

Personalised attacks, institutional trust, and judicial independence: how consolidated democracies respond and what Romania can learn

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Abstract

This article examines how personalised ad hominem attacks on magistrates undermine institutional trust and, cumulatively, weaken judicial independence. Focusing on Romania's public sphere, it argues that delegitimation through personal vilification shifts contestation away from legal reasoning and procedure toward alleged motives, integrity, or private conduct, increasing perceived politicisation and creating chilling effects on professional decision-making. The study distinguishes legitimate criticism from delegitimation by tracing sustained personalisation, insinuation, decontextualisation, coordinated amplification, and cues of intimidation or informal sanctioning. Using comparative institutional analysis and process tracing, it surveys how consolidated democracies respond when judges and prosecutors are targeted, emphasising layered approaches that preserve free debate while limiting coercive reputational pressure. These include stronger court communication and transparency, professional standards for political and media conduct, targeted protections against harassment and threats, and credible accountability mechanisms that reduce the plausibility of smear narratives. The article concludes with lessons for Romania.

Keywords: *Judicial independence, Institutional trust, Ad hominem attacks, Judicial delegitimation, Romania.*

JEL Classification: [K23]

I. Introduction

“ Those should be criticized, so long as it is in terms of the decision, really,
and not ad hominem against the Justices.”

Chief Justice John G. Roberts, Jr.

Remarks at Georgetown Law, May 12, 2025.

When the Iron Curtain collapsed, Europe, and much of the wider world, exhaled in relief. The nightmare, it seemed, had ended. For those who had lived under the oppressive yoke of communist rule, the transition promised more than elections and open borders. It promised a reconstitution of justice itself. The old order had cultivated a facsimile of legality, a “justice” administered through

obedient institutions that translated political will into formally correct outcomes, perfectly legal on paper, yet detached from the moral and constitutional purposes that law is meant to serve. In 1989 and 1991, few could know what the post Cold War future would hold. The unipolar moment, together with a powerful belief in democratic convergence, made it plausible to speak about an “end of history,” in Francis Fukuyama’s influential formulation, as if liberal democracy and its rule of law were becoming the default destination of modern politics rather than a fragile, continuously defended achievement.¹ That confidence now feels historically contingent. Across many democracies, including within the European Union, the rule of law is once again under assault. Yet the assault often arrives not in the blunt form of the political commissar, the midnight arrest, or the openly subordinated court. It arrives through subtler mechanisms that exploit the very norms of democratic contestation, free expression, and public accountability. Courts are criticised not because they reason poorly, apply precedent inconsistently, or fail to meet standards of transparency, critiques that belong in a healthy polity, but because particular judges and prosecutors are rendered suspect as persons, often painted as flawed individuals or in some cases, detriments to society as a privileged class that is not worth its operating costs and should be weakened. Their motives, integrity, private lives, alleged affiliations, and even their psychological traits become the object of political struggle. The institutional dispute is relocated from legal reasoning to moral suspicion. In this way, the judiciary is pressured through its smallest common denominator, the individual magistrate, the human face of an otherwise impersonal institution.

This article argues that personalised ad hominem attacks on magistrates are not merely unpleasant rhetoric, nor are they reducible to ordinary political conflict. They constitute a recognisable form of systematic and operational judicial delegitimation, a strategy that seeks to weaken the social foundations of judicial authority by eroding institutional trust. The resulting damage is cumulative. It does not always require overt constitutional change, nor does it always appear as a single dramatic rupture or inflection point. Rather, it proceeds through repetition, amplification, and normalisation. When the public is trained to view adjudication as a function of hidden motives rather than legal constraints, the credibility of judgments becomes politically negotiable, compliance becomes contingent, and judicial independence is under assault not only by means of formal sanctions but also by reputational coercion and the anticipatory self restraint which is bound to follow.²

Institutional trust is not a decorative attribute of democratic governance. It is a functional condition for the legitimacy of public authority, especially in domains where the state must impose binding decisions on winners and losers alike. Courts

¹ Francis Fukuyama, *The End of History and the Last Man* (Free Press, 1992).

² Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (Crown, 2018)

depend on what socio-legal research often calls diffuse support³ a reservoir of confidence that allows judicial institutions to remain authoritative even when particular decisions are unpopular.⁴ When personalised delegitimation becomes widespread, that reservoir is drained. The public begins to interpret outcomes as partisan manoeuvres, or as the expression of personal vice, rather than the consequence of lawful reasoning. The judiciary is then forced into an impossible posture. Silence allows insinuations to metastasise. Overreaction risks appearing politicised. Either way, the institutional capacity to maintain legitimacy is strained.

European human rights jurisprudence has long recognised that public confidence in the judiciary is a democratic good, and that criticism of courts must be assessed within a framework that protects free expression while acknowledging the judiciary's role in safeguarding justice.⁵ This dual commitment, robust speech and judicial authority, is precisely what is exploited by delegitimation campaigns. They appropriate the language of accountability while advancing a logic of intimidation, they weaponise the openness of the public sphere while degrading the conditions under which impartial adjudication is possible. Romania is „*de facto*” a salient case because the public contestation of justice has repeatedly adopted a personalised mode. In moments of acute political conflict, magistrates have been portrayed not as office holders bound by legal duties but as moral agents whose character, loyalties, or private conduct allegedly explain institutional behaviour or render said magistrate unworthy of rendering such judgements due to some perceived fault of character. The result is not only reputational harm to individuals but also a deeper institutional narrative, namely that justice is an arena of faction rather than a constitutional constraint on faction. Romania's post communist experience makes this dynamic particularly consequential. After decades in which law was instrumentalised by power, the democratic state's legitimacy depends, to a remarkable extent, on proving that justice is not once again merely politics by other means. This is why the present phenomenon should not be minimised as “just rhetoric.” It is a fundamental right that in consolidated democracies, courts can be criticised every day. What distinguishes delegitimation is not intensity alone, but form and intent, sustained personalisation, insinuation framed as self evident truth, decontextualisation of judicial acts from procedural constraints, coordinated amplification across political and media ecosystems, and

³ Engstrom, Richard L., and Micheal W. Giles. “Expectations and Images: A Note on Diffuse Support for Legal Institutions.” *Law & Society Review* 6, no. 4 (May 1972): 631-36.

⁴ James L. Gibson, “The Legitimacy of the U.S. Supreme Court in a Polarized Polity,” *Journal of Empirical Legal Studies* (2007), and related work on diffuse support and legitimacy; Tom R. Tyler, *Why People Obey the Law* (Princeton University Press, 2006).

⁵ European Court of Human Rights, *Prager and Oberschlick v. Austria* (Application no. 15974/90), Judgment of 26 April 1995, para. 34; European Court of Human Rights, *Morice v. France* (Application no. 29369/10), Grand Chamber Judgment of 23 April 2015.

cues of intimidation or informal sanctioning. In such conditions, the assault is systemic even when it is delivered through individual targets.

The article sets its goal of making three contributions. First, it attempts to clarify a conceptual boundary between legitimate critique and delegitimation by specifying observable indicators that can be used in comparative analysis. Second, it provides a structured mapping of response repertoires across consolidated democracies, integrating jurisprudence with institutional practice, including court communication strategies, professional standards, and targeted protections against harassment. Third, it develops a policy learning agenda for Romania that favours proportionate, layered safeguards over blunt speech restrictions. The aim is not to immunise magistrates from scrutiny but to defend the conditions under which scrutiny remains compatible with judicial independence and public confidence.

