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ARTICLE

Risk and Normativity: The Life and Times of Romanian Anticorruption (2003–2025)

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Abstract

The article discusses the unfolding of the anticorruption campaign in Romania, from pre-accession to present day. Its argument is that the risk-induced anticorruption paradigm has produced effects that have been from the very beginning irreconcilable with liberal-constitutional normativity. To generate results, normative understandings regarding fundamental rights, institutional autonomy, and judicial independence were subordinated to the policy imperatives and manipulated to achieve them. In the long run, normative considerations resurfaced as a backlash, in equally distorted and instrumental forms. I argue that a single-minded pursuit of policy imperatives thought conducive to risk-abatement has not only not reduced or managed the risk of corruption but also has generated more intractable, systemic threat patterns. Some of these paradoxical, unintended consequences are not contained, resulting in normative spillover within the common constitutional area. The first part of my paper discusses the politicisation of the judicial system. A second substantive section analyses the protracted saga of judicial salaries and pensions and repeated attempts to manipulate the retirement conditions in order to generate personnel and policy changes. A third probes into the dialogues between the CJEU, the Romanian Constitutional Court and the High Court of Cassation and Justice regarding the statute of limitations and its implications.

Keywords: anticorruption; cooperation and verification mechanism; judicial independence; judicial politics; judicial salaries and pensions

I. Anticorruption as a risk-driven game-changer

Romania has peaked to global notoriety in the wake of the 2024 cancelled elections, an event which incidentally upset narrative equilibriums. Before December 2024, for over two decades, internal and external imaginaries revolved primarily around corruption and anticorruption. The country was presented and represented itself unidimensionally, as a "corrupt" jurisdiction striving for redemption from the evils of political sleaze. By the same token, since antigraft policies were put into effect by pre- and post-accession EU requirements, this direction of justification and narration had from the onset wider connotations and implications. To wit, Romanian constitutional crises in 2012, 2015 and 2017–2019, each intersecting with the fight against corruption, resulted in comparisons between Romania, on the one hand, and the archetypal RoL-backsliding jurisdictions, Hungary and Poland.[1]

[1] B Iancu and Ş Deaconu, "False Analogies? Rule of Law 'Backsliding' and Identitarian Claims in Hungary, Poland, and Romania" (2025) *Hague J Rule Law* https://doi.org/10.1007/s40803-025-00264-5. Online first.

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Proximate genus analogies missed however the specific difference between two paradigms. Whereas, as regards the 2004 wave of Enlargement ("Big Bang"), the Copenhagen Criteria were interpreted by the Commission in a more multifaceted manner,[2] the emphasis for post-2004 entrants and candidates fell primarily on anticorruption as signifier of the rule of law. The overemphasis on anticorruption implies a foundational-constitutive choice different from the tradition of liberal constitutionalism, namely, a fully distinct transition to an emphasis on risk abatement. To illustrate this observation, judicial councils, whose "capture" by political majorities was at the heart of Polish and Hungarian rule-of-law crises, were a conformity extrapolated by the Commission from the political *acquis* and congealed into a blueprint. Pre-accession entrenchment of the "Judicial Council Euro-Model"[3] was demanded of most post-communist jurisdictions that joined in 2003, upon the rationale that this institutional form was the best post-accession guarantee of judicial independence for unstable democracies. The idea of risk (i.e., potential post-accession politicisation of the judiciary) may have lurked in the background.[4] Yet the frame of analysis was, as regards the Copenhagen implements applicable to the first eastward enlargement, primarily normative and embedded in a recognisably constitutional-"state-building" paradigm.[5] In contrast, "corruption" is difficult to translate credibly in inherited vocabularies, such as representative democracy, the separation of powers or fundamental rights[6] and even, arguably, the rule of law.[7] A focus on corruption as the point of ingress into systemic change proceeds from a different type of assessment and creates an idiosyncratic set of effects. Such effects, the unravelling of which will form the object of my paper, may be pathological, and they may include patterns of politicisation and backtracking on accession commitments. Nonetheless, "backsliding" in this specific setting is dissimilar from the Hungarian and Polish typology of ostensible, visible political "capture" of neutral institutions.

In the EU context, Romania marks the inflection point in the redefinition of conditionalities applying to candidate countries. The paradigm shift was not necessarily linear or pursued systematically in norm and practice. Bulgaria, placed under almost identical pre- and post-accession requirements, did not build antigraft institutions remotely comparable to their Romanian analogues. Croatia, which joined in 2013, was partly "skipped over" as regards the imperative of the fight against corruption, later picked up again as predicate demand made of the current candidates for accession. At the level of legal and institutional developments, Romania was therefore a testing ground and early model for anticorruption "best practices." Various institutional blueprints, notably, the functionally autonomous prosecutorial watchdog, the National Anticorruption Directorate (DNA, *Direcția Națională Anticorupție*), served as starting points in the

[2] R Janse, "Is the European Commission a Credible Guardian of the Values? A Revisionist Account of the Copenhagen Political Criteria during the Big Bang Enlargement" (2019) 17 (1) International Journal of Constitutional Law 43–65, https://doi.org/10.1093/icon/moz009

[3] M Bobek and D Kosař (2014) "Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe" 15(7) Ger L J 1257–1292, https://doi.org/10.1017/S2071832200019362

[4] Conversely, risk, however conceptualised (from Humean anthropological pessimism to concrete fears informing constitution-making), is an underlying second-order premiss of liberal constitutionalism.

[5] The blueprint (sometimes dubbed "Mediterranean" form of judicial organisation) builds on Italian, French, Spanish and Portuguese councils. With the instruments of comparative constitutional law alone, the solution can be reasonably proposed as a judicial independence-enhancement, stabilisation instrument adapted to the constitution-making needs of a post-totalitarian, "democratising" system.

[6] F Peirone, "Corruption as a Violation of International Human Rights: A Reply to Anne Peters" (2018) 29 (4) European Journal of International Law 1297, https://doi.org/10.1093/ejil/chy069

[7] B Iancu, "Quick Fix Solutions-Anticorruption as Core/Peripheral Modality of the 'Rule of Law'" (2024) 16 Hague Journal on the Rule of Law 611–42, https://doi.org/10.1007/s40803-024-00220-9

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elaboration new generations of conditionality packages applying to the Western Balkans, Moldova and Ukraine.[8]

Therefore, even as the article focuses on this jurisdiction, the case selection is justified by the paradigmatic location of the country in the evolution of conditionalities and by the fact that anticorruption imperatives were given actual, full effect, over a considerable period of time. Legal foundations were laid in 2003–2005, the campaign gathered momentum and peaked in 2012–2019, the Cooperation and Verification Mechanism (CVM), instituted in 2006, lasted formally until 2023. Throwbacks and carryovers continue, as we shall see, up until today. Implications can therefore be abstracted and partly extrapolated and tested in other, similarly situated jurisdictional settings. Moreover, since the argument will inevitably cover the supranational nexus, this study probes into the broader imprint, namely, the way in which anticorruption specificities have impacted on the normative cohesion of the Strasbourg and Luxembourg courts caselaw.

