individual liability (for mistakes), the establishment

held by the GET revealed that the objectives of the reform had, at times, gone far beyond the earlier consultations, and reportedly included elements which had not previously been discussed. The GET was told that many judges and prosecutors discovered the actual content of the proposed changes through the media. Later on, the CSM disseminated the draft Law to all the courts and issued a (first) negative opinion. Against the background of public protests, the government did not commit its responsibility for the draft Law. The latter was nonetheless taken over by Parliament and those met by the GET had different readings as to the way this happened.

8. The fact of the matter is that on 29 September 2017, the two chambers of Parliament established a new special joint committee – the *Committee of the Chamber and Senate for the systematisation, unification and ensuring legal stability in the field of justice*. About one month later, on 25 October, the Minister of Justice presented his proposals to the Committee. The Romanian authorities explained after the visit that the Minister actually gave a presentation in accordance with article 111 of the Constitution<sup>5</sup>. This stage of the process before the special committee is not well documented<sup>6</sup> and three working documents in table format (all dated 25 October) have been posted on-line<sup>7</sup>. The CSM and the General Prosecutor's Office were among those issuing public criticism about the process<sup>8</sup>.

9. The GET was told that, in the following days, a series of discussions took place and three formal motions for a draft law were submitted on 31 October, by 10 MPs and registered by the Permanent Bureau of the Chamber<sup>9</sup> whilst, in parallel, 3 900 judges and prosecutors signed a

---

of a specialised directorate within the Public Ministry with exclusive competence for the criminal prosecution of magistrates, as well as the transfer of the Judicial Inspectorate under the responsibility of the Ministry of Justice.

<sup>5</sup> “*The Government and the other bodies of the public administration, within the parliamentary control of their activity, are obliged to present the information and documents required by the Chamber of Deputies, the Senate or the parliamentary commissions through their presidents. (...) Government members have access to Parliament's work. **If attendance is required, their participation is mandatory***”. [highlighted by the Romanian authorities]

<sup>6</sup> Despite various headings referring to the agenda and working documents on the webpage of the Committee hosted by the Senate's website ([https://www.senat.ro/Comisie\\_new.aspx?Z&ComisieID=fcd47296-4b0c-4848-bfc2-d0a1cc7c9e60](https://www.senat.ro/Comisie_new.aspx?Z&ComisieID=fcd47296-4b0c-4848-bfc2-d0a1cc7c9e60)) there is no concrete information available there. The webpage hosted by the Chamber's website (<http://www.cdep.ro/cd/serinte2015.lista?tip=221&an=2017>) only lists the agenda, starting on 22 November.

<sup>7</sup> These appear on a webpage of the Chamber of Deputies, listing working documents of the committee for the year 2017: [http://www.cdep.ro/pls/proiecte/upl\\_com2015.lista?dc=221&an=2017](http://www.cdep.ro/pls/proiecte/upl_com2015.lista?dc=221&an=2017)

<sup>8</sup> The CSM issued a public statement criticising the process and noting that the draft Law “had been sent directly to Parliament at its request”. With similar words, the Prosecutor General's Office stated that the “diversion of the declared path of the amendments - from the legislative initiative of the Government through the Ministry of Justice to the transmission of these amendments to the Joint Special Committee (...) does not meet the standards required in terms of public debate and inter-institutional dialogue”.

<sup>9</sup> The following links document the parliamentary process:

[Pl-x nr. 417/2017 – legislative proposal to amend law nr.304/2004 on the organization of the judiciary](#)

[Pl-x nr. 418/2017 – legislative proposal to amend and complement law nr.303/2004 on the statute of judges and prosecutors](#)

[Pl-x nr. 419/2017 – legislative proposal to modify and complement law nr.317/2004 on the organization and functioning of the Superior Council of Magistracy](#)

public manifesto against the reform<sup>10</sup>. Each of the draft laws was accompanied by a short explanatory report (about one page)<sup>11</sup>. The urgent procedure was applied and the drafts were subsequently sent for opinion to the Government, the Legislative Council and the CSM (expected by 9 November). The process and timelines were basically the same for the three drafts, which carried amendments to three organic laws on the judiciary. The CSM, which was not able to comply with those short deadlines, issued a negative opinion on all three draft Laws.

10. On 13 November, the three draft Laws were transmitted to the special committee with a deadline of 20 November for the formal submission of revised drafts, and of 27 November for the submission of a final report. During the first half of December 2017, the special committee finalised its reports (one or two pages in text format, the rest in form of a table). The three bills were subsequently adopted by the Chamber on 11-13 December and by the Senate on 19-21 December.

11. Large public protests took place during that period<sup>12</sup> followed by public statements issued by foreign embassies on 27 November and 21 December<sup>13</sup> calling on “actors involved in the judicial reform project to refrain from any action resulting in a weakening of the independence of the judiciary and of the fight against corruption, and to seek without delay the necessary advice of the Venice Commission in order to ensure that the independence of the judiciary is preserved and the reform process in general remains intact.”

12. On 15 December, the special committee started to examine amendments to the criminal procedure code<sup>14</sup>. The GET was informed that, in the following days, intensive work was

<sup>10</sup> <http://www.forumuljudicialorilor.ro/index.php/archives/2866>

<sup>11</sup> As regards the amendments to law n°304/2004, the report enumerates in general terms the rationale: 1) need to take into account a constitutional decision and to transfer certain prerogatives of the sections of the CSM to the plenary; 2) increase to 60 days (as opposed to 30 days, currently) of the deadline for the drafting of court judgements; 3) in agreement with the ministry of justice, necessity of creating a special directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice (HCCJ), to investigate offences of magistrates;

As regards the amendments to law n°303/2004, the report refers to: 1) the need to take into account certain decisions of the constitutional court; 2) establishing the conditions for the appointment to senior positions at the HCCJ and at the Prosecutor's Office attached to it, DNA and DIICOT; 3) introduction of a period of traineeship of 3 years in various services; 4) need to establish a system for the suspension of duties; 5) need to review the liability of magistrates, the statute of limitation for the protection of injured persons and redefining the expression “bad faith” and “serious negligence”

As regards the amendments to law n°317/2004, reference is made to 1) the need to restore normality and to take into account several constitutional court decisions; 2) need to amend the appointment for the leadership in the HCCJ and in the Prosecutor's Office attached to the HCCJ; 3) “in view of the information reported recently in mass media, we believe that there is a need to transform the Judicial Inspectorate into an autonomous institution, so as to preserve its independence from other state powers, as well as to remove suspicions regarding its activity.”