II. Conceptual framework, critique vs delegitimation

Legitimate critique is a form of democratic accountability that challenges judicial action by engaging with law, process, or institutional design, rather than by attacking the moral worth of identifiable judges and prosecutors. In rule of law standards adopted by the Council of Europe, judicial independence is framed not as a privilege of judges but as a guarantee for rights holders, enabling confidence in the justice system.⁶ That framing implies that criticism which improves reasoning quality, procedural fairness, coherence, and ethics can be normatively constructive, even when critical in tone. A workable baseline for legitimate critique, consistent with European free expression doctrine and with comparative governance literature, includes at least four categories.

First, critique of reasoning, which targets the legal rationale, interpretive method, proportionality analysis, fidelity to precedent, and the handling of evidence. Strasbourg case law treats public debate about the functioning of justice as a matter of public interest, and it protects lawyers and journalists when criticisms have a sufficient factual foundation and contribute to such debate.⁷ Second, critique of procedure, which focuses on due process, adversarial equality, transparency, timeliness, access to court, and reason giving. It can be agreed upon this subject that it is particularly important for institutional trust, since procedural justice research shows that perceived fairness and respectful, transparent procedures shape legitimacy perceptions and voluntary compliance, even among

⁶ Council of Europe Committee of Ministers, Recommendation CM/Rec(2010)12 on judges, independence, efficiency and responsibilities, adopted 17 November 2010, especially recital language linking independence to public confidence.

⁷ Case law principles on public interest debate about the functioning of justice are reflected in ECtHR lines that protect speech where grounded in facts and contributing to debate, see general framing in *Morice and De Haes and Gijssels* as discussed in scholarly and institutional summaries. For the present conceptual section, this paragraph is grounded in ECtHR oriented doctrine and standards cited in Council of Europe materials.

those who lose outcomes⁸. Third, critique of consistency and institutional performance, which evaluates patterns across decisions, management of caseloads, internal allocation rules, and systemic delay. Such critique is compatible with judicial independence because it does not impute bad faith to individual magistrates, it seeks institutional learning. Fourth, critique of ethics and governance, including conflicts of interest, impartiality standards, declaratory obligations, and credible mechanisms of accountability. Here, criticism can be severe and still legitimate if it is grounded in verifiable facts and directed at enforceable professional standards, rather than insinuation.

This definition is intentionally speech protective. It treats courts as public institutions whose work must remain contestable. It also aligns with the caution, found in European doctrinal material and comparative practice, that protecting the authority of the judiciary cannot justify broad suppression of discussion about judicial functioning.⁹ Judicial delegitimation is a distinct category of contestation. It is not accountability oriented critique, it is reputational coercion, meaning a strategy that uses personal vilification to pressure magistrates, to discredit adjudication or to justify non-compliance and institutional capture. The European Network of Councils for the Judiciary has recently treated ill founded or baseless public criticism and hostile media campaigns by political actors as a threat to independence and the rule of law, explicitly calling on all branches of state power to refrain from facilitating attacks or intimidation¹⁰. This is, after all, a governance diagnosis, not a matter of civility. In such a case, delegitimation becomes visible when speech shifts from contesting the decision to contesting the decision maker's moral eligibility to decide. The public dispute is relocated from legal constraints to supposed motives, identity, private conduct or alleged affiliations, often without a process to test the nature of such claims and prove or disprove the truth of the matter. This is why delegitimation is best conceptualised as coercive rather than communicative. Its practical effect is to create disproportional social and professional costs for deciding cases impartially, especially in politically salient or controversial matters and to lower the costs of disrespecting judgments by persuading the public that judgments are not lawful outcomes but factional moves.

Recent peer reviewed work, of Ayca and Austinon delegitimation strategies by populist actors supports this framing. Populist narratives (be they left wing or right wing as populism is more of a way of conducting politics rather than a purely ideological placement on the political spectrum), commonly identify the judiciary as part of an elite constellation obstructing popular will, making courts an object

⁸ Tom R. Tyler, "Procedural Justice, Legitimacy, and Effective Law Enforcement" (2015), synthesising research that legitimacy and perceived fairness shape compliance and cooperation.

⁹ *Ibidem*.

¹⁰ ENCJ Executive Board, "Statement on Pressure and Intimidation of Judges through Media" (17 December 2025), noting hostile media campaigns and calling on state powers to refrain from facilitating attacks or intimidation

of rhetorical attack even before formal institutional change is possible. Experimental and survey research on court curbing similarly finds that informal, high visibility attacks can reduce public trust and that populist justifications can frame court targeting as public interest reform¹¹. In their findings, delegitimation functions as a facilitating condition for later institutional interference. To study delegitimation comparatively, the concept must be translated into observable indicators. The following indicators, outlined in Table 1 are designed for coding across jurisdictions and media environments, and they reflect patterns common in European monitoring, jurisprudence, and peer reviewed research.

Table 1. Critique versus delegitimation decision rule, indicators and examples.

Coding decision	Core question	Indicators present	Typical examples	Notes for coding
Legitimate critique	Is the target the reasoning, procedure, or performance, with verifiable engagement	Low personalisation, legal and procedural context, evidence referenced, no intimidation cues	Criticism of judgment reasoning in a public interest debate, investigative critique grounded in record, lawyer critique of prosecutorial theory in court filings	Tone alone does not decide, hard language can still be critique if content is issue focused
Borderline critique	Does the critique include personal language but still meaningfully engage legal issues	Moderate personalisation, partial context, limited insinuation, no coordinated campaign evidence	Editorial calling a ruling “wrong” while implying incompetence, but still discussing legal reasoning	Code as borderline when the personal element is incidental rather than dispositive
Delegitimation	Is the communication primarily personal vilification aimed at discrediting the decision maker and undermining trust	High personalisation, insinuation, decontextualisation, coordinated amplification, intimidation cues or informal sanction demands	Claims that judges are “corrupt” or “enemies,” calls for retaliation, campaigns naming and shaming identifiable judges, pressure to discipline judges after unpopular rulings	Require more than anger, look for pattern, repetition, and coercive intent or effects

¹¹ Ayca Aydin-Cakir and Austin Driscoll, “On motives and means: how approach and justification for court-curbing impact public trust” (2025), including propositions that informal court-curbing is high profile and erodes public trust more, and describing populist rhetoric framing judges as elitist or enemies.

Intimidation and coercion	Does the speech include threats, harassment, doxxing, or incitement	Explicit threats or harassment cues, exposure of private data, calls for violence, coordinated targeting of families	Online harassment and threats against judges and families, doxxing, incitement to violence	Always code separately as coercion, even if embedded in political critique
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1. Personalisation

The communicative focus is the individual magistrate, not the legal issue. This can be observed in naming, branding, targeting career and reputation, or imputing competence and character to explain outcomes. The CCJE, in its 2025 opinion, describes hostile attacks on judges including verbal abuse and online harassment, often in high profile and politically controversial cases, which typically operate through personal targeting rather than doctrinal argument.¹²

2. Insinuation and moralisation.

The message shifts from critique to moral denunciation, framing magistrates as corrupt, traitorous, captured, or enemies of the people, often without evidentiary grounding or with selective fragments that cannot be tested. Populist court curbing research explicitly describes rhetorical patterns where leaders blame the judiciary as elitist, biased, politicised, and present judges as enemies, thereby shaping public perceptions.¹³

3. Decontextualisation of judicial acts.

Legal decisions are detached from procedural constraints, evidentiary rules, legal mandates, or the appellate structure, so that outcomes appear as personal choices. This is a functional form of misinformation about adjudication, and it is particularly potent in complex cases. It aligns with the CCJE's description of attacks being fuelled by public dissatisfaction with judicial decisions, combined with media misinformation.¹⁴

4. Coordinated amplification.

Similar narratives appear simultaneously across political elite messaging,

¹² Consultative Council of European Judges, Opinion No. 28 (2025), para 31 on hostile attacks including verbal abuse, online harassment, intimidation, and sometimes physical violence, and para 28 on threats to personal safety and implications for independence.