The essential argument is that the risk-induced anticorruption paradigm has produced effects that have been from the very beginning difficult to reconcile with liberal-constitutional normativity. To generate results, normative understandings regarding fundamental rights, institutional autonomy, and judicial independence writ small were subordinated to antigraft policy imperatives and manipulated to achieve them. In the long run, normative considerations resurfaced as a backlash, in distorted and instrumental forms. In essence, I argue that a single-minded pursuit of policy imperatives thought conducive to the abatement of a diffuse risk (systemic corruption) has not only not reduced or managed the risk of corruption but has also generated more intractable threat patterns. Some of these unintended consequences have resulted in normative spillover within the common constitutional area.

The following Section (II) will discuss the issue of institutional autonomy, arguing that an extreme degree of external institutional autonomy, considered instrumental for the optimal prosecution of anticorruption, generated in time the perverse effect of internal politicisation and a diminution of internal independence. Section III will discuss the issue of judicial salaries and pensions. Whereas the protection of judicial salaries has traditionally been regarded as an element of judicial independence, the manipulation of this specific instrument to advance antigraft policy goals led to unintended consequences, which further neither the normative-constitutional value of judicial independence nor the anticorruption policies which have prompted this tinkering with said normative value. Finally, the issue of fundamental rights and attendant rule of law justifications as a limit to EU law primacy will be analysed. More precisely, I will track the transition from the phase of "[anticorruption] enforcement on steroids,"[9] where arguments from rights and RoL limitations were systematically sidelined or sidestepped, to the opposite direction, as the pendulum swung towards the manipulation of normative justifications in furtherance of,

[8] Arguably, the prominence of Romania, long presented as a model for successful anticorruption prosecution, was also reflected by the appointment of Ms. Laura Codruța Kövesi to head the EPPO in 2019, after she had been removed from her DNA position. She had served two three-year terms as General Prosecutor of Romania and was twice appointed Chief Prosecutor of the DNA. Her career spanned the full trajectory of the anticorruption campaign and overlapped with accession and the unfolding of monitoring under the CVM. As an energetic, young, and intrepid chief prosecutor, Ms. Kövesi was often portrayed in the Romanian and Western media as the flagship of EU anticorruption writ large. Her image was thus inseparable from anticorruption policy implements and associated narratives in which the Union was invested far beyond national specificities.

[9] M Gonzalez-Ocantos, P Muñoz, N Pavão and HV Baraybar, *Prosecutors, Voters, and the Criminalisation of Corruption in Latin America: The Case of Lava Jato* (Cambridge, Cambridge UP 2023), at p. 7 (for the phrase). Enforcement on steroids is however a common feature of all robust enforcement campaigns. See, for a comprehensive, recent comparative study, N Hogic, *Judicial Anti-Corruption Campaigns: Prosecutions in Italy, Brazil, and Romania* (London, Routledge 2025).

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arguably, impunity. The article closes by pulling these threads together and indicating exploratory avenues for further research.

II. Anticorruption, judicial (in)dependence, and judicial politics

1. The sources and forms of judicial polarisation

Enlargement law, as Kochenov and Basheska rightly point out, "*is* the Commission's game."[10] The new name of this game after "Big Bang" enlargement was anticorruption. In Romania, as in Bulgaria, the CVM instituted a sui-generis form of membership with strings attached and silently extended the application of enlargement law long past factual accessions on 1 January 2007. The instrument was initially designed with a provisional sunset clause, to lapse after three years. It ended up straddling sixteen.[11] By the same token, the Commission, while formally extending the game indefinitely, got after a while distracted or tired of actively playing it,[12] and engaged, as time went on, in a form of risk-averse "geo-constitutional fudg[ing]."[13] Bulgaria, under almost identical "benchmarks," created no robust anticorruption institutions, has (had) lower corruption rankings, yet was rewarded with a suspension of its parallel mechanism already in 2019.[14] Romania, in contrast, embraced anticorruption enforcement enthusiastically, with dozens of high-level politicians convicted and antigraft morphing into an "informal constitutional change."[15] The Romanian CVM was suspended much later, in 2022. This discrepancy indicates[16] that the CVM conditionality was a two-way street, with powerful internal political forces deeply invested in it, perhaps much more than the Commission itself.

Ideologically, anticorruption was the rallying cry of the centre-right and, within the centre-right, this discourse has been spearheaded by the Union Save Romania (USR), junior partner to the mainstream centre-right, the National Liberal Party (*Partidul Național Liberal*, PNL). The USR is an economically neoliberal and value-progressive faction, created specifically on an anticorruption platform. It draws its main support from the affluent bigger cities.[17] Due to internal political and electoral dynamics and the nature of the semi-

[10] DV Kochenov and E Basheska, "Ukraine and the EU Enlargement: What Is the Law and Which Is the Way Forward?" European Journal of Risk Regulation. Published online 2025:1–17. https://doi.org/10.1017/err.2025.23. Citation at p. 12, emphasis in original.

[11] Commission Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption.

[12] Even as under Art. 2 of the CVM Decision, the Commission should have, starting in June 2007, issued a monitoring report whenever necessary and at the latest at every six months, in the last years the practice of biannual reports was diluted, with annual reports in some years, biannual in others. During the pandemic, when simplified procurement rules amplified incentives for corruption greatly, there was no report between October 2019 and June 2021.

[13] M Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford/NY, Oxford University Press 2021), p. 212 ff.

[14] See, on the Commission's CVM monitoring, R Vassileva, "Threats to the Rule of Law: The Pitfalls of the Cooperation and Verification Mechanism" (2020) 26 (3) European Public Law 741–68.

[15] C Bernal, "Foreword—Informal Constitutional Change: A Critical Introduction and Appraisal" (2014) 62 (3) The American Journal of Comparative Law 493–513.

[16] Croatia was partly "skipped over" in terms of both the implementation of anticorruption conditionalities and the nature of its accession in 2013 (with no post-accession monitoring strings attached). As Kochenov and Basheska, *supra*, also point out, whereas enlargement law as such is the Commission's purview if not monopoly, enlargement decisions as such rest with the states, in their various veto-point avatars. Neither Romania, nor Bulgaria, members since 2007, even raised the issue of double standards during Croatia's process of accession, let alone leveraged it.

[17] The greater metropolitan area of Bucharest is (Eurostat, 2023) in terms of GDP (PPP) per capita above Madrid, Berlin, Budapest, Athens, Hamburg, etc., at over 190.3% of the EU average. The North-East region is four times poorer, at 46,5%. At https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/ddn-20250211-2

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presidential political system, the presidency has over the past twenty years been the fiefdom of the centre right. Until the "sovereigntists" surfaced in the post-pandemic context, anticorruption was, as indicated, a centre-right shibboleth and the main political division, pitting the centre-right parliamentary factions and the presidency against parliamentary majorities often dominated by the Social-Democratic Party (PSD), consequently portrayed as the party of "the corrupt." In institutional terms, these divisions have been particularly salient during appointments to apex prosecutorial positions[18] and for a while to the High Court of Cassation and Justice. Initially, the fight against corruption, especially since it was tied to the CVM and thus formally to "Europe," was portrayed and widely perceived as apolitical. In time, the campaign generated deep patterns of multifaceted polarisation, which eventually reverberated within the judicial system itself, which in turn replicated-reinforced political polarisation.[19] Such manifestations, obfuscated for a long time by the Luhmannian coding specific to the legal system, have progressively become more transparent. New ideological divisions have arisen since the rise of ultranationalism, alongside older path-dependencies and polarisation fault lines.