<sup>12</sup> See for instance <http://www.dw.com/en/in-romania-thousands-rally-against-proposal-to-water-down-corruption-laws/a-41539714>

<sup>13</sup> See <http://www.dailyherald.com/article/20171127/news/311279857> and <https://www.facebook.com/DutchEmbassyRomania/posts/1802313063112358>

<sup>14</sup> A working document in form of a table was uploaded on 15 December on a webpage listing the documents of the committee; see item 9 at [http://www.cdep.ro/comisii/suasl\\_justitie/pdf/2017/rd\\_1215.pdf](http://www.cdep.ro/comisii/suasl_justitie/pdf/2017/rd_1215.pdf)

conducted. On 21 December 2017, three draft laws submitted by a group of more than 40 MPs from the main ruling party and carrying amendments to the Criminal Code (CC) and the Criminal Procedure Code (CPC)<sup>15</sup> were registered by the Senate<sup>16</sup>.

13. On 27 December, several constitutional challenges have been filed against the three justice laws by MPs and the High Court of Cassation and Justice. Shortly after, in January 2018, the Prime Minister resigned<sup>17</sup> and there was a government reshuffling (the Minister of Justice retained his functions).

14. The Constitutional Court rendered its decisions on 23 and 30 January and on 13 February 2018 and declared unconstitutional several provisions. The decisions have been published in the following weeks (as a rule, the Court has to draft its rulings within 30 days). The latest constitutional challenges, which were filed on 25 January 2018 and questioned the constitutionality of the legislative process as a whole, were dismissed as they did not meet formal requirements (deadlines, number of signatures). The GET was told that the Parliament will have to review (only) those provisions addressed in the Court's findings and that in principle, this work will not entail a broader general review. The Parliament may amend other provisions only insofar as these cannot be dissociated from those which have been declared unconstitutional. The authorities indicated in their latest submission that the Chamber of Deputies adopted on 20 March 2018 revised versions of the three laws and published these the day after on its website; the Senate is now to examine these.

<sup>15</sup> English versions of the CC and CPC can be found at <http://www.legislationline.org/documents/section/criminal-codes/country/8>

<sup>16</sup> **Legislative proposal 2017-686 (B686/2017):**

See [https://www.senat.ro/legis/lista.aspx?nr\\_ds=b686&an\\_ds=2017;it](https://www.senat.ro/legis/lista.aspx?nr_ds=b686&an_ds=2017;it) comprises a single article aiming to amend art. 175 CC on the definition of public servants with a view to excluding "persons who have been elected to positions of public dignity". The draft was sent for an opinion to the Legislative Council, to the Supreme Council of Magistracy and to the Government. On 5 March, the former issued a negative opinion.

**Legislative proposal 2017-687 (B687/2017):**

See [https://www.senat.ro/legis/lista.aspx?nr\\_ds=b687&an\\_ds=2017](https://www.senat.ro/legis/lista.aspx?nr_ds=b687&an_ds=2017) –aims *inter alia* at amending the incriminations of bribery and trading in influence (art. 289, 290, 291, 292), by specifying that the undue advantage must be tangible, by removing the third party beneficiaries of undue advantages ("for someone else", natural or legal person) and the "indirect" element of the offence (e.g. use of intermediaries or third party initiators for trading in influence). The offence of abuse of office would remain a criminal offence only insofar as the illegal benefit or damage would amount to 200 000 euro or more. Abuse of powers for sexual favours would be abolished;

**Legislative proposal 2017-688 (B688/2017):**

See [https://www.senat.ro/legis/lista.aspx?nr\\_ds=b688&an\\_ds=2017](https://www.senat.ro/legis/lista.aspx?nr_ds=b688&an_ds=2017) –provides for instance for a review / reduction of the statutes of limitations, higher financial thresholds for the application of certain aggravating circumstances ("particularly serious consequences"), offences which are specific to the judiciary are reviewed or added, e.g. inducing a judicial body into error, "unjust repression", "remanding, arrest or other preventive measure applied to a person in the absence of concrete evidence", "abuse of judicial powers" is added with penalties of up to seven years imprisonment.

<sup>17</sup> <http://www.bbc.com/news/world-europe-42697971>

### III. ANALYSIS BY GRECO

15. The following analysis focuses on certain aspects of the draft amendments currently in Parliament. This new legislation is considered within the particular framework of GRECO's Fourth Evaluation Round, covering, *inter alia*, corruption prevention in respect of judges and prosecutors.

16. The broader context is also taken into account, especially other intended reforms regarding the criminal legislation and the situation of the DNA. Many interlocutors met on-site (both from the public and civil society sectors) agreed that, should the controversial elements in the various segments of the current reforms (judicial institutions, procedural and substantive criminal law) be adopted and enter into force, they have the potential to affect the criminal justice capacity to deal with corruption and other offences involving senior officials; interlocutors also pointed to the political rhetoric used to justify those changes<sup>18</sup>.

17. It is recalled that the risks of set-backs as regards legislation and anti-corruption efforts more generally has been a recurring issue in respect of Romania over nearly a decade. This has been documented repeatedly in previous GRECO reports<sup>19</sup> which have expressed concerns including about attacks on the anti-corruption bodies and legislative amendments using expedited or emergency procedures sometimes decided overnight<sup>20</sup>. Moreover, avoiding such situations and ensuring legislative stability and transparency has also been one of the important commitments of Romania in the CVM (Cooperation and Verification Mechanism) process of the European Union<sup>21</sup>.