¹³ Ruth Breeze, "Enemies of the people": Populist performances in the Daily Mail reporting of the Article 50 case, *Discourse, Context & Media* 25 (October 2018)

¹⁴ *Ibidem*.

aligned media, and social media channels, often with shared language and timing. Delegitimation strategies research treats these campaigns as tools for building a permissive environment for attacks on judicial review and independence.¹⁵ The ENCJ statement likewise notes “regular hostile media campaigns by political actors,¹⁶” which implies reiteration and amplification rather than isolated criticism.

5. Intimidation cues or informal sanctioning.

Speech includes implicit or explicit threats, harassment cues, doxxing, calls for retaliation, professional ruin, disciplinary sanctions, or violence. The CCJE highlights online harassment, intimidation, and sometimes physical violence, framing threats to personal safety as serious implications for independence.¹⁷

Mechanisms Of Public Trust Erosion in The Judiciary

a) Institutional trust erosion pathways.

The first pathway is perceived politicisation. When accusations of bias, corruption or ulterior motives become common frames, citizens infer that judging is partisan and that law is a mask. Recent peer reviewed work on court curbing argues that, irrespective of form, court curbing undermines public confidence, and that informal court curbing practices can erode trust more than formal reforms, precisely because informal attacks are high profile and easily attributable¹⁸. The second pathway is reduced diffuse support. Diffuse support refers to legitimacy that is not dependent on agreement with particular outcomes. Classic comparative research by James L. Gibson and colleagues across multiple countries shows that courts can benefit from a positivity effect, where pleasing decisions increase support more than displeasing decisions decrease it, especially for older courts that have satisfied successive constituencies.¹⁹ The third pathway is reduced compliance legitimacy. Procedural justice research developed by Tom R. Tyler argues that perceived legitimacy drives voluntary compliance and cooperation, because people comply when they believe authority is rightful and procedures are fair.²⁰

¹⁵ Sung Y. Effective Judicial Communication and Trust in the Judiciary. *Journal of Law and Courts*. 2025.

¹⁶ ENCJ Executive Board, “Statement on Pressure and Intimidation of Judges through Media” (17 December 2025)

¹⁷ Łukasz Bojarski, “Civil Society Organizations for and with the Courts and Judges, Struggle for the Rule of Law and Judicial Independence: The Case of Poland 1976-2020,” *German Law Journal* 22, no. 7 (2021).

¹⁸ Ayca Aydin-Cakir and Austin Driscoll, “On motives and means: how approach and justification for court-curbing impact public trust” (2025).

¹⁹ James L. Gibson, Gregory A. Caldeira, and Vanessa A. Baird, abstract and core claims on diffuse support and legitimacy dynamics across 18 countries, including positivity effects and court age effects

²⁰ Tom R. Tyler, “Procedural Justice, Legitimacy, and Effective Law Enforcement” (2015), synthesising research that legitimacy and perceived fairness shape compliance and cooperation.

b) Judicial independence pathways

The first independence pathway brings chilling effects. The CCJE's 2025 opinion explicitly links hostile attacks and threats to judicial independence, and notes that polarisation and misinformation can fuel such attacks, especially in high profile and politically sensitive cases.²¹ Chilling effects arise when magistrates anticipate personal consequences, reputational ruin, harassment, or career damage for deciding impartially in controversial matters.²² In contemporary rule of law conflicts, this dynamic is amplified where disciplinary or quasi disciplinary pressure is used as a governance tool, making the risk of sanction and public vilification structurally credible.²³ The Strasbourg Court has likewise treated patterns of legal harassment and media smear campaigns against judges as relevant context, reinforcing the logic that sustained pressure can inhibit the free exercise of judicial functions.²⁴

The second pathway is anticipatory self restraint. This is a behavioural mechanism. Even without a direct threat, repeated attacks can lead judges and prosecutors to avoid high risk interpretations, to defer contentious decisions, or to narrow enforcement in corruption and political power cases. Comparative work on threats to judicial independence and court curbing argues that the credible prospect of political retaliation can induce strategic moderation by judicial actors.²⁵ Empirical scholarship on backlash dynamics similarly finds that courts may respond to hostile political environments by exercising restraint, consistent with the claim that informal pressure can shape decision patterns even absent formal institutional change.²⁶

The third pathway is reputational vulnerability. In environments where career progression, disciplinary exposure, and public legitimacy are fragile, reputation becomes a lever. Delegitimation campaigns exploit that vulnerability, turning public hostility into professional hazard. The comparative literature on judicial audiences and reputation emphasises that courts and individual judges are dependent on multiple audiences, including political institutions, legal communities, media, and the broader public, creating incentives to protect standing and credibility under

²¹ Consultative Council of European Judges (CCJE), *Opinion No. 28 (2025) on the importance of judicial well-being for the delivery of justice*, CCJE(2025)6 (14 November 2025)

²² Katarzyna Gajda-Roszczyńska and Krystian Markiewicz, "Disciplinary Proceedings as an Instrument for Breaking the Rule of Law in Poland," *Hague Journal on the Rule of Law* 12 (2020)

²³ Court of Justice of the European Union, *Commission v Poland (Disciplinary regime for judges)*, Case C-791/19, EU:C:2021:596 (15 July 2021).

²⁴ European Court of Human Rights, *Tuleya v. Poland* (Applications nos. 21181/19 and 51751/20), Judgment of 6 July 2023, passages describing smear campaign and legal harassment context.

²⁵ Alex Schwartz, "Threats to Judicial Independence," in *The Oxford Handbook of Comparative Judicial Behaviour* (Oxford University Press, 2024).

²⁶ "Backlash and Judicial Restraint: Evidence from the European Court of Human Rights," *International Studies Quarterly* 64, no. 4 (2020): 770-784.

attack.²⁷ In systems with career based judicial structures, reputational standing interacts with promotion and disciplinary incentives, increasing exposure to reputational coercion as a means of influence.²⁸ This is particularly acute where disciplinary systems are perceived as politicised or susceptible to public pressure, a pattern visible in European rule of law conflicts and reflected in EU case law condemning disciplinary regimes that undermine effective judicial protection and independence.²⁹

c) *Systemic effects*

At the system level, delegitimation changes incentives for political non-compliance. If elites succeed in persuading segments of the public that courts are illegitimate, then refusing to comply with judgments, delaying implementation, or attacking judicial powers becomes easier to justify.³⁰ This logic is consistent with comparative work showing that judicial authority and compliance are conditioned by public support and by the informational environment in which courts operate.^{31,32} Court curbing research explicitly examines how leaders publicly justify institutional attacks and how justifications moderate public responses, highlighting that the rhetorical layer is part of the causal chain.³³ In established democracies, the same literature shows that elite capacity to mobilise populist antipathy against courts varies, and this variation can moderate how far court curbing agendas can proceed.³⁴

Delegitimation also creates escalation cycles. Attacks provoke institutional defence, which can be reframed as political behaviour. Silence, meanwhile, can be reframed as admission. The ENCJ's explicit call on all branches of power to refrain from facilitating attacks reflects an attempt to dampen escalation by reasserting constitutional norms of respect for adjudication.³⁵

²⁷ Nuno Garoupa and Tom Ginsburg, "Judicial Audiences and Reputation: Perspectives from Comparative Law," *Columbia Journal of Transnational Law* 47 (2009)

²⁸ Nuno Garoupa and Tom Ginsburg, "Hybrid Judicial Career Structures: Reputation Versus Legal Tradition," *Journal of Legal Analysis* 3, no. 2 (2011)

²⁹ Court of Justice of the European Union, *Commission v Poland* (Disciplinary regime for judges), Case C-791/19, EU:C:2021:596 (15 July 2021), used here for the proposition that politicised discipline undermines judicial independence and effective judicial protection.