Before the first round of the Romanian rerun presidential elections, on 24 April 2025, a one-judge panel of the Court of Appeals of Ploieşti (CAP) unexpectedly voided the Constitutional Court of Romania (CCR) ruling annulling the 2024 presidential elections and suspended briefly the do-over round. Immediately, the Superior Council of the Magistracy notified the Judicial Inspection to commence disciplinary proceedings against the magistrate. The High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*, ÎCCJ) was seized with an appeal by both the CCR and the prosecutor's office attached to the Ploieşti Appellate Court. The Supreme Court quashed the judgment with uncharacteristic swiftness, within hours after the CAP judgment was published, in a one-hour court session, without waiting for a five-day term to run out. How a Constitutional Court decision could be censored by this provincial appeals court and why a judge in Ploieşti was even seized with such an application were perplexing questions that no one could initially address. Speculations were made that perhaps the court's portal had been hacked, until information regarding the process was made public on April 25, at which point the reasoning became officially available. As it turned out, similar suits had been rejected by other appellate panels all over the country and over a hundred cases were still pending. Every administrative judge in Ploieşti was vested with an identical claim, lodged so that they would be evenly and sequentially distributed. It also became clear that a retired "sovereigntist" judge in the North-East of the country had made available online all forms necessary for the actions, with step by step, user-friendly instructions and templates to be filled in by the plaintiffs ("with a blue pen").[20] The diagram was complete with a TikTok video demonstration regarding the procedure needed to make the online payment of the diminutive court fee. Strategically, the hope was to find a receptive, "patriotic" judge, in the hope that the "annulment of the annulment" would have led to the cancellation of the

[18] Chief prosecutors and the General Prosecutor are appointed for three-year, once renewable terms of office, by the President, on the proposal-nomination made by the Minister of Justice, following an advisory opinion of the CSM. The opinion of the CSM on the nominee is decisionally irrelevant, followed when suitable or weaponised rhetorically, as interests dictate.

[19] A Iancu, "The Independence of the Judiciary in Romania: Narratives and Political Polarization" in A Lorenz and DM Mariş (eds), *Politics and Society in Romania. Societies and Political Orders in Transition* 167–81 (Wiesbaden, Springer 2025). https://doi.org/10.1007/978-3-658-49515-2_10.

[20] Available at https://anulareccr.vercel.app/?fbclid=IwY2xjawJ3kWBleHRuA2FlbQIxMABicmlkETBlaUZQNUZUcFdESWJtV09pAR40iELgo1RhllGKkG97h5p8urihhL8rhoDWHcv5xSia_5gJPrv5rmw-TSFxWQ_aem_wQZ4WLGRZAYcfMVCB0TT-Q

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restaged 2025 elections. The judgment, relatively lengthy and not unsophisticated, could not have been extemporised.[21] Arguably, it might have been written in anticipation.

More recently, a documentary was released by the media platform *Recorder.ro*, under the title "Captive Justice,"[22] suggesting that, in the aftermath of extensive overhauling in 2022 of three laws known under the collective moniker "Justice Laws," the judicial system has been transformed into a corrupt satrapy. The archvillain, according to the story, is the current president of the High Court, Judge Lia Savonea, who allegedly holds the reins of the entire system, in collusion with most court of appeals leadership panels and the Superior Council of Magistracy (*Consiliul Superior al Magistraturii*, CSM). A few judges and prosecutors are interviewed in the documentary, half of them in anonymised format (blurred image, voice cloning). They accuse the upper echelons of the judiciary of repressing, by way of perverted technicalities, the effective prosecution of white-collar criminality, particularly in high-level corruption cases. Judicial mandarins in Bucharest are also charged with fostering a climate of fear and cronyism.

The release of the documentary resulted in a scandal, which generated, among other effects, an unprecedented press conference, convened by the leadership board of the Bucharest Court of Appeals (*Curtea de Apel Bucureşti*, CAB). Most judges present appeared to stand behind the court president but one took the floor unexpectedly, clad in her black judicial robes,[23] to defend the statements of a colleague interviewed in the documentary, himself seconded to the CAB from a provincial tribunal. A list in support of these two judges was swiftly compiled, signed by judges and prosecutors representing most jurisdictional tiers.[24] Yet, while the total number of signatories eventually went over 700, the number of active magistrates on the list remained the same, at less than 10% of the whole.[25] This initiative was spearheaded by the representatives of judicial associations

[21] The ruling is available (in Romanian) at https://www.juridice.ro/wp-content/uploads/2025/04/sentinta-CA-Ploiesti-1.pdf Judge Alexandru Vasile essentially used a Venice Commission Urgent Report and applicable Romanian law (the Constitution, Law 370/2004 on presidential elections, the CCR organic law 47/1992, and the administrative review Law 554/2004). Reference is also made, more cursorily and in *obiter*, to European human rights standards, including the ECHR and the CFREU. In essence, the reasoning can be summated as follows: immunity from judicial review of administrative actions applies to the exercise of CCR powers of constitutional review proper. In the absence of procedural forms, the CCR is essentially issuing an administrative act, which can be quashed by an administrative court.

[22] Available at https://recorder.ro/documentar-recorder-justitie-capturata/

[23] All the others were in "civilian" attire. By law, court dress can only be worn in the courtroom *stricto sensu*, while in judicial sessions.

[24] There are currently 176 judecătorii (trial courts), 42 tribunals, in each county and Bucharest, 4 specialised tribunals, 15 courts of appeal. The apex court is the ÎCCJ in the capital. The military justice system comprises four territorial tribunals and a military court of appeals. Currently, about 6500 judges and prosecutors are in the system, with the occupancy rate dented by recent waves of early retirement. To wit, 571 out of 5070 judicial posts are vacant (15%), as per the recent press release of the judicial section of the CSM https://www.csm1909.ro/PageDetails.aspx?PageId=299&FolderId=12508&FolderTitle=COMUNICAT%20DE%20PRESĂ%20privind%20solicitarea%20publică%20adresată%20Guvernului%20României%20de%20a%20adopta%20măsuri%20pentru%20deblocarea%20concursurilor%20de%20admitere%20în%20magistratură-(2026-01-13) The occupancy rate is even lower for prosecutors, at roughly 73% of the total number of posts, 3071. The main point of ingress into the career is in principle the two-year National Institute of Magistracy, which graduates roughly two hundred trainees yearly. Lateral appointments through open competitions are only possible exceptionally and at the basis of the pyramid (trial courts or prosecutorial offices attached to them).