#### The legislative process leading to the justice laws

18. The circumstances in which the amendments to Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on judicial organisation and Law no. 317/2004 on the Superior Council of Magistracy were adopted are a clear illustration of Romania's need to substantially improve the transparency of its legislative practices. A recommendation was already issued in this respect in the 4<sup>th</sup> Round Evaluation Report<sup>22</sup>.

<sup>18</sup> See for instance:

<https://www.romania-insider.com/psd-statement-parallel-state/>;

<https://www.agerpres.ro/english/2018/02/12/social-democrat-head-dragnea-increasingly-more-evidence-emerges-about-parallel-state-s-existence--53345>

<sup>19</sup> See: paragraph 95 of the [Third Round Evaluation Report](#) – Theme I Incriminations – of December 2010; paragraphs 13 et seq. (referring i.a. to the “Black Tuesday” of December 2013). and paragraphs 19 et seq. of the [Fourth Round Evaluation Report](#) of December 2015; and more recently paragraph 69 of the March 2017 [addendum](#) in Romania's Third Round Compliance Procedure in relation to the so-called “Government Emergency Ordinance 12”.

<sup>20</sup> See also <https://www.theguardian.com/world/2017/feb/01/romanians-protests-emergency-law-prisoner-pardons-corruption>

[https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en)

<sup>21</sup> See recommendation i) in the GRECO Evaluation Report, available at <https://rm.coe.int/16806c7d05>

19. Although the Minister of Justice and the ruling coalition parties met in Parliament have insisted on the transparency and broad nature of the consultations held, it should be pointed out that most interlocutors met by the GET have stressed that the draft elaborated and presented in August 2017 by the Minister of Justice went far beyond the earlier discussions and consultations held since 2015 (some even said that they did not have much in common). In particular, despite the fact that many features of the intended reform may have pursued a legitimate objective of modernisation and updating of the justice system, the inclusion of many changes – often perceived as constituting a threat to the independence of the judiciary and the operational independence of prosecutorial bodies – are difficult to understand and have contributed to the development of a climate of suspicion.

20. The modalities and timing of presentation of the intended reform (through the media in the middle of the Summer) did not contribute to securing adherence to, and trust in such reforms by those who are first and foremost concerned with their implementation, namely the magistrates themselves. From that perspective, the claims that particular attention was paid to participatory efforts which have effectively been deployed since 2015 have not fulfilled their purpose.

21. Moreover, this wide ranging judicial reform involved amendments to three organic laws and pursued, *inter alia*, the declared objective of addressing concerns raised by various constitutional court decisions rendered in recent years. As such, it should have been conducted in a proper and concerted manner, leaving much more time to work out consistent amendments, to improve existing laws and double check the coherence of provisions across the various laws. During the discussions with the GET, several examples of remaining inconsistencies were given and many pointed to the volume of information and amendments which had to be handled in a particularly short time span (see also paragraph 28 et seq.).

22. Instead, after the broad protests against the ministerial draft of August 2017, and following the subsequent disengagement of the Government from this initiative, a legislative process was started in haste in Parliament on the basis of a disputed procedure involving a new special joint committee. It has been argued by some interlocutors met by the GET that this committee had no appropriate competence to deal with the reform of judicial institutions (its competence was limited to dealing with amendments to the criminal code and criminal procedure code), until its terms of reference were extended *ex post facto* on 20 November for it to be able to deal with “all normative acts in the field of justice”, after approximately one month of work. The Romanian authorities indicate that the Constitutional Court in a decision no. 828 of 13 December concerning another challenge filed against the lack of competence of the committee noted that “it was constituted for the elaboration of legislative proposals referring to the Code of Criminal Procedure, the Criminal Code and the laws in the field of Justice”. The GET also heard that measures had been taken to limit the ability of the opposition to bring up in plenary debate certain objections which had not been retained in committee discussions. It was finally brought to the attention of the GET that the committee did not draw up minutes of its



meetings, and that its board never met (the rules of the committee reportedly give broad powers to its president<sup>23</sup> as regards organisational decisions).

23. For many, even the previous Prime Minister<sup>24</sup>, the ministerial bill was just sent directly to Parliament without governmental approval, and converted into parliamentary drafts, even though the Minister of Justice claims that he just gave a presentation at the Parliament's request. The parliamentary process was concluded in just two months. The GET shares the concerns expressed by many that the whole process should have been accompanied by proper impact assessments as regards the institutional, legal and financial implications of the many aspects of the reform, including for the overall structure of the professional body of judges and prosecutors. During the on-site discussions, the GET witnessed a number of disagreements among Romanian interlocutors as to the actual implications of many changes approved so far by Parliament. These had a lot to do with the absence of proper impact assessments, which has opened the door to lengthy speculations. The latter concerned such essential aspects – for the continuity of one of the State's core functions – as the number of judges and prosecutors who would retire in a foreseeable time, should the laws enter into force. Among various incidents brought to the GET's attention, some associations have reportedly been denied participation in the committee's discussions and the legitimacy/legality of certain amendments made at the very end of the process has occasionally been questioned.

24. The GET also heard praise for the fact that the special committee's work and discussions in November 2017 on the three justice laws was broadcasted, which was apparently a "first" and a response to criticism on the lack of transparency of the legislative process up until then. The fact that some civil society organisations / professional associations had been actively associated to the discussions was also appreciated by many of those the GET met while some of them saw their participation as a necessity in order to prevent the adoption of more problematic amendments. Overall, during the on-site discussions, some members of Parliament and associations expressed satisfaction with the process and praised the fact that, at the present stage, following the debate and many amendments in Parliament, a number of problematic changes had eventually been abandoned or watered down. Others stressed that there was a need to significantly improve the texts and hoped that this could be done soon, when Parliament reviews the drafts to reflect the Constitutional Court's decisions.