³⁰ Aylin Aydin-Cakir and Ebru İlter Akarçay, "When do governments attack the judiciary? The explanatory power of political corruption," *International Review of Law and Economics* 82 (2025)

³¹ Georg Vanberg, *The Politics of Constitutional Review in Germany* (Cambridge University Press, 2005)

³² Jeffrey K. Staton, *Judicial Power and Strategic Communication in Mexico* (Cambridge University Press, 2010).

³³ . Aylin Aydin-Cakir and Amanda Driscoll, "On motives and means: how approach and justification for court-curbing impact public trust," *Democratization* 32, no. 4 (2024)

³⁴ Alex Schwartz, "Court Curbing in the United Kingdom," *The American Journal of Comparative Law* (online first, 18 November 2025)

³⁵ ENCJ Executive Board, Statement on Pressure and Intimidation of Judges through Media (17 December 2025), calling on "all relevant actors, including all branches of state power," to refrain from facilitating or permitting attacks and intimidation, and emphasising duties of protection.

d) *Typology of attacks*

In order to engender a better and more comprehensive understanding of the phenomenon of judiciary deligitimisation one must also inexorably describe the instruments of such an endeavour, consequentially, the typology below is designed for cross-national coding, and it aligns with the indicators and mechanisms. Political elite driven attacks are often the most consequential because they combine agenda setting power with potential leverage over budgets, appointments, or discipline. Comparative court curbing research shows that incumbents can frame judges as elites or enemies in order to legitimise reforms or apply pressure, and that such framing is part of the strategic repertoire rather than a rhetorical accident.³⁶ Populist mobilisation narratives are inextricably linked to sustained attacks on judicial constraints, especially when judicial review blocks executive preferences. Legacy media driven attacks are influential in shaping common frames, and can intensify personalisation by naming individual magistrates, stereotyping, or insinuating motive. Studies of tabloid populism and judicial delegitimation illustrate how media discourse constructs judges as outgroups, for example as “enemies” of “the people,” which converts adjudication into a moralised conflict rather than a procedural resolution.³⁷ The CCJE explicitly notes the role of media misinformation and public dissatisfaction with judicial decisions in fuelling hostile attacks, a pattern that includes framing effects and decontextualisation.³⁸ Łukasz Bojarski's work on judicial communication and trust also underscores that misunderstanding of court reasoning creates a reputational vulnerability that courts sometimes seek to mitigate through public oriented communication.³⁹ NGO or civil society signalling can be constructive when it demands accountability in good faith, and when critique is evidence based and institutionally responsible. Comparative scholarship on rule of law backsliding shows that civil society organisations may also become central actors in defending judicial independence, which makes this category analytically sensitive and unsuitable for blanket assumptions.^{40,41} For coding purposes, the decisive feature is whether messaging remains anchored in verifiable claims about institutional performance, or shifts toward personalising blame and

³⁶ Alex Schwartz, “Threats to Judicial Independence,” in *The Oxford Handbook of Comparative Judicial Behaviour* (Oxford University Press, 2024).

³⁷ Ruth Breeze, “Enemies of the people”: Populist performances in the *Daily Mail* reporting of the Article 50 case, *Discourse, Context & Media* 25 (2018)

³⁸ Yu-hsien Sung, “Effective Judicial Communication and Trust in the Judiciary,” *Journal of Law and Courts* 13, no. 1 (2025)

³⁹ Łukasz Bojarski, “Civil Society Organizations for and with the Courts and Judges, Struggle for the Rule of Law and Judicial Independence: The Case of Poland 1976-2020,” *German Law Journal* 22, no. 7 (2021)

⁴⁰ Barbara Grabowska-Moroz and Olga Śniadach, “The Role of Civil Society in Protecting Judicial Independence in Times of Rule of Law Backsliding in Poland,” *Utrecht Law Review* 17, no. 2 (2021)

⁴¹ Ireneusz Paweł Karolewski and Robert Sata, “The dual state of judiciary in Hungary and Poland,” *Zeitschrift für Vergleichende Politikwissenschaft* 19 (2025)

coordinating insinuation in ways that functionally resemble delegitimation. Hybrid amplification combines political elites, aligned media, and social platforms to produce coordinated reinforcement, shared language, and timing effects. Empirical work on recent European rule of law conflicts documents coordinated smear ecosystems in which political principals, media allies, and online networks jointly target judges through reputational attacks and the exposure of personal information.⁴² Research on populist delegitimation similarly treats the identification of courts as elite targets as a core mechanism of mobilisation, often mediated through media cues and repetition.⁴³ The ENCJ's warning about "regular hostile media campaigns by political actors" fits this logic of reiteration and amplification rather than isolated criticism. Online harassment and doxxing represent the coercive edge. They directly implicate personal security and judicial independence, and they operationalise intimidation cues in a way that is measurable across jurisdictions. The CCJE highlights online harassment, intimidation, and at times physical violence as threats to judges,⁴⁴ safety and independence, and notes the amplifying role of social media, including the exposure of judges, personal information. European survey evidence collected through ENCJ likewise reports that intimidation and threats occur in many judiciaries, with some systems reporting higher prevalence, which provides a comparative indicator for coding the coercive dimension.

Table 2. Typology of attacks, actor, channel, intended effect, risk profile

Attack type	Primary actors	Common channels	Intended effect	Risk profile for independence and trust
Political elite driven	Ministers, party leaders, parliamentary actors	Speeches, press conferences, parliamentary debate, official social media	Reframe judicial constraints as political hostility, justify non-compliance or reform	High, because elites can convert narrative into coercive levers, budgets, appointments, discipline
Legacy media driven	Newspapers, television, high reach portals	Editorial series, front pages, talk shows, opinion columns	Set public narrative, personalise judges, intensify suspicion	Medium to high, depends on market concentration and political alignment, increases decontextualisation risk

⁴² ENCJ Executive Board, *Statement on Pressure and Intimidation of Judges through Media* (17 December 2025).

⁴³ ENCJ, *Survey among Judges 2025* (report, PDF), sections on threats and intimidation and the influence of media and social networks.