[25] Various versions were circulated on Facebook and picked up by the press, e.g., in Adevărul (4 December 2025), Lucian Mironescu, „Justiția ruptă în două. Cine sunt semnatarii listei de susținere a magistraților din documentarul Recorder și cine sunt marii absenți." (*Justice divided. Who are the signatories of the Recorder magistrates' support list and who are the great absentees*), at https://adevarul.ro/stiri-interne/evenimente/justitia-rupta-in-doua-cine-sunt-semnatarii-2494264.html In the past, figures were higher, even as pensioners and on occasion even judicial trainees and assistant-magistrates were added to the mix, to inflate numbers, e.g., https://www.juridice.ro/wp-content/uploads/2018/02/lista-sustineri-scrisoare-1024.pdf.

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(FJR, Initiative for Justice, AMASP)[26] that expound a vision of anticorruption, which, in Romanian politics, corresponds to the roughly similar electoral percentage of the political flagship of anticorruption, the Union Save Romania.

The President of Romania interjected and announced a January "referendum" within the magistracy.[27] As President Dan put it, somewhat convolutedly, he means to question judges and prosecutors whether the current apex structures, judicial and corporative, are representative of the "public interest" or of "guild interests" (*interesele breslei*).[28] The President invited to consultations judges and prosecutors. A mere handful showed up at the Cotroceni presidential palace, primarily but not solely visible representatives of professional associations aligned with the anticorruption agenda.

Factional dissension lies also within the institutions as such. The two sections of the CSM, judicial and prosecutorial, have recently taken on the habit of issuing separate press releases, with often diametrically opposed views on the same issues (except for pensions, discussed in Section III below). The prosecutorial section issued a release implicitly lending credence to the general tenor of the *Recorder* documentary.[29] The then-vice-president of the high judicial council, by tradition a prosecutor, even opined in a Facebook post, quickly picked up by the press, that Romania should adopt the Albanian and Moldovan judicial vetting system, to "cleanse the rot."[30] Judges, especially superior courts and the judicial CSM section take the strongest possible objections to such positions. Most recently, the Judicial Section withdrew from a governmental committee ("working group") on necessary modifications to the judiciary laws. The section accused the executive of pretextual ad-hockery in terms of how the committee membership was set up and of surreptitious agenda manipulation.[31] The prosecutorial section has yet to follow suit.

[26] The "progressive associations" are primarily these three (since membership is not public, actual representativeness of all factions is somewhat mysterious). AFJR stands for *Asociația Forumul Judecătorilor din România* (Judicial Forum Association), whereas AMASP is the acronym for *Asociația Mișcarea pentru Apărarea Statutului Procurorului* (Association "Movement for the Defence of the Prosecutor's Status"). At loggerheads with these are other associations, namely the UNJR (*Uniunea Națională a Judecătorilor din România*, National Union of Romanian Judges), AJADO (*Asociația Judecătorilor pentru Apărarea Drepturilor Omului*, Association of Judges for the Defense of Human Rights), and AMR (*Asociația Magistraților din România*, the Association of Romanian Magistrates). The latter three are closer to or overlap with positions that, in the realm of Romanian politics, have been traditionally expressed by the Social-Democratic Party. S. Doroga and R. Bercea, "The Role of Judicial Associations in Preventing Rule of Law Decay in Romania: Informal Communication and Strategic Use of Preliminary References" (2023) 24(8) German Law Journal 1393–411. https://doi.org/10.1017/glj.2023.69. In this highly informative piece, the AFJR positions and evolutions are primarily, somewhat synecdochally covered. Political polarisation of judges and judicial associations in judicial council-systems are as such not uncommon, as revealed, for instance, by the Spanish (parliamentary selection of council members, with reinforced majority) and Italian (pure judicial self-government council model) cases.

[27] The President of Romania may call upon "the people of Romania" to pronounce itself on "matters of national importance"; the results of such referenda are consultative, not binding (Art. 90, Romanian Constitution). There are, as a former CCR president remarked, no national "referendums by professions." Hypothetically, the President could lawfully ask the CSM, whose meetings he presides over (if and when he chooses to attend them) to initiate an opinion poll (a consultation) within the magistracy.

[28] It is paradoxical to ask the members of a "guild" (*breaslă*) if their guild organs serve "guild interests" or those of the public at large.

[29] At https://www.csm1909.ro/PageDetails.aspx?PageId=299&FolderId=12467&FolderTitle=COMUNICAT+DE+PRESĂ++al+Secţiei+pentru+procurori+a+Consiliului+Superior+al+Magistraturii-%282025-12-11%29&brid=aoAUd3bRIiPKjNgaOinqQA

[30] At https://www.facebook.com/claudiu.sandu.7393/posts/comisii-de-vetting-când-am-auzit-prima-data-de-astfel-de-comisii-mi-s-a-părut-ca/2227603501307658/

[31] At https://www.csm1909.ro/PageDetails.aspx?PageId=299&FolderId=12518&FolderTitle=COMUNICAT%20DE%20PRESĂ%20privind%20poziţia%20Secţiei%20pentru%20judecători%20în%20raport%20cu%20legitimitatea%20demersului%20de%20constituire%20a%20Comitetului%20de%20analiză%20a%20legislaţiei%20în%20domeniul%20justiţiei-(2026-01-15)

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2. The evolutionary morphing of judicial polarisation: from hyper-neutrality to politics

Such events exposed to full public view political factionalism within the judiciary. This tendency has built up for some time. Its connotations and implications were hidden from the common observer, impervious to the arcane terminology in which political and ideological predilections are recoded into legal jargon.

Roots go back to the pre-accession period, when the Spanish-type judicial council entrenched in the 1991 Constitution was overhauled. Parliamentary selection of judges, for shorter terms of four years, and a merely ornamental-consultative prosecutorial section were remade into a "perfect"[32] and symmetrical model of professional self-government. The position of the prosecutors as "magistrates" was also strengthened in 2003, severing most of their ties with the executive and placing them under the primary canopy of the CSM. Out of 19 members, 14 (9 judges and 5 prosecutors) are elected by their peers for terms of six years. The Prosecutor General and the President of the High Court sit in the Council by right, the minister of justice is the only political member. Two civil society representatives are elected by the Senate; they take part in plenary sittings only, where ever-more inconsequential decisions are taken. All relevant career decisions, from selection and training to promotions and the application of disciplinary sanctions are concentrated in the Council and primarily in the two sections, judicial and prosecutorial. The philosophy behind the metamorphosis was that only extreme autonomy from political influence could fully serve the imperative of combatting corruption. New judiciary laws followed in 2004, complemented with another set of amendments in 2005, promoting a reformist philosophy emphasising renewal through judicial youth. Most importantly, the weak anticorruption prosecutor's office set up in 2002 was reestablished as a functionally independent integrity agency[33] in 2005 and renamed the National Anticorruption Directorate (*Direcția Națională Anticorupție*, DNA) in 2006. To guarantee the stability of this entire configuration past accession and perhaps also to express onsetting, post-Constitution Treaty eastward enlargement fatigue, Romania, alongside Bulgaria, was also placed under the CVM.