25. As to the next steps, now that the Constitutional Court has rendered its decisions on the four constitutional challenges, the Parliament will have to review the three draft laws and make the necessary adjustments. The President of Romania retains the possibility to ask (once) the Parliament to review the laws and he may himself challenge their constitutionality before the Constitutional Court.

---

<sup>23</sup> It was also pointed out that the current president is the former Minister of Justice who was responsible for the presentation of the controversial Government Emergency Ordinance 13 in January 2017; see <http://www.romaniajournal.ro/pm-grindeanu-i-was-aware-geo-13-will-be-on-the-agenda/>

<sup>24</sup> See an interview of the former Prime Minister of 10 January 2018 at [https://www.stiripesurse.ro/pm-tudose-on-justice-laws-any-law-can-be-perfected\\_1242007.html](https://www.stiripesurse.ro/pm-tudose-on-justice-laws-any-law-can-be-perfected_1242007.html)

26. It would appear that a comprehensive review of the criminal procedure is also being discussed by the special joint committee in the context of the implementation of the EU Directive 343/2016 on the presumption of innocence. In this case too, a lack of transparency is observed as the discussions appear to be conducted since 15 December on the basis of a mere table summing up the intended changes<sup>25</sup>. It remains unclear whether the process is documented by verbatim records of discussions and position papers presented to the committee, and accompanied by legislative supporting documentation (explanatory report, impact assessments etc.).

27. The process has shown once again the importance for Romania to take full account of and implement the recommendations contained in GRECO's Fourth Evaluation Report; GRECO reiterates **that the transparency of the legislative process be improved (i) by further developing the rules on public debates, consultations and hearings, including criteria for a limited number of circumstances where in camera meetings can be held, and ensuring their implementation in practice; ii) by assessing the practice followed and accordingly revising the rules to ensure that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, and that adequate timeframes are in place for submitting amendments and iii) by taking appropriate measures so that the urgent procedure is applied as an exception in a limited number of circumstances.**

#### Particular concerns raised by amendments to the three justice laws

28. The draft amendments to Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on judicial organisation and Law no. 317/2004 on the Superior Council of Magistracy carry a number of changes. In the adoption process, several hundred amendments have been submitted, 316 of which have been accepted. Several provisions now need to be redrafted before the texts are sent to the President for promulgation.

29. As the GET noted during the on-site discussions and in the many position papers it has received, a number of aspects of the reform remain a source of concern both for the general institutional capacities of the courts and prosecution offices and the risk of political and other undue influence at various levels. It also remains to be seen how those provisions which have been invalidated in full or in part by the Constitutional Court will be redrafted. As mentioned earlier, the Chamber of Deputies adopted on 20 March 2018 revised versions of the three laws and published these the day after on its website; the Senate is now to examine these. The following paragraphs focus on some of the most controversial issues raised during meetings with the GET.

- *Risks of drainage in the magistracy and of arbitrariness in promotions*

30. Several changes pertaining to the recruitment and retirement of judges and prosecutors in Law 303/2004 may have, because of their combined effect, a significant impact on the work

<sup>25</sup> See item 9 at [http://www.cdep.ro/comisii/suasl\\_justitie/pdf/2017/rd\\_1215.pdf](http://www.cdep.ro/comisii/suasl_justitie/pdf/2017/rd_1215.pdf)

force and the general capacities of courts and prosecutorial bodies especially since no transitional period has been planned. Magistrates would be able to retire early, after just 20 years of service without any condition of age (with pensions which could amount to 75 % of the last gross salary, i.e. up to 120% of the last net salary in exceptional cases). This could constitute a powerful incentive for many judges and prosecutors – especially in the higher ranks of the judiciary – to retire very soon. According to certain estimates, approximately 1 500 to 2 000 magistrates (out of approximately 8 000) would benefit from these new arrangements. Regarding the High Court of Cassation and Justice (HCCJ) alone, 94 judges out of 115 are potentially concerned (the rest would be in a position to retire within the next five years). If adopted, the draft legislation would also introduce a minimum seniority of 18 years as a magistrate in order to be eligible to a vacancy in the HCCJ, for a theoretical service time of just two years if that person intends to retire after 20 years; this would potentially affect the adequate handling of many cases by the HCCJ. At the same time, the initial and practical training of new recruits is increased to six years altogether (instead of four under the current rules), which could create a gap of several years until the workforce is recreated. The above scenario could affect the functioning of the judiciary as a whole (backlogs of cases, dismissals of cases due to the statute of limitations and delays in administering justice).

31. The intended amendments still contain a proportion of subjectivity in the selection and decision process concerning promotions, which contemplates a two-phased promotion procedure, the latter phase consisting of an assessment of one's past work and conduct<sup>26</sup>. The amendments also provide for the CSM to develop and adopt rules on the procedure for organising such assessments including appointments to the responsible commission and the particular aspects to be assessed<sup>27</sup>. The GET heard fears that this new system would leave more room for personal or political influences in career decisions, which could impact the neutrality and integrity of the justice system and it would thus be essential that the CSM develops appropriate rules to guard against such risks, including clear and objective criteria to guide the future decisions of the selection commission.

32. Because of the risks and uncertainties referred to above, **GRECO recommends that i) the impact of the changes on the future staff structure of the courts and prosecution services be properly assessed so that the necessary transitional measures be taken and ii) the implementing rules to be adopted by the CSM for the future decisions on appointments of judges and prosecutors to a higher position provide for adequate, objective and clear criteria taking into account the actual merit and qualifications.**

---

<sup>26</sup> The current process which involves a written examination or competition organised centrally would be complemented with a system of assessment of the activity and conduct in the last three years, involving an interview before a commission (for vacancies in the HCCJ), but a mere file (desk) review for all the other magistrates.