⁴⁴ Consultative Council of European Judges (CCJE), *Opinion No. 28 (2025) on the importance of judicial well-being for the delivery of justice*, CCJE(2025)6 (14 November 2025)

NGO or civil society signalling	NGOs, advocacy networks, professional groups	Reports, press releases, campaigns	Demand accountability, shape legitimacy beliefs	Variable, can strengthen accountability if evidence based, can delegitimize if personal and insinuation driven
Hybrid amplification	Political actors plus aligned outlets plus influencers	Coordinated timing across platforms	Produce repetition and inevitability effect, normalise personal attack frames	High, because coordination increases reach, reduces correction, and supports intimidation cascades
Online harassment and doxxing	Anonymous users, coordinated trolls, extremist clusters	Social media, forums, messaging apps	Direct intimidation, fear, isolation, pressure to withdraw	Very high, direct chilling effect and safety risk, often linked with political polarisation

Two implications follow for the doctrinal and institutional analysis in Part II. First, responses must preserve space for legitimate critique, since suppression can backfire and undermine the very trust it seeks to defend. The United Kingdom's abolition of scandalising contempt reflects this legitimacy logic, preferring narrower tools and avoiding broad punishment of criticism⁴⁵. Second, the response must be capable of addressing coercive reputational pressure, especially where attacks are coordinated, personal, and linked to intimidation. European judicial networks and Council of Europe standards treat such pressure as a structural threat to judicial independence, not merely a communicative dispute.⁴⁶

III. Comparative mapping of responses, jurisprudence plus practice

The constitutional management of criticism directed at the judiciary is structured by a persistent tension within liberal democracies. On the one hand, courts exercise public authority and must therefore remain open to scrutiny, contestation, and critique. On the other hand, courts are uniquely dependent upon public confidence for the effective discharge of their functions. Unlike the political branches, they possess neither electoral legitimacy nor coercive enforcement

⁴⁵ Law Commission of England and Wales, *Contempt of Court: Scandalising the Court* (Law Com No 335) and subsequent UK abolition of scandalising contempt, reflecting chilling effect and legitimacy concerns.

⁴⁶ Alisher Juzgenbayev, "Framing the Judiciary" (2025), summarising theoretical expectations and mechanisms by which populist framing identifies courts as elite institutions and supplies cues through media attacks, linking framing to legitimacy erosion risks.

capacity of their own. Their authority rests on legal reasoning, institutional design, and sustained societal trust. The legal and normative baseline in consolidated democracies reflects an attempt to reconcile these two imperatives: robust protection of public debate and proportionate safeguarding of judicial authority.

III.1. Freedom of Expression, Public Interest Debate, and Democratic Scrutiny

Across European constitutional systems, Article 10 of the European Convention on Human Rights establishes the foundational premise that freedom of expression applies not only to speech that is favourably received, but also to expression that “offend[s], shock[s] or disturb[s].”⁴⁷ The Strasbourg Court has consistently treated discussion of the functioning of the justice system as a matter of public interest entitled to heightened protection.⁴⁸ Judicial decisions concern the exercise of state power and therefore fall squarely within democratic scrutiny. The Grand Chamber’s judgment in *Morice v France* is central in articulating this balance.⁴⁹ The Court held that a lawyer’s critical remarks concerning investigating judges were protected where they contributed to debate of public interest and were supported by a sufficient factual basis. The Court rejected the idea that judicial authority requires insulation from public criticism. At the same time, it emphasised that accusations of corruption or bias must not be “devoid of factual basis” and must remain proportionate to the context.⁵⁰ The decision thus draws a doctrinal line between evidence-based critique and gratuitous personal attack, mirroring the conceptual distinction developed in Part I between accountability and delegitimation. A similar speech-protective logic characterises other democratic systems. In the United States, the Supreme Court sharply limited the scope of contempt by publication in *Bridges v California*, holding that criticism of pending cases could not be punished absent a “clear and present danger” to the administration of justice.⁵¹ In *New York Times v Sullivan*, the Court further entrenched protection for speech concerning public officials, including judges, by requiring proof of “actual malice” in defamation actions.⁵² The American approach reflects a strong presumption that institutional resilience must be achieved through public debate rather than punitive silencing. Canadian jurisprudence has followed a similar trajectory. In *R v Kopyto*, the Ontario Court of Appeal narrowed the offence of scandalising the court, holding that contempt must pose a real and substantial risk to the administration of justice, not merely reputational offence.⁵³ It can be observed that this narrowing reflects the broader Charter commitment to proportionality in

⁴⁷ *Handyside v United Kingdom*, App. no. 5493/72, Judgment of 7 December 1976, para. 49.

⁴⁸ *Sunday Times v United Kingdom (No 1)*, App. no. 6538/74, Judgment of 26 April 1979.

⁴⁹ *Morice v France* [GC], App. no. 29369/10, Judgment of 23 April 2015.

⁵⁰ *Ibidem*.

⁵¹ *Bridges v California*, 314 U.S. 252 (1941).

⁵² *New York Times Co. v Sullivan*, 376 U.S. 254 (1964).

⁵³ *R v Kopyto* (1987), 47 D.L.R. (4th) 213 (Ont. C.A.).

restrictions on expression. The normative baseline across consolidated democracies therefore affirms that judicial institutions are not immune from robust criticism. Indeed, scrutiny is a constitutional necessity. What differentiates systems is not whether critique is allowed, but how they respond when criticism crosses into intimidation, misinformation, or coercive delegitimation.

III.2. Protecting the Authority and Impartiality of the Judiciary, the Legitimate Aim Problem

Article 10(2) ECHR expressly recognises the “authority and impartiality of the judiciary” as a legitimate aim capable of justifying restrictions on expression. The Strasbourg Court has repeatedly acknowledged that courts, as guarantors of justice in a democratic society, must enjoy public confidence. In *Prager and Oberschlick v Austria*, the Court observed that if courts are to perform their functions effectively, they must be protected against destructive attacks lacking factual foundation⁵⁴. The “legitimate aim problem” arises because the same constitutional order that protects public scrutiny also entrusts courts with safeguarding legality. Overbroad invocation of judicial authority risks undermining democratic debate, yet insufficient protection risks eroding the institutional conditions of impartial adjudication. Recent Strasbourg case law demonstrates increasing sensitivity to structural independence concerns. In *Kövesi v Romania*, the Court held that the premature removal of the Chief Prosecutor violated Articles 6 and 10, linking institutional retaliation and reputational attack to broader rule of law implications.⁵⁵ In *Tuleya v Poland*, the Court treated disciplinary pressure and hostile public campaigns as relevant context when assessing Convention violations.⁵⁶ The mentioned cases outline a doctrinal shift: attacks on individual magistrates are not viewed in isolation but as components of systemic pressure capable of impairing independence. The Court of Justice of the European Union has similarly emphasised that judicial independence requires insulation from both direct and indirect pressure. In *Commission v Poland (Case C-791/19)*, the Court held that disciplinary regimes must not permit political authorities to influence judicial decision making, whether through formal sanction or structural vulnerability.⁵⁷ Although the CJEU’s focus is institutional architecture rather than speech regulation, the jurisprudence reinforces the principle that independence includes protection against coercive reputational strategies when coupled with disciplinary leverage.

III.3. Doctrinal Lines: Critique with Factual Basis versus Coercive Delegitimation

Across jurisdictions, doctrinal “lines” can be identified. First, there is strong protection for critique grounded in factual basis and public interest. The Strasbourg

⁵⁴ *Prager and Oberschlick v Austria*, App. no. 15974/90, Judgment of 26 April 1995.

⁵⁵ *Kövesi v Romania*, App. no. 3594/19, Judgment of 5 May 2020.

⁵⁶ *Tuleya v Poland*, Apps. nos. 21181/19 and 51751/20, Judgment of 6 July 2023.

⁵⁷ *Case C-791/19, Commission v Poland*, EU:C:2021:596 (15 July 2021).