Minor fracas started early on. For instance, a small-scale judicial mutiny occurred when, reflecting the anticorruption-induced aggrandisement of the prosecutor's position, a prosecutor was elected as president of the CSM. Structurally, the Constitutional Court obstructed all constitutional revision attempts to re-democratise the council by increasing the relative proportion of political appointees. Such an amendment, the CCR held, was pre-empted by the eternity clause of Article 152, if the weight of judicial mandates would be offset by increasing political selection.[34] A subsequent decisions held that an increase in the number of political appointments would be constitutional *only if* the number of judicial members would be also increased on par.[35] In 2011, CCR had deflected arguments regarding accountability, by pointing out that the CSM was internally accountable, through the possibility of judicial assemblies to recall "their" elected members. However, only a couple of years later, when two council members, then associated with the anticorruption agenda, were recalled and then challenged the procedure to the CCR, the court declared the procedure unconstitutional, through an interpretive decision that declared CSM mandates "representative," not "imperative," transformed the nature of the

[32] B Selejan-Guțan, "Romania: Perils of a 'Perfect Euro-Model' of Judicial Council" (2018) 19(7) German Law Journal 1707–40. https://doi.org/10.1017/S207183220002321X

[33] ES Tănăsescu, "The Impact of National Accountability Agencies on the EU" in B. Iancu and ES Tănăsescu (eds), *Governance and Constitutionalism: Law, Politics and Institutional Neutrality* (London, Routledge 2018) pp. 85–96. Ordonanță de Urgență nr. 43 din 4 aprilie 2002, M. Of. Nr. 244 din 11 aprilie 2002.

[34] Decizia Nr. 799 din 17 iunie 2011, M. Of. Nr. 440 din 23.06.2011.

[35] Decizia Nr. 80 din 16 februarie 2014, M.Of. Nr. 246 din 07.04.2014.

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recall into a disciplinary procedure, and fettered it with so many "due process" caveats as to change its whole meaning and structure from "quasi-democratic" to "quasi-judicial." This intervention rescued the two members but rendered recall effects precatory.[36] The amended mechanism is overly cumbersome, takes at least a year to come to (an improbable) fruition, and thus has never been used since.

As anticorruption morphed into a constitutional meta-narrative, contradictions deepened. Some factions within the judiciary supported the fight against graft without reservations or qualifications, a posture which invited steadily more fierce opposition. In particular, the appellate and cassation magistrates that dominate the judicial section of the council pushed for stripping the DNA of its prosecutorial jurisdiction over crimes committed within the judiciary, for a separation of judicial and prosecutorial careers, and for severing ties between the anticorruption watchdog and the powerful domestic intelligence service, the SRI (*Serviciul Român de Informații*).[37] Passions were also stirred by the publication in January 2020 of a 2018 Judicial Inspection report, according to which the section in the DNA dedicated to prosecuting magistrates had opened thousands of files concerning judges and prosecutors.[38] Some cases were opened *sua sponte*, most resulted from complaints. More importantly, hundreds of such criminal files, involving criminal and apex judges, also CSM members, were left or kept dormant (*lăsat în nelucrare*) for years on end. Opponents accused systematic duress and "Stalinist" intimidation by antigraft prosecutors to secure conviction results "on the cheap." Conversely, judicial advocates of anticorruption dismissed all reservations as incidental or anecdotal-irrelevant and all actions as needful to the cause. Both camps have for the most part addressed these matters in the sanitised and ostensibly neutral jargon of legal substance and procedure. Legal-normative arguments in a technical-positivistic key lend themselves easily to persuasive arguments in either direction, all impossible to falsify.[39] Over time, anticorruption politics,[40] which are not coextensive with the institutional-legal minutiae of anticorruption yet inevitably spill over into those,[41] reinforced inner-professional polarisation.

Most of the demands of the "anti-anticorruption" associations found their way into 2018 massive amendments to the three judiciary laws, passed by the left-dominated parliamentary coalition in power at the time.[42] The new paradigm strengthened the position of judges, diminished the powers of the DNA by stripping it of prosecutorial

[36] Decizia Nr. 196 din 4 aprilie 2013, M. Of. Nr. 231 din 22.04.2013. One of the two recalled members was judge Vasilică-Cristi Dănileț, the hero of recent Strasbourg case discussed below.

[37] See, e.g., the press release by UNJR, indicating these three dimensions as its and AMR desideratums which were presented to the revision, joint parliamentary committee and eventually taken over in the 2018 amendments https://unjr.eu/2026/01/07/drept-la-replica-fata-de-un-articol-manipulator-din-g4media/?brid=wNwakH6znYwgoiwKJYlR-g

[38] CSM Plenum Decision 225/15 October 2019, at https://old.csm1909.ro/csm/linkuri/08_01_2020__97031_ro.pdf

[39] The anticorruption camp dismissed the treasure trove of DNA dormant files on judges and prosecutors as prevalently the result of citizen complaints (which must be filed under the principle of legality) and of a crowded docket. Their opponents now explain away the lack of *any convictions for corruption* within the magistracy, under a substitute, post-2018, toothless institutional arrangements, as the consequence of a "maturing judicial system" and better prevention. Indeed, the lack of convictions for corruption is unassailable positivistic evidence that there is no corruption.

[40] I Krastev, *Shifting Obsessions: The Essays on the Politics of Anticorruption* (Budapest, NY: CEU Press, 2004).

[41] Romanian anticorruption politics fused familiar "Washington Consensus" predilections for "small state" solutions, radical opposition to the public goods promotion and the welfare state, on occasion masquerading as latter-day anticommunism, and punitivism. The latter facet presented unsettling continuities with interwar Romanian anti-parliamentarism; *see*, on this specific latter facet, C Cercel, "Darker Legacies of Anti-corruption: Fascist Criticisms of the Law in Inter-war Romania" (2024) 20(4) International Journal of Law in Context 529–48. https://doi.org/10.1017/S1744552324000119.

[42] See on the 2018–2022 political and political-judicial debates around the "Justice Laws", A Iancu 2025, *supra*.