<sup>27</sup> Article 463 of Law 303/2004

- *The new special prosecutor's section for the investigation of offences in the judiciary*

33. One of the most controversial changes is the creation, through an amendment to Law 304/2004, of a new Section for the Investigation of Offences in the Judiciary within the Prosecutor's Office attached to the High Court of Cassation and Justice (HCCJ) to investigate and prosecute criminal offences committed by magistrates. The GET did not receive convincing information supporting the creation of this section<sup>28</sup>. The latter is considered by many as an anomaly in the current institutional set-up, in particular because (i) there have been no particular data or assessments demonstrating the existence of structural problems in the judiciary which would warrant such an initiative, (ii) of the way its management is appointed<sup>29</sup>, and (iii) this section would have no investigators and adequate investigative tools at its disposal, unlike other specialist prosecution bodies. It has also been pointed out that this body would be immediately overburdened due to the (draft) arrangements providing for the immediate transfer of many cases from other prosecution services, whilst its small staff is not commensurate to dealing with them (15 in total according to draft legislation)<sup>30</sup>.

34. Moreover, this new section would be dealing with criminal offences even if other persons are involved, together with magistrates (e.g. civil servants, elected officials, businessmen etc.), according to the wording of the intended amendments to article 88<sup>1</sup> paragraph 1<sup>1</sup> of law n°304/2004. As many have pointed out, this could lead to conflicts of jurisdiction with the existing specialised offices (DNA, DIICOT, military prosecutor's offices), even though the authorities recall that such conflicts are normally sorted out by the Prosecutor General. More importantly, there are also fears that this section could easily be misused to remove cases handled by the specialised prosecution offices or interfere in sensitive high-profile cases if complaints against a magistrate were lodged incidentally in that case as it would automatically fall under the competence of the new section (a decision would then need to be taken to split that case under the general criminal procedure law on the grouping/splitting of cases, for it to remain in the hands of the originally competent prosecutors).

35. In the light of the above, **GRECO recommends that the creation of the new special prosecutor's section for the investigation of offences in the judiciary be abandoned.**

---

<sup>28</sup> The authorities have subsequently indicated that in one of its recent decisions, the Constitutional Court, refers *inter alia* to the fact that the creation of this Section is a guarantee for, and a safeguard of the principle of the independence of the judiciary especially concerning the judges, that it would provide adequate protection for the magistrates against pressures and abuses through arbitrary criminal complaints, and that it would facilitate a unified judicial practice in respect of criminal offences allegedly committed by magistrates.

<sup>29</sup> The Chief Prosecutor of the Special Investigative Office will be appointed by a CSM panel composed of 3 judges designated by the Judges Section, a prosecutor appointed by the Prosecutors Section, a representative of the civil society. This contradicts the fact that all other prosecutors are appointed by the Prosecutors Section of the CSM.

<sup>30</sup> In 2017, there were about 3500 criminal complaints made against judges and prosecutors; even if a large proportion may be ill-motivated and concern cases of parties disappointed by a judicial decision, according to certain estimates these could still translate into a few hundred cases which would require closer examination.

- *Risks of weakening of the prosecutors' status, especially their independence*

36. The draft amendments reduce in some respect the powers of the executive, especially by abolishing the possibility for the Ministry of Justice to initiate disciplinary proceedings against a judge or prosecutor.

37. That said, as regards prosecutors specifically, many of those met by the GET have expressed concerns about the implication of various intended changes for the position of the prosecutorial bodies vis-à-vis the authority and responsibilities of the executive branch (Minister of Justice). The purpose of the amendments is reportedly to align the legal provisions (in Law n°303/2004) with the Constitution and to replace the expression “*the prosecutors appointed by the President of Romania enjoy stability and are independent, according to the law*”, by “*The prosecutors shall carry out their activity according to the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice.*” The guarantees of independence and stability would thus disappear and a reference to their independence is retained in a new provision only with regard to the “*settlement of solutions*” (“*Prosecutors are independent in the settlement of the solutions, under the conditions stipulated by the Law no. 304/2004 on the judicial organisation (..)*”).

38. The GET was told that, up until now, the Constitutional Court had considered that prosecutors are largely equated with judges when it comes to their guarantees of independence, and that the intended changes actually constitute a regression. The combined effect of the removal of the guarantees of independence and stability are a cause of concerns, since another amendment broadens the possibilities for hierarchical superior prosecutors to invalidate decisions taken by hierarchically inferior prosecutors, not only if unlawful but also if ungrounded (the former is however required to do it in a reasoned manner, which is a safeguard). The modified status of prosecutors is also reflected in various other areas<sup>31</sup>.

39. At the same time, the draft amendments provide for further important changes. In particular, the revised procedure for appointing senior prosecutors limits the right of the President of the Republic to refuse only once the candidate(s) proposed by the Minister of Justice (as opposed to several refusals under the current rules). Overall, the GET regrets again the absence of adequate assessments of the implications of the various intended changes, for the position and actual operational independence of prosecutors. It recalls opinion n°9 adopted in 2014 by the Consultative Council of European Prosecutors, which stressed *inter alia* that “The independence and autonomy of the prosecution services constitute an indispensable corollary

---

<sup>31</sup> For instance, the judicial inspectorate would be reorganised in such a way as to put it under the responsibility and authority of a Chief Inspector (with lesser involvement of the CSM regarding the selection of inspectors, and the adoption of internal rules), appointed by a panel of CSM members comprising three judges but only one prosecutor, in addition to a civil society representative and a psychologist. Some also regretted that the CSM would be presided systematically by a judge in future (this was challenged successfully before the Constitutional Court) and others wondered to what extent prosecutors would benefit from the future role of the CSM (deciding in plenum) in matters related to the defence of the “independence of the judiciary”.

to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged".<sup>32</sup>

40. Because of the many uncertainties, GRECO recommends i) ensuring that the independence of the prosecution service is – to the largest extent possible – guaranteed by law, and ii) assessing the impact of the intended changes on the future operational independence of prosecutors so that additional safeguards be taken, as necessary, to guard against interference.