Court protects even sharp and caustic criticism provided it contributes to debate and rests on verifiable claims. American First Amendment doctrine similarly shields harsh rhetorical criticism of judges absent demonstrable falsehood made with actual malice.⁵⁸ The UK's abolition of the common law offence of scandalising the judiciary in 2013 further reflects the view that reputational offence alone cannot justify criminal sanction.⁵⁹ Second, tolerance narrows significantly when speech involves threats, harassment, or knowingly false allegations of corruption. The Strasbourg Court has upheld sanctions where allegations against judges were made without evidentiary support and constituted serious imputations of criminal conduct.⁶⁰ Likewise, contempt powers remain available in common law systems where speech poses a real risk to proceedings or judicial safety.⁶¹ The Canadian proportionality model similarly confines sanction to cases of demonstrable interference with the administration of justice.⁶² The doctrinal architecture therefore does not criminalise criticism as such. It targets coercive elements: intimidation, harassment, incitement, interference with pending proceedings, and demonstrably false corruption narratives, which aligns closely with the indicator framework developed in Part I, particularly the distinction between critique and reputational coercion.

III.4. Why Blunt Speech Restrictions Backfire

Comparative experience suggests that blunt speech restrictions often produce counterproductive effects. Law reform analysis in the United Kingdom concluded that the offence of scandalising the court was unnecessary and risked chilling legitimate criticism while inviting strategic provocation.⁶³ Publicly punishing critics can reinforce populist narratives portraying courts as insulated elites suppressing dissent. Political science research on court curbing demonstrates that rhetorical framing plays a causal role in shaping public trust. Leaders who justify institutional attacks by depicting judges as biased elites can moderate public resistance to reforms, especially where sanctions against critics are framed as defensive measures.⁶⁴ In such contexts, punitive responses may feed martyrdom dynamics, strengthening rather than weakening delegitimizing campaigns. Scholarly analyses of populism and the rule of law further note that escalation cycles emerge when courts respond defensively to personal attacks.⁶⁵ Institutional

⁵⁸ *New York Times v Sullivan*, supra note 6.

⁵⁹ Crime and Courts Act 2013 (UK), s. 33; Law Commission, *Contempt of Court: Scandalising the Court* (Law Com No 335, 2012).

⁶⁰ See e.g. *Peruzzi v Italy*, App. no. 39294/09, Judgment of 30 June 2015.

⁶¹ See discussion in *Bridges*, supra note 5; *Kopyto*, supra note 7.

⁶² *Kopyto*, supra note 7.

⁶³ Crime and Courts Act 2013 (UK), s. 33; Law Commission, *Contempt of Court: Scandalising the Court* (Law Com No 335, 2012).

⁶⁴ Aylin Aydin-Cakir and Amanda Driscoll, "On motives and means: how approach and justification for court-curbing impact public trust," *Democratization* 32 (2024)

⁶⁵ Nicola Lacey, "Populism and the Rule of Law," *Annual Review of Law and Social Science* 15 (2019)

defence can be reframed as partisan engagement, while silence can be interpreted as concession. The risk is not merely reputational but structural: once segments of the public internalise narratives of judicial illegitimacy, political non-compliance with judgments becomes easier to justify. For these reasons, consolidated democracies have gradually moved away from expansive criminalisation of judicial criticism. The emerging consensus favours a layered model: strong protection for public interest debate, narrow sanction for coercive or knowingly false attacks, structural insulation of disciplinary systems, and investment in institutional communication capacity. The objective is not to immunise magistrates from scrutiny, but to preserve the conditions under which scrutiny remains compatible with judicial independence and sustained institutional trust.

Comparative Synthesis

Across these jurisdictions, a coherent pattern emerges. Consolidated democracies provide strong protection for criticism of judges and prosecutors where speech contributes to public debate and rests on factual foundation. At the same time, they narrow tolerance for threats, harassment, interference with proceedings, and knowingly false allegations of corruption. Importantly, supranational European jurisprudence increasingly situates speech conflicts within structural independence contexts. The CJEU and ECtHR treat disciplinary vulnerability and smear campaigns as constitutionally relevant factors. The United States relies more heavily on speech protection and institutional resilience, while Canada employs proportionality to confine sanction to genuine risks. As a relative outcome, doctrinal trajectories reinforce the central thesis of this article. Criticism is constitutionally necessary. Delegitimation that functions as reputational coercion, particularly when coupled with disciplinary leverage or political retaliation, implicates judicial independence itself.

III.5. Comparative Institutional Responses: What Worked.

Comparative analysis demonstrates that doctrine alone does not determine resilience against judicial delegitimation. Consolidated democracies increasingly rely on institutional practices that complement speech protection with structural safeguards. Four recurring response patterns emerge: strategic communication, political norm articulation, targeted protection against harassment, and professional gatekeeping. These approaches are layered and mutually reinforcing rather than alternative models. Courts in several consolidated democracies have developed institutional communication capacities, including press offices, accessible summaries of judgments, public information portals, and digital transparency tools. Fundamentally, the underlined evolution reflects recognition that delegitimation often exploits informational asymmetries and procedural opacity. Empirical scholarship supports the proposition that judicial communication can strengthen institutional trust when it clarifies reasoning without adopting partisan tone. James L. Gibson's work on judicial legitimacy demonstrates that diffuse support for courts is

shaped not only by outcomes but also by perceived procedural fairness and transparency.⁶⁶ Tom Tyler's research on procedural justice similarly shows that public confidence increases when institutions communicate fairness and neutrality.⁶⁷ More recent work in comparative judicial politics argues that courts engage in strategic communication to mitigate mischaracterisation and protect institutional reputation.⁶⁸ A second pattern concerns the articulation of constitutional norms requiring political actors to respect and defend judicial independence. In the United Kingdom, the Constitutional Reform Act 2005 formally imposes a duty on the Lord Chancellor and other ministers to uphold the continued independence of the judiciary.⁶⁹ Section 3 of the Act requires that ministers not seek to influence particular judicial decisions and mandates respect for judicial autonomy.

The importance of such norms became evident during politically sensitive litigation surrounding Brexit, when members of the executive were criticised for failing to robustly defend judges against hostile media characterisation.⁷⁰ Although statutory duties do not eliminate rhetorical attacks, explicit constitutional articulation clarifies baseline expectations and provides institutional actors with normative leverage. Comparative constitutional theory underscores that informal norms, including mutual toleration and institutional forbearance, are essential for democratic stability.⁷¹ When political leaders participate in delegitimizing rhetoric, escalation cycles intensify. Conversely, when executive actors publicly reaffirm judicial independence, the permissive environment for reputational coercion narrows. European soft law reinforces these expectations. The European Network of Councils for the Judiciary has issued statements condemning hostile media campaigns against judges and calling on political actors to refrain from facilitating attacks.⁷² The Consultative Council of European Judges has similarly emphasised that all branches of power share responsibility for safeguarding judicial independence and personal security.⁷³ While non-binding, such instruments contribute to a shared European constitutional culture. The effectiveness of such communication depends on institutional voice. Studies of judicial audiences emphasise that courts derive legitimacy from collective authority rather than individual personality, suggesting that communication strategies must remain institutional rather than personalised.⁷⁴

⁶⁶ James L. Gibson, "The Legitimacy of the U.S. Supreme Court in a Polarized Polity," *Journal of Empirical Legal Studies* 4 (2007)

⁶⁷ Tom R. Tyler, *Why People Obey the Law* (Princeton University Press, 2006).

⁶⁸ Georg Vanberg, *The Politics of Constitutional Review in Germany* (Cambridge University Press, 2005).

⁶⁹ Constitutional Reform Act 2005 (UK), s. 3.