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powers over crimes committed within the judiciary, devolved even more power from the CSM Plenum to the sections, and – within the judiciary – considerably increased the powers of the court presidents, particularly the powers of appeals courts and the ÎCCJ presidents.[43] These specific changes were subsequently taken over in adapted forms in a new, comprehensive legislative package adopted in 2022.[44]

Eventually, the main external peg of the fight against corruption disappeared, when the CVM was officially suspended in 2022 and finally lifted for both Romania and Bulgaria in 2023. This elicited the delight of some judicial factions and the dismay of associations beholden to the imperative of anticorruption and associated narratives. Among the latter, the Judicial Forum, main promoter of the waves of preliminary references sent to the CJEU towards the tail-end of the CVM, eventually cut off "diplomatic ties" with the Commission, "refusing that the (sic!) honorability of its members be used for political speeches and settlements."[45] This dramatic act was performed in protest over the way in which the 2024 Rule of Law Mechanism monitoring report reflected the state of the Romanian judiciary. The Initiative for Justice, an association of prosecutors based in Constanța even sought to have the CVM reinstated, through an outlandish annulment action before the Tribunal. To circumvent the notoriously draconian standing limitations for non-privileged claimants, the association proffered the argument that in the past it had been sedulously courted by the Commission. A prior track record of privileged networking with the Union executive had allegedly raised a "legitimate expectation" that it would be consulted by same before it decided to lift the CVM. The action was in the event dismissed as inadmissible.[46]

Some consequences of anticorruption-driven political and judicial polarisation migrated to the European Court of Human Rights, which approached them by analogy to Hungarian and Polish cases. *Kövesi v. Romania*[47] was, in terms of reasoning under both Art. 6 and Art. 10, the *DoppelgängerIN* of *Baka v. Hungary*. And yet nuances were lost in the transposition of standards, the difference being that the applicant in the Romanian case was a chief prosecutor, not a judge. That prosecutors are not covered by the term judicial independence in the same way as judges has been, for the longest time, an accepted notion

[43] B Iancu, "Perils of Sloganised Constitutional Concepts Notably that of 'Judicial Independence.' David Kosař, Perils of Judicial Self-Government in Transitional Societies (Cambridge University Press 2016) 470pp." (2017) 13(3) European Constitutional Law Review 582–599. https://doi.org/10.1017/S1574019617000177 Paradoxically, given that CSM presidents are elected for inconsequential one-year terms, the institution now appears to partly, albeit informally, fit the last element of the Bobek-Kosar "Judicial Council Euro-model" ideal-type definition, namely, that Council are to be presided by the Supreme Court president. The CSM judicial section seems to be, in effect, led by the Supreme Court president. During the CAB press conference, a live mic picked up the moment when one of the CAB vice-presidents was telling the president "Lia called me. I am now going to talk to her." (*M-a sunat Lia. Mă duc să vorbesc.*), which anecdotally appeared to confirm the thesis according to which the High Court President, Lia Savonea, looms like a promontory with *auctoritas* over more formal institutional arrangements.

[44] Currently, Laws 303, 304, 305/2022, on the status of judges and prosecutors, judicial organisation, and the Superior Council of Magistracy, respectively (formerly, laws 303, 304, and 317/2004). Most of the essential features of 2018 reforms found their way in adapted forms in the 2022 new laws. For instance and crucially, while the initial prosecutorial section for "offenses committed within the judiciary" (SIIJ or SIOJ, Special Section for Offences Committed within the Judiciary) was scrapped, the current arrangement, albeit structurally different, is a functional equivalent of the former. Prosecutorial competence over judges and prosecutors was not returned to the DNA, which was the preferred solution for the "progressive" judicial associations, a course of action they have been lobbying for ever since.

[45] At https://www.forumuljudecatorilor.ro/index.php/archives/6829 "Romanian Judges' Forum Association: The Rule of Law Report 2024 does not objectively reflect the situation of judiciary in Romania", press release of 24 July 2024, last accessed on 15 January 2025).

[46] CJEU, Case T-1126/23, *Asociația Inițiativa pentru Justiție v. European Commission*, Order of the General Court of 3 February 2025, EU:T:2025:138.

[47] ECtHR, 23 June 2016, No. 20261/12, *Kövesi v Romania.*

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in constitutional systems, as a matter of theoretical analyses in leading commentaries[48] and also as a matter of *ius constitutionale commune* formally synthesised by Venice Commission soft law guidelines.[49] *Prosecution bias* is, for example, the sign of a dysfunctional criminal law system. One can certainly understand how the judgment came to pass, in the general context of the removal from office of the applicant and in the broader context of anticorruption conditionalities applied to newer Member States and candidate countries to the EU. Such policy strategies require, inevitably, implementation by autonomous watchdogs, and thus a high degree of structural insulation of such bodies from political influence. By the same token, the normative difficulties intrinsic in the translation of standards from judges to chief judges and then to prosecutors and chief prosecutors were also worth pondering. A minority of Council of Europe (CoE) countries follow the French–Italian model of using the "magistrate" umbrella to equate the functions and even in those systems the equivalence is imperfect. The Romanian constitutional dispute from which the application originated concerned the interpretation of the correlative roles of the President and Justice Minister in the removal procedure. According to the national fundamental law, prosecutors in the Public Ministry carry their duties "according to the principles of legality, impartiality, and hierarchical control, under the authority of the Minister of Justice" (Article 132 (2) Romanian Constitution). Art. 6 due process guarantees applicable to a removal from high prosecutorial office are more difficult to reconcile with the hybrid nature of the prosecution service, as revealed by the provision above or, more generally, by comparative law.[50] Furthermore, if a chief prosecutor has a human right to speak for her institution, and such right happens to collide with the free speech rights of other judicial stakeholders (e.g., council members, associations' representatives, apex court's president), which of these rights is more deserving of enhanced "human rights" protection?

The imponderables of analogising situations whereby political majorities capture the judiciary system by explicitly and formally subordinating it, on the one hand (Poland,[51] Hungary[52]) to quasi-political polarisation replicated within a formally highly autonomous judiciary (Romania), on the other, are even more glaring in the *Dănileț* judgments.[53] Polish and Hungarian case law, tailored to a distinct configuration, had cut a narrow Article 10 freedom of expression protection for judges who, while normally bound by a duty of reserve or discretion, speak from a position of representativeness (Chief Justice, Council member)[54] to defend the judicial system writ large from legislative or even constitutional

[48] *See* C Guarnieri and P Pederzoli, *The Power of Judges: A Comparative Study of Courts and Democracy,* (Oxford, Oxford University Press, 2002), at p. 193, for an early identification of this trend and of its perils: "Confusion between prosecution and judicial functions should be avoided, and prosecution powers need to have some clear checks over them to protect individual freedoms."

[49] CDL-AD (2010)040 Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service – Adopted by the Venice Commission - at its 85th plenary session (Venice, 17–18 December 2010) (Para 86): The "independence" of prosecutors is not of the same nature as the independence of judges. While there is a general tendency to provide for more independence of the prosecution system, there is no common standard that would call for it. Independence or autonomy are not ends in themselves and should be justified in each case by reference to the objectives sought to be attained.

[50] MM Prado, F Kerche and M Marona, "Corruption and Separation of Powers: Where do Prosecutors Fit?" (2024) 16 Hague Journal on the Rule of Law 643–69. https://doi.org/10.1007/s40803-024-00229-0

[51] ECtHR, 16 June 2022, No. 39650/18, *Żurek v. Poland.*

[52] *Baka v Hungary*. ECtHR, 5 May 2020, No. 3594/19.

[53] *Dănileț v. Romania*. ECtHR, 20 February 2024 (Chamber Judgment), 15 December 2025 (Grand Chamber). No. 16915/21.