- *Specific issues concerning the rights and obligations of judges and prosecutors, including incompatibilities*

41. The draft amendments to Law n° 303/2004 currently contemplate a number of new obligations, some of which have been challenged successfully before the Constitutional Court; they will thus need to be withdrawn or amended, depending on the case, when the Parliament reviews the draft laws. These concern conflicts of interest, the duty for judges and prosecutors to be and appear to be independent, the duty for judges and prosecutors "to refrain from any kind of act of defamation in act or expression, against the other powers of the State – legislative and executive".

42. Many of those met by the GET have expressed concerns about such provisions for their lack of clarity and their concrete implications. This is all the more relevant as they would normally entail disciplinary liability and should therefore be sufficiently clear and predictable. It should also be reminded that, quite ironically, in the context of the CVM process the European Commission has repeatedly insisted for the inclusion of measures against verbal and other attacks, but to protect the work of magistrates against such attacks from political leaders and other persons.

43. The draft amendments to Law n°303 provide for a series of possibilities to suspend temporarily the functions of judges and/or prosecutors at his/her request: a regime of "voluntary suspension", a regime of "voluntary time-off" and a special regime for those who become members of government.

44. These different regimes are not easy to distinguish. They entail, however, different consequences as regards legal incompatibilities and prohibitions. Greater consistency would be desirable, so that judges and prosecutors do not engage in activities or deal with files (as a consultant or lawyer) which would clearly be problematic. Concerns have also been expressed that, in the absence of proper safeguards to authorise or not, or only under certain circumstances, a suspension or time-off period, the functioning of certain courts or prosecution services could be disrupted in case of requests of combined application of these provisions by

<sup>32</sup> [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCPE\(2014\)4&Language=lanEnglish&Ver=original&BackColorInternet=FBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCPE(2014)4&Language=lanEnglish&Ver=original&BackColorInternet=FBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)

several magistrates at the same time. The above draft amendments have been found unconstitutional and they will thus need to be removed.

45. Particularly problematic are the new intended arrangements for a magistrate taking up duties in government. Currently, a judge or prosecutor would have to resign to take up a government function. Under the planned amendments, however, the judge or the prosecutor would be placed “on leave” while serving in a government capacity, but there would be no cooling-off arrangements when the judge or the prosecutor resumes his/her work. It would be desirable to have more specific restrictions on the simultaneous holding of the office of magistrate and that of a member government and more generally, that the issue of political activity of magistrates be dealt with in all its aspects at legislative level, given its impact on the fundamental principles of independence and impartiality, both real and perceived, of the judiciary. The GET heard recurrent criticism about the fact that the profession of judges has become quite politicised in recent years and it is pleased to hear from the Romanian authorities (in their latest information) that the revised draft amendments adopted by the Chamber on 20 March 2018 have completely abandoned the various intended suspension regimes. **GRECO therefore recommends avoiding the creation of new avenues for conflicts of interest and incompatibilities, particularly in connection with political activities and government functions.**

46. The redefinition of the conditions of judges’ liability has also attracted strong criticism. The Romanian State is responsible for the compensation of a person who has suffered damage in case a judge or prosecutor commits a “judicial error”. The State may then turn itself against the magistrate concerned. With the proposed amendments, the Ministry of Public Finance would now have **the obligation** to recover from the judge or prosecutor concerned the amounts paid. The draft law provides that any compulsory insurance scheme cannot delay, diminish or eliminate liability for a “judicial error” caused by acting in “bad faith” or with “serious negligence”. In the GET’s views, this could also negatively impact on the effectiveness of anti-corruption efforts because of their excessively intimidating effect on judges and prosecutors. Certain aspects of these intended amendments have been found unconstitutional and they will thus need to be removed or reviewed.

47. In the light of the above, **GRECO recommends that the various amendments affecting the rights and obligations and the liability of judges and prosecutors for judicial errors be reviewed so as to ensure sufficient clarity and predictability of the rules concerned, and to avoid that they become a threat to the independence of the judiciary.**

#### Developments concerning the National Anti-Corruption Directorate

48. Over the last few years, in spite of its widely recognized effectiveness in tackling corruption, the DNA has been a subject of repeated political criticism, often in the form of attacks and inappropriate comments by political leaders and persons actually prosecuted by the DNA itself, prompting it to seek, at times, the intervention and protection of the CSM. Some of these attacks were even of a personal nature against DNA’s chief prosecutor. A public controversy has been ongoing, reaching unprecedented proportions in recent months,

especially after DNA investigated the case of the above-mentioned controversial “Governance Emergency Ordinance 13” (the Constitutional Court eventually considered that this fell outside DNA’s jurisdiction<sup>33</sup>).

49. At the request of the Minister of Justice, the functioning of DNA and/or the conduct of its head were audited in the Summer 2017 by the Judicial Inspectorate. The latter has presented a report on 6 October 2017 stating that the Head of DNA has built prestige for the DNA and has the necessary qualities to run the directorate, with efficient results in 2016 and in the first semester of 2017. It found some irregularities in the management and recommended that disciplinary investigations be conducted in respect of the head but the proposal was put forward to replace her<sup>34</sup>. On 12 January 2018<sup>35</sup>, the Inspectorate submitted a proposal for disciplinary proceedings against the Head of the DNA to the CSM’s section for prosecutors, in connection with inappropriate behaviour, but the results are not available as yet. To date, no final conclusions have been reached in the abovementioned proceedings.