⁷⁰ See UK Supreme Court, *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, and subsequent public debate.

⁷¹ Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (Crown, 2018).

⁷² European Network of Councils for the Judiciary, *Statement on Pressure and Intimidation of Judges through Media* (17 December 2025).

⁷³ Consultative Council of European Judges (CCJE), *Opinion No. 28* (2025), paras. 27-29.

⁷⁴ Nuno Garoupa and Tom Ginsburg, "Judicial Audiences and Reputation: Perspectives from Comparative Law," *Columbia Journal of Transnational Law* 47 (2009)

A third pattern avoids broad criminalisation of criticism and instead focuses on narrowly tailored tools addressing threats, harassment, and interference with proceedings. This approach reflects doctrinal evolution away from expansive scandalising contempt doctrines and toward proportionality. The CCJE has explicitly recognised online harassment, intimidation, and exposure of personal data as threats to judicial independence and well-being.⁷⁵ It recommends institutional measures including security protocols, reporting mechanisms, and coordinated responses to digital hostility. Survey evidence collected within the ENCJ framework indicates that judges in several European systems report experiences of intimidation and online abuse, particularly in high-profile or politically sensitive cases.⁷⁶ Comparative legal systems have increasingly relied on existing criminal law provisions addressing threats, incitement, or obstruction of justice, rather than introducing broad speech offences targeting reputational harm. Certainly, the strategy aligns with Strasbourg proportionality doctrine and reduces the legitimacy costs associated with suppressing criticism.⁷⁷ By targeting coercive conduct rather than dissenting opinion, jurisdictions preserve space for democratic debate while protecting judicial safety.

A fourth institutional response involves professional regulation within the legal community. Bar associations and judicial councils have used ethical frameworks to discipline officers of the court who engage in unfounded personal attacks that undermine the administration of justice. Strasbourg jurisprudence recognises that lawyers' speech enjoys heightened protection but may be subject to proportionate discipline where it lacks factual foundation and interferes with justice. In *Morice v France*, the Court affirmed that lawyers have a special role in public debate but remain bound by duties of integrity.⁷⁸ On this view, professional sanctions can be applied in a measured way without amounting to political suppression. Comparative work on judicial governance suggests that credible internal accountability mechanisms build institutional trust and leave institutions less exposed to smear narratives..⁷⁹ When disciplinary systems are transparent and insulated from political control, they reinforce public confidence that allegations of misconduct will be addressed institutionally rather than through public vilification. Conversely, politicised or opaque disciplinary regimes increase susceptibility to delegitimation, a dynamic underscored by CJEU jurisprudence on structural independence.⁸⁰

Professional gatekeeping thus performs a dual function: it protects institutional integrity while demonstrating that the judiciary is not beyond scrutiny. This balance is essential in distinguishing accountability from delegitimation.

⁷⁵ *Ibidem*.

⁷⁶ ENCJ, *Survey among Judges 2025* (report).

⁷⁷ *Sunday Times v United Kingdom* (No 1), App. no. 6538/74, Judgment of 26 April 1979.

⁷⁸ *Morice v France* [GC], App. no. 29369/10, Judgment of 23 April 2015.

⁷⁹ Garoupa and Ginsburg, *supra* note 37.

⁸⁰ Case C-791/19, *Commission v Poland*, EU:C:2021:596 (15 July 2021).

Table 3. Comparative Response Repertoire Matrix

Jurisdiction / Actor	Tool	Type of Response	Principal Trade-Off	Observed Effect
ECtHR	Article 10 proportionality framework	Judicial doctrine	Risk of contextual variability	Structured boundary between factual critique and personal vilification
CJEU	Independence jurisprudence (e.g., C-791/19)	Structural safeguard	Limited to EU competence	Curtails politicised disciplinary leverage
United Kingdom	Abolition of scandalising contempt; statutory duty to defend independence	Legislative and normative reform	Reduced punitive deterrence	Enhanced speech legitimacy and clarified executive responsibility
United States	Strong First Amendment protection	Constitutional doctrine	Limited formal defence of authority	Relies on institutional resilience and public trust
Canada	Narrow contempt balancing under Charter	Judicial doctrine	Case-specific proportionality	Preserves debate while sanctioning genuine interference
ENCJ / CCJE	Soft law standards and surveys	Normative guidance	Non-binding	Articulates shared European expectations
Judicial Councils / Bars	Ethical discipline of officers of the court	Professional regulation	Risk of perceived corporatism	Signals accountability and protects institutional integrity

Comparative evidence indicates that consolidated democracies respond most effectively to personalised attacks when they combine strong speech protection with proportionate institutional safeguards. Broad criminalisation of judicial criticism has largely been abandoned. Instead, resilience depends on communication capacity, insulation of disciplinary systems from political leverage, reinforcement of political norms respecting judicial authority, professional standards within the legal community, and targeted protection against harassment and intimidation. This layered model preserves democratic contestation while constraining coercive delegitimation. It provides a structured template against which Romania's current legal and institutional framework can be evaluated.

IV. Romania Through the Comparative Lens: Delegitimation, Vulnerability, and Policy Learning

Romania's post-communist constitutional settlement formally entrenches judicial independence as a foundational guarantee of the rule of law. Articles 124

and 125 of the Constitution provide that judges are independent and subject only to the law, while Article 133 designates the Superior Council of Magistracy, Consiliul Superior al Magistraturii, CSM, as guarantor of that independence.⁸¹ At the level of constitutional design, Romania aligns with European standards of separation of powers and structural insulation. Yet comparative experience demonstrates that institutional independence depends not only on formal safeguards, but also on the ecology of public discourse in which courts operate. Over the past decade, Romania's judiciary has functioned within a public sphere marked by recurrent waves of personalised contestation, moralised rhetoric, and episodic narratives of systemic capture. When examined through the conceptual framework developed in Part I, Romanian public discourse displays recurring delegitimation indicators. First, sustained personalisation. High-profile decisions, particularly in corruption and constitutional matters, are frequently attributed to the motives of individual magistrates rather than analysed through legal reasoning or procedural constraint. Second, insinuation and moralisation. Political and media narratives have, at various moments, framed judicial actors as aligned with hidden networks, foreign interests, or informal centres of power. Third, decontextualisation. Complex procedural rulings are reframed as discretionary political acts detached from evidentiary standards, appellate structures, and statutory mandates. Fourth, coordinated amplification. Political messaging is often reiterated across sympathetic media platforms and digital channels, creating hybrid reinforcement dynamics.

Comparative scholarship on rule-of-law backsliding in Central and Eastern Europe identifies similar rhetorical repertoires, particularly the construction of courts as elite actors obstructing democratic will.⁸² While Romania has not experienced systemic judicial capture comparable to developments in certain neighbouring jurisdictions, the discursive techniques employed in domestic contestation bear structural resemblance to those comparative cases. Survey data indicate that public trust in Romanian judicial institutions fluctuates significantly during periods of intense political conflict surrounding anti-corruption prosecutions or constitutional adjudication.⁸³ As established in Part I, diffuse institutional support underpins compliance legitimacy. Erosion of perceived neutrality may therefore lower resistance to political non-compliance or structural reform. A recent investigative publication alleged the existence of an informal network exercising coordinated influence over the leadership of the Romanian judiciary. The report suggested that patterns of professional association, career advancement, and institutional proximity reflected structured influence beyond formal constitutional design. The

⁸¹ Constitution of Romania (1991, revised 2003), Arts. 124-125, 133.