[54] *Żurek,* para 222 (reference omitted, emphasis added): In the present case, the Court is assessing the situation of an applicant who was not only a judge, but also a member of a judicial council and its spokesperson. However, the Court would note that a similar approach would be applicable to any judge who exercises his freedom of expression (. . .) with a view to defending the rule of law, judicial independence or other similar values falling

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attempts to render it subservient to the political branches. In contrast, Mr. Dănileț, while a visible and vocal member of the Romanian judiciary and one-time member of the CSM,[55] was at the time when the facts occurred a simple judge at the Cluj Tribunal. He was disciplinarily sanctioned (a 5%, two-month salary cut) by the judicial council for two Facebook posts, one in which he praised a prosecutor for "having blood in his installation" (*sânge în instalație*)[56] and another in which he commented on the extension by presidential decree of the Army Chief of Staff's term of office. In the latter, judge Dănileț, as he then was, glossed, somewhat cryptically, on the army's constitutional duty to defend democracy, perhaps even "out on the streets." The Chamber judgment found a violation of Article 10, by a razor-thin four-to-three vote. Unlike in *Kövesi*, the government appealed to the Grand Chamber, which maintained the Chamber solution, by an equally tentative division (10 to 7). Out of the ten judges in the aggregate majority, one found the sanction, in his single concurring opinion, essentially justified but disproportionate. The national judge, who tilted the vote in the Chamber, had initially authored a single concurrence whose argument sat uneasily with his actual vote.[57] Judge Răduleţu then coauthored another, joint concurring opinion, attached the Grand Chamber judgment. In the latter, the two signatories advocate for a departure from obsolete forms and for embracing active participation of the judiciary on social media platforms, which would be especially apposite in immature democracies. Such a move would "demystify" judgeship, "humanize" the judiciary and, as an added benefit, "counter misinformation by being an authoritative source, which is critical for maintaining their legitimacy." The consolidated majority opinion as such sidesteps the difficulties through a multi-pronged test and yet the case arguably transforms a narrow exception, itself controversial, into a balancing exercise with fuzzy contours. In other words, it enunciates an admission that judges have a (qualified) right to free speech on political matters.[58] This metamorphosis is fraught with many unintended normative consequences, at least in systems where judgeship is a career magistracy and where strong duties of neutrality have been the traditional standard, offset or compensated in various status-protective modalities.

However irreconcilable the political and worldview-representations between the various friend-enemy alignments within the judicial systems may have been in Romania, magistrates are united in one respect. Inwardly bitterly divided, judicial and prosecutorial stakeholders of whichever ideological persuasion have outwardly been united in common enmity towards the budget. This intriguing topic will form the object of the next section.

within the debate on issues of general interest. *When a judge makes such statements not only in his or her personal capacity, but also on behalf of a judicial council, judicial association or other representative body of the judiciary, the protection afforded to that judge will be heightened.*

[55] Incidentally, Judge Dănileț was also nominated by the USR, in 2022, for a constitutional judgeship.

[56] The phrase *sânge în instalație* is translated in the ECtHR judgments as "blood in his veins." A perfect linguistic equivalent (*sânge în vine*) is readily available in the Romanian language for that specific expression, thus the preference here for a more precise translation from Romanian.

[57] In essence, the concurrence recognises three tiers of free speech review, one applicable generally (and classically), where protection of the right is maximal and subject to strict proportionality review, an intermediate area where, in the case of judges and other state officials, the duty of discretion prevails, and the newfangled, *Baka*-originated right to freedom of speech of judicial representatives to protect judicial independence. Judge Răduleţu admitted (then) that Dănileț's application fitted only the second tier or category.

[58] The phrase "matters of public interest about which the general public had had a legitimate interest in being informed" stands in the reasoning as an undertheorised, "rose-by-any-other-name" euphemism for, arguably, political speech. Said rose smells perhaps just as sweet when it comes to judges flirting with politics, albeit they remain unsubjected to the specific, electoral rigors of the political process.

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III. Corporatism united: the creation and defence of "acquired rights"

Salaries and retirement benefits in the judicial system, frugal in the immediate post-communist period, were eventually heightened in 1997, by Minister of Justice Valeriu Stoica, as he then was, in the context of broader reforms. This was the one and only occasion when a reform was made in service of the liberal-constitutional principle according to which judicial independence includes also financial implications.[59] Subsequent events were tied primarily to political attempts to promote or frustrate the anticorruption agenda. Secondarily, extreme systemic autonomy generated diffuse instrumentalism piggybacking on these incentive structures.

To exemplify first with the latter category, organised crime and anticorruption prosecutors received, reasonably enough, salary bonuses reflecting the real risks they were confronted with and the general imperative of pre-accession reforms. What followed was the upward generalisation of antidiscrimination principles. First the specialised criminal justice bonuses were spread over the entire system, following suits by other judges and prosecutors, who felt "discriminated" and were swiftly vindicated by judges who themselves sued for this or other bonus.[60] Another stage concerned the retroactive recovery of benefits owed with interest and so on, seemingly *ad infinitum*.[61] In 2007 and 2008, the High Court decided for instance that a seniority benefit" and a 50% "risk and neuropsychological overstress" bonus applied to judges of that bench, in effect a self-awarded salary hike. The CCR interjected, pointing out that such rulings breached separation of powers principles (the ordinary courts had become, in other words, law unto and for themselves) but did not go so far as declaring specific judgments unconstitutional. Hence, its position remained a precatory admonition, without any practical effect. Delegations from one court or prosecutorial office to another courts, for example, to an understaffed provincial court, include, reasonably enough, housing allowances and *per diems*. Yet judicial mandarins seconded to or in Bucharest also receive plum housing allowances and reimbursements equivalent in many cases to up to five additional yearly paychecks. So do others, for "commuting" within the broader metropolitan area or by being seconded from one building to another in Bucharest or simply for changing their address to the peri-urban area of the city in which their court or prosecutorial office is

[59] Judicial compensations were pegged on to a stable source of state budget revenue (customs and excise taxes) in the reign of Queen Anne, Act of 7 Anne Chapter 11 (1708), which was a form of protection in the general historical context (the Act of Settlement of 1701 had already introduced tenure during good behavior). The United States Constitution famously includes a compensation clause applicable to judges but not only to them, even though the formulations of the Compensation Clauses in Articles I (Section 6), II (Section 1, Cl. 7), and III (Section 1) differ. The location of the provision in the economy of Art. III and its formulation "which *shall not be diminished* during their Continuance in Office" [emphasis supplied] may be used to draw some inferences regarding the specific relevance of this guarantee in the case of the judiciary. The amounts of judicial salaries and their correlation to judicial independence, accountability, and effectiveness are subject to renewed debates and controversies in mature democracies also. See, e.g., SJ Choi, G. Mitu Gulati and EA Posner, "Are Judges Overpaid?: A Skeptical Response to the Judicial Salary Debate" (Winter 2009) 1 (1) Journal of Legal Analysis 47–117, https://doi.org/10.4159/jla.v1i1.3

[60] In an interesting turn of events and an example of transnational constitutionalism in action, DNA prosecutors sued to receive the salaries on par with those of the handful of EPPO Romanian seconded prosecutors, with the argument that "they do the same work." At https://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=3000000011271 15&id_inst=3#Informaţii_generale.