50. However, on the second day of the GET’s visit, the Minister of Justice gave a long press conference in which he presented a report containing 20 grounds for the dismissal of DNA’s Head<sup>36</sup>. According to article 51 of law n°303/2004, there are three grounds for such a dismissal, one of which is the general management in relation to effective work, the general behaviour and communication, responsibilities and managerial skills. So far, the official assessments of DNA<sup>37</sup> have basically praised the work of the institution and the dismissal process has prompted criticism including for reasons of partiality<sup>38</sup> as well as public statements from a majority of DNA prosecutors and the Prosecutor General<sup>39</sup>. After the Head of DNA was heard, the CSM issued on 27 February a negative (non-binding) opinion on the Minister’s request<sup>40</sup> and the final

<sup>33</sup> <https://www.romania-insider.com/constitutional-court-finds-conflict-romania-governments-dna/>

<sup>34</sup> <http://www.romaniajournal.ro/dna-chief-kovesi-heard-by-csm-on-judicial-inspection-report-says-the-team-had-divergent-opinions/>

<sup>35</sup> <https://www.romania-insider.com/romania-laura-codruta-kovesi-misconduct/>

<sup>36</sup> <http://www.romaniajournal.ro/update-2-justice-minister-announces-start-procedures-dismiss-dna-chief-kovesi/>

<sup>37</sup> See especially the EU’s CVM reports at

[https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en) and the last general activity report of the Romanian prosecution services [http://www.mpublic.ro/sites/default/files/PDF/raport\\_activitate\\_2017.pdf](http://www.mpublic.ro/sites/default/files/PDF/raport_activitate_2017.pdf)

<sup>38</sup> <https://uk.reuters.com/article/uk-romania-government-protests/thousands-demonstrate-to-support-romania-anti-corruption-prosecutor-idUKKCN1G90W9>

<http://www.business-review.eu/news/president-iohannis-reaction-to-the-latest-scandal-in-the-justice-system-38151> ;

<https://www.hotnews.ro/stiri-opinii-22302745-decaparea-justitiei-ministrul-infractorilor.htm>

<https://www.hotnews.ro/stiri-esential-22304307-comisia-europeana-reactie-cererea-revocare-sefei-dna-urmarim-indeaproape-ingrijorare-daca-presiunea-asupra-dna-afecta-lupta-anticoruptie-din-romania-comisia-putea-reevalua-conduzia-din-raportul-mcv.htm>

<sup>39</sup> <https://www.digi24.ro/stiri/actualitate/justitie/augustin-lazar-nu-exista-nici-un-fel-de-motiv-intemeiat-de-revocare-a-laurei-codruta-kovesi-882806>

<http://www.romaniajournal.ro/135-out-of-the-183-dna-prosecutors-send-joint-message-to-support-kovesi/>

<sup>40</sup> <http://www.romaniajournal.ro/update-csm-issues-negative-opinion-on-justice-ministers-call-to-dismiss-dnas-kovesi/>; the Minister was reportedly the only one of the 7 members to support her dismissal.



decision will be taken by the President of Romania (in accordance with article 54 para. 4 of the above law) who has so far repeatedly supported DNA and its Head.

51. The GET recalls that in the Fourth Evaluation Round Report of December 2015, GRECO had pointed to the need to reduce the political influence and the power of the executive branch of power in the appointment and dismissal of senior prosecutors such as the head of the DNA. Their field of responsibilities exposes them to risks of undue influence and anomalies have sometimes been observed in practice as regards the termination of functions. So far, this recommendation has not been implemented. As noted in the Compliance Report of December 2017, the CSM had prepared and submitted some proposals during the first half of 2017 to the Minister of Justice, regarding the increased role of the CSM in the appointment process (but not in respect of dismissals) but these were not endorsed. GRECO had also noted that the subsequent draft amendments introduced in Parliament on 31 October 2017 for amending and supplementing Law no. 303/2004 on the status of judges and prosecutors, maintain the current status quo with regard to the role of the executive in the appointment of senior prosecutors.

**52. GRECO reiterates its recommendation that the procedure for the appointment and revocation for the most senior prosecutorial functions other than the Prosecutor General, under article 54 of Law 303/2004, include a process that is both transparent and based on objective criteria, and that the Supreme Council of Magistracy is given a stronger role in this procedure.**

#### IV. CONCLUSION

53. The issues raised above regarding the judicial reform must be seen in the wider context of the justice system reform in Romania, which have raised serious concerns from a number of national and international institutions: several additional problematic developments (regarding the criminal legislation) have, indeed, materialised after GRECO's last plenary meeting, during the process of adoption of the justice laws.

54. GRECO notes that the amendments to Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on the judicial organisation and Law no. 317/2004 on the Superior Council of Magistracy, adopted in December 2017, following their debate in Parliament, have not retained some of the particularly controversial proposals presented by the Minister of Justice in August 2017. The Parliament needs at present to review the drafts in the light of a series of recent Constitutional Court decisions. Then, the President of the Republic will examine the drafts for possible promulgation. He also retains the possibility to submit these for further constitutional review.

55. The on-site visit carried out by a GRECO delegation on 21 and 22 February 2018 shows that there are still a number of concerns regarding the potential impact of the changes. It is regrettable that, despite the wide scope of these reforms, and especially their possible structural impact on the courts and prosecution services (due to the combined effects of new

recruitment/training and retirement arrangements), no proper impact assessments have been done. Instead, the legislative process was conducted according to a process which has itself been questioned, and at a rhythm often described as particularly hasty, which did not allow to discuss many aspects of the reforms. Calls have been made on several occasions for Romania to request an opinion from the Venice Commission. GRECO considers that seeking such an opinion would be timely. The above also confirms the importance for Romania to comply with the recommendations contained in GRECO's Fourth Round Evaluation Report. Issues concerning the legislative process, in particular the excessive use of accelerated / urgent procedures and the lack of transparency had, notably, been pointed out.

56. GRECO has also taken note of the latest developments concerning the highly mediatised dismissal process of the Head of DNA, initiated on 22 February. A recommendation had been issued in the Fourth Evaluation Round Report precisely to eliminate a risk of undue influence being exerted in relation to appointments and dismissal procedures by the Executive branch of power.