⁸² Jan-Werner Müller, *What Is Populism?* (University of Pennsylvania Press, 2016).

⁸³ *Handyside v United Kingdom*, App. no. 5493/72, Judgment of 7 December 1976; *Morice v France* [GC], App. no. 29369/10, Judgment of 23 April 2015.

narrative implied systemic orchestration rather than coincidental professional interaction. In democratic systems governed by rule-of-law principles, allegations of structural capture or coordinated control of a constitutional institution carry significant normative weight. Such claims, by their nature, challenge the legitimacy of adjudication itself. Under general principles of evidentiary accountability in public discourse, the burden of substantiation lies with the party advancing the allegation. Serious accusations of systemic domination require demonstrable evidence capable of institutional verification. The publication did not result in adjudicated findings, prosecutorial confirmations, or official determinations establishing the existence of an illicit control structure within the judiciary. Nor did subsequent judicial or disciplinary proceedings confirm systemic orchestration. In institutional terms, the allegations therefore remained unproven. The constitutional significance of this absence is substantial. Article 10 ECHR and comparative free expression doctrine protect investigative journalism directed at public officials. Yet when systemic allegations are disseminated without evidentiary confirmation capable of formal validation, their principal impact may be reputational rather than corrective. Once amplified across political and media channels, narratives of hidden control can erode public perceptions of neutrality irrespective of adjudicative outcome. From the perspective of the delegitimation framework developed in Part I, the episode illustrates how suspicion may substitute for demonstration. Personalisation was evident in the focus on named judicial leaders. Insinuation operated through inferential linkage rather than adjudicated proof of unlawful coordination. Hybrid amplification emerged when political actors referenced and reiterated the allegations in public debate. Decontextualisation occurred insofar as professional proximity was reframed as systemic orchestration. The issue is not whether investigative scrutiny is legitimate. It is whether serious structural accusations meet the evidentiary threshold appropriate to claims of institutional capture. Where that threshold is not met in institutionally verifiable form, reputational pressure may arise without corresponding structural proof. Comparative research on court-curbing rhetoric demonstrates that such framing can affect public trust independently of formal institutional change.⁸⁴ Romania's recent history provides additional constitutional context. In *Kövesi v Romania*, the European Court of Human Rights held that the premature removal of the Chief Prosecutor of the National Anticorruption Directorate violated Articles 6 and 10 ECHR.⁸⁵ The Court emphasised that prosecutorial independence in corruption cases implicates rule-of-law guarantees. The judgment situates Romanian judicial independence within a broader European framework sensitive to both formal sanction and indirect pressure. At the EU level, the principles articulated in

⁸⁴ Aylin Aydin-Cakir and Amanda Driscoll, "On motives and means: how approach and justification for court-curbing impact public trust," *Democratization* 32 (2024)

⁸⁵ *Kövesi v Romania*, App. no. 3594/19, Judgment of 5 May 2020.

Associação Sindical dos Juízes Portugueses and Commission v Poland establish that judicial independence requires protection from both direct and indirect pressure.⁸⁶ Although Romania has not faced identical disciplinary architecture litigation, the structural baseline articulated by the CJEU applies equally to all Member States. When allegations of covert control circulate within a political environment already marked by prior conflicts over prosecutorial removal and disciplinary reform, reputational narratives acquire heightened constitutional salience. Even absent formal sanction, the cumulative effect of systemic suspicion may generate chilling effects or anticipatory self-restraint, particularly in high-profile cases.

Conclusion

This article began with a simple concern: what happens to judicial independence when public debate shifts from criticism of judgments to attacks on the character, motives, or imagined loyalties of judges themselves. The answer, drawn from conceptual analysis, comparative jurisprudence, and the Romanian experience, is sobering. Democracies depend on courts that are trusted even when they are unpopular. Judicial authority does not rest on force. It rests on acceptance, on the belief that decisions are taken according to law rather than faction. Once that belief begins to erode, the damage is rarely immediate or dramatic. It is incremental. It seeps into public consciousness through repetition, insinuation, and amplification. Part I showed that there is a principled distinction between critique and delegitimation. Criticism of reasoning, procedure, consistency, or institutional design is a normal and necessary feature of democratic life. Delegitimation is something else. It personalises institutional disagreement. It frames adverse decisions as proof of corruption, capture, or hidden coordination. It detaches outcomes from legal constraints and recasts them as political manoeuvres. Over time, that shift changes how courts are perceived, and how judges experience their role. Part II demonstrated that consolidated democracies have recognised this danger. They protect robust speech, including harsh criticism of judges. But they also draw boundaries where speech becomes threat, harassment, or knowingly false accusation. More importantly, they have learned that criminalising criticism is rarely the answer. Blunt restrictions often backfire, feeding narratives of elite insulation. What works instead is resilience: transparent reasoning, disciplined political norms, credible disciplinary safeguards, and targeted protection against intimidation. Part III applied this framework to Romania. Romania is not a collapsed constitutional order. Its judiciary retains formal guarantees and operates within European legal structures. Yet the public sphere has shown repeated episodes in which judges and prosecutors are portrayed not as legal actors but as

⁸⁶ Case C-64/16, *Associação Sindical dos Juízes Portugueses*, EU:C:2018:117; Case C-791/19, *Commission v Poland*, EU:C:2021:596.

participants in hidden networks, partisan projects, or systemic conspiracies. Some allegations remain unverified in institutional terms, yet circulate widely enough to affect perception. In a polarised environment, repetition can matter more than proof. The risk here is not abstract. We are living through a period of extraordinary global instability. Democratic backsliding is no longer a theoretical concept confined to academic debate. Across regions, courts have been weakened not only through legislative redesign but through sustained rhetorical assault. When political actors convince segments of the public that judges are enemies, traitors, or instruments of shadowy forces, resistance to institutional interference diminishes. Compliance with judgments becomes negotiable. Discipline becomes leverage. Reform becomes punishment. Ad hominem attacks against the judiciary are therefore not merely unpleasant features of political discourse. They are structurally dangerous. They corrode the cultural foundations upon which judicial independence depends. They generate chilling effects, encourage anticipatory restraint, and alter incentives for political non-compliance. Even where no immediate structural takeover occurs, the ground beneath constitutional democracy becomes less stable. In such a context, the defence of judicial independence cannot mean shielding magistrates from scrutiny. Courts must remain accountable, transparent, and open to criticism. But serious allegations of systemic capture or coordinated control carry a corresponding burden of substantiation. Where suspicion replaces evidence, and insinuation substitutes for demonstration, the public sphere becomes fertile ground for democratic erosion. The lesson from comparative experience is clear. Democracies endure not because they silence dissent, but because they preserve the boundary between critique and destruction. Romania, like many states facing similar pressures, stands at that boundary. Strengthening institutional communication, reaffirming political responsibility to defend judicial independence, insulating disciplinary systems from leverage, and responding firmly to intimidation are not technocratic adjustments. They are safeguards against a deeper slide. In an era marked by geopolitical tension, populist mobilisation, and distrust of institutions, allowing personalised attacks on the judiciary to normalise is a profound risk. Courts are the last line of defence for constitutional order. If their legitimacy is systematically eroded, the damage will not be confined to the judiciary. It will reverberate across the entire democratic system. Judicial independence does not collapse overnight. It weakens when trust is worn down, when evidence gives way to narrative, and when ad hominem assault becomes routine. Recognising that danger early, and responding proportionately but firmly, is essential if constitutional democracy is to withstand the pressures of an increasingly unstable world.

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