57. In the light of the above, GRECO reiterates the following two recommendations addressed to Romania in the Fourth Evaluation Round report, which have not been implemented to date:

- that the transparency of the legislative process be improved (i) by further developing the rules on public debates, consultations and hearings, including criteria for a limited number of circumstances where in camera meetings can be held, and ensuring their implementation in practice; ii) by assessing the practice followed and accordingly revising the rules to ensure that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, and that adequate timeframes are in place for submitting amendments and iii) by taking appropriate measures so that the urgent procedure is applied as an exception in a limited number of circumstances (paragraph 27 of the present report);
- that the procedure for the appointment and revocation for the most senior prosecutorial functions other than the Prosecutor General, under article 54 of Law 303/2004, include a process that is both transparent and based on objective criteria, and that the Supreme Council of Magistracy is given a stronger role in this procedure (paragraph 52 of the present report).

58. In addition, in the light of the findings of the present report concerning the justice reforms specifically, GRECO addresses to Romania the following recommendations:

- i. that i) the impact of the changes on the future staff structure of the courts and prosecution services be properly assessed so that the necessary transitional measures be taken and ii) the implementing rules to be adopted by the CSM for the future decisions on appointments of judges and prosecutors to a higher

**position provide for adequate, objective and clear criteria taking into account the actual merit and qualifications (paragraph 32);**

- ii. that the creation of the new special prosecutor's section for the investigation of offences in the judiciary be abandoned (paragraph 35);**
- iii. i) ensuring that the independence of the prosecution service is – to the largest extent possible – guaranteed by law, and ii) assessing the impact of the intended changes on the future operational independence of prosecutors so that additional safeguards be taken, as necessary, to guard against interference (paragraph 40);**
- iv. avoiding the creation of new avenues for conflicts of interest and incompatibilities, particularly in connection with political activities and government functions (paragraph 45);**
- v. that the various amendments affecting the rights and obligations and the liability of judges and prosecutors for judicial errors be reviewed so as to ensure sufficient clarity and predictability of the rules concerned, and to avoid that they become a threat to the independence of the judiciary (paragraph 47);**

59. It should be emphasised that the recommendations issued in paragraph 58 above are of a preliminary nature, and may be reviewed in light of the information to be provided by the Romanian authorities in June 2018, and in December 2018 in the context of the 4<sup>th</sup> Round Compliance procedure (see paragraph 62 below).

60. GRECO is equally concerned by the objectives pursued by certain draft amendments to the criminal law (substantive and procedural) and the legislative process initiated in December in this respect, as these could have a negative impact on the country's anti-corruption efforts. The intended amendments to the Criminal Procedure Code discussed by the special parliamentary joint committee in relation to the EU Directive on the presumption of innocence, reportedly go beyond the purposes of the said Directive. These proposed amendments are raising serious concerns both domestically and among other countries for their potential negative impact on mutual legal assistance and the capacity of the criminal justice system to deal with serious forms of crime, including corruption-related offences. For instance, it has been pointed out that the drafters intend to excessively restrict the conditions for the application of covert investigative techniques and the use of evidence gathered through them (for instance, the suspects would have to be informed from the outset about such measures, they would have the possibility to participate in the hearings of all witnesses and their alleged victims, etc.). Moreover, as mentioned earlier, three draft laws were registered by the Senate on 21 December 2017; these carry amendments to the Criminal Code (CC) but also to the Criminal Procedure Code (CPC). Leaving aside questions concerning the articulation and possible overlapping with the on-going work of the special committee, these amendments – if adopted – would clearly contradict some of Romania's international commitments including in relation to

the Council of Europe's Criminal Law Convention on Corruption (see paragraph 12 and footnote 16). The GET also noted that another attempt is made at amending the offence of abuse of office in a way which would decriminalise completely all acts committed in relation to a damage of up to 200 000 euros (in a country where the average monthly wages are in the range of 600 to 800 euros). The GET recalls that the controversial emergency ordinance which was passed overnight in January 2017 (and then repealed) was pursuing a similar objective.

61. The parallel increase of the repressive arsenal to deal with acts committed in the context of a judge's or prosecutor's work appears in stark contrast when one refers to the legislative proposals aiming at strengthening the offences which are specific to the judiciary e.g. inducing a judicial body into error, "unjust repression", "remanding, arrest or other preventive measure applied to a person in the absence of concrete evidence (see the third legislative proposal in footnote 16). For instance, a new offence of "abuse of judicial powers" would be created with penalties of up to seven years imprisonment. Not only does this convey the wrong message about Romania's current priorities, but it could have an excessively intimidating effect on the work of judges and prosecutors (see also the underlying concerns for the above recommendations on the liability of magistrates for judicial errors and on the new special prosecutor's section for the investigation of offences in the judiciary).

62. The compliance procedure in the 4<sup>th</sup> evaluation round is still on-going in respect of Romania and GRECO recalls that following the [Fourth Round Compliance Report](#) adopted in December 2017, which concluded that the level of implementation of recommendations was "globally unsatisfactory", Romania was asked to submit additional information by 31 December 2018. GRECO considers it important not to await that deadline to take stock of the on-going changes. It therefore instructs its President to inform the Romanian authorities about GRECO's findings and it invites the Head of the Romanian delegation to present at the next GRECO plenary meeting (18-22 June 2018) a written update on the state of the proposed reforms concerning the justice system (including institutional aspects and criminal law/procedure).

63. GRECO also points out that Romania should refrain from passing criminal law amendments which would contradict its international commitments and undermine its domestic capacities in the area of the fight against corruption. GRECO concludes that should the intended amendments be adopted, it may have to review some of its conclusions reached in previous evaluation rounds.

64. Finally, GRECO invites the authorities of Romania to authorise, at their earliest convenience, the publication of this report, to translate it into the national language and to make the translation publicly available.