[61] See D Morar, *Putea să fie altcumva-o istorie subiectivă a justiţiei după 1990* (Bucureşti, Humanitas, 2022), p. 558 ff. Morar was the first chief prosecutor of the DNA, acting General Prosecutor afterwards, later appointed to the CCR. He provides a non-exhaustive enumeration of such benefits subject to cascade litigation and generalisation at p. 559: "vacation bonus, professional seniority bonus, specialisation bonus, risk and neuropsychological bonus, endangerment bonus, confidentiality bonus, meal vouchers, stability bonus, loyalty bonus (with various multiplying factors)."

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seated.[62] Emoluments accrue not only to judges and prosecutors proper but also to "assimilated personnel" in the MoJ and assistant magistrates of the High Court and of the Constitutional Court. The discursive needs of the anticorruption narrative legitimised such excesses or, at the very least, made it difficult for any administration to counter them effectively.

To be sure, Romanian politicians were no innocent bystanders. They tinkered passionately with the pension benefits calculation formula and/or with the retirement age and seniority conditions,[63] to create or reinforce loyalties or to generate specific results, in lockstep with the meanderings of the fight against corruption. A 2004 measure, introduced by a center-left minister of justice, changed the computation of retirement benefits from 80% of the net to the gross salary, which resulted in the anomaly of retirement benefits potentially higher than actual salaries. In 2005, center-right minister Monica Macovei, the early torchbearer of anticorruption, lowered the professional seniority condition to 25 years, out of which at least 15 should have been spent as an active magistrate, so that an age condition would effectively no longer apply to the profession. The philosophy behind this move (stated openly) was that, in this way, older judges and prosecutors, presumably affiliated to the PDSR (since 2001, the PSD), would be offered a "golden parachute" out of the profession, so that younger magistrates, INM-trained, presumably "European," progressive, anticorruption-prone, could replace them. To pass various legislative packages, e.g., putting instrumental dents in instrumental anticorruption, politicians have often needed to secure the allegiance of the upper echelons in the CSM and the High Court. Seeking an advisory opinion of the CSM on all amendments to the three statutes known by the local moniker "Justice Laws" (on the status of judges and prosecutors, judicial organisation, and the organic law of the CSM) is mandatory. Informal support is more important still. In 2018, the proposal was mooted that a judge or prosecutor could retire after twenty years of service with a pension equating 80% of the gross salary, including all bonuses,[64] adding up to a pension significantly higher than the net salary, itself generous and a hypothetical retirement age of 43–45. This specific idea was eventually abandoned. In practice, the 25 years seniority rule currently in place still means, in a career selection system where recruitment is channeled by default through the National Institute for Magistracy (INM), that a 47- or 48-year-old could (as of now, some still can) hypothetically retire early.[65] Amounts exceeded until recently

[62] A judge or prosecutor whose residence is in one city and is appointed to another will receive a housing allowance. If in three years he or she is seconded to a third, they will receive a *per diem* also. The same may also happen if one is seconded from the Court of Appeals of Bucharest to the MoJ or the CSM, i.e., from one building to another in the same city, provided residence is not registered in Bucharest (or is changed to another city or perhaps a town in the greater metropolitan area). A "Rise Project" investigation provides many illuminating examples. Ionuț Stănescu, „Raiul diurnei din magistratura română. Judecători şi procurori de la vârful sistemului, în drum spre alte tranșe de bani nemunciți" (The Heaven of Per Diems in Romanian Magistracy. Apex Judges and Prosecutors, on to More Easy Cash.), Nov. 11, 2024, at https://www.riseproject.ro/investigations/uncategorized/raiul-diurnei-din-magistratura-romana-judecatori-si-procurori-de-la-varful-sistemului-in-drum-spre-alte-transe-de-bani-nemunciti/

[63] A full chronology of the legislative reforms and debates can be accessed at https://www.riseproject.ro/strania-istorie-a-pensiei-magistratilor-din-romania-treizeci-de-ani-de-contorsiuni-parlamentare/ (Ionuț Stănescu, „Strania istorie a pensiei magistraților din România. Treizeci de ani de contorsiuni parlamentare." (The Strange History of the Magistrates's Pensions. Thirty Years of Parliamentary Contortions), published on 7 October 2025.

[64] Conversely, adding bonuses to the reference period salary used to compute the pension artificially inflated at times the retirement benefits.

[65] In 2010, to compare, the age was 60 and the seniority condition 25 years of professional activity. Epic battles were also fought over what *could* be included in the computation of professional seniority, from activity in other legal professions (including, for instance, that of policeman), INM training, and even military service.

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salaries,[66] the retirement benefits of all other public employees, and exponentially[67] average pensions.

An intractable problem has been the fact that abrupt threats to the *status quo* would deplete overnight, by mass early retirements, the personnel of the fifteen Courts of Appeals and the High Court of Cassation and Justice.[68] In the past, however, the custom was that a magistrate could retire early, then make a request to be reinstated by the CSM, and subsequently collect the salary *and* a fraction of the pension benefits.[69]

The Commission as such kept mum on these matters until after the CVM was lifted in 2023. As releasing RRP tranches is now conditional upon so-called "special pensions" reform, including those of magistrates, an interesting reversal of local roles and positions has occurred. EU law instruments are weaponised against such recommendations, with neophyte fervour, to preserve the local status quo. The financial benefits of the defunct CVM are for example discovered by representatives of the very judicial associations that in the past campaigned to have the instrument lifted as an affront to the Constitution and national pride,[70] whereas *ASJP* is brandished to draw general inferences from *obiter*, while neglecting the actual holding.[71]

The latest reform attempt generated a currently unfolding trench lawfare. In October 2025, the CCR blocked, with a five to four majority, the law adopted by engagement of responsibility.[72] The majority reasoning is essentially that the government should have waited for a thirty-day *legislative* deadline to fully run out, within which the CSM can issue an advisory opinion on laws affecting the judiciary.[73] Most recently, when called upon to pronounce on the slightly altered, newly introduced law, challenged anew by the ÎCCJ, the Court was bogged down and could not reach any decision, in a court session initially scheduled on 28 December, the Sunday between Christmas and New Year's Eve. When it appeared that one of the justices in the initial majority had "defected,"[74] the remaining

[66] Custom dictates that one (lawfully) secures a retirement *decision* (*decizie de pensionare*) from the National Public Pension Office (CNPP) right after fulfilling the conditions, even if the magistrate continues to serve in office. Later on, one may a apply to the CSM to be released from office (*decizie de eliberare din funcție*), through a CSM decision, thus activating the CNPP retirement decision. New rules do not retroactivate, so that earlier calculation formulas apply (80% of the gross including pay raises (bonuses) applicable in the last month).

[67] According to the National Statistical Institute, in the third trimester of 2025 the average pension was 2.815 Romanian Lei, less than 600 €. At https://insse.ro/cms/sites/default/files/com_presa/com_pdf/pensii_tr3r2025.pdf During the meeting with President Dan, one of the magistrates, a prosecutorial retiree, stressed self-righteously (perhaps not fully self-aware) that he had retired at the age of 51, not 48, and did not receive 5000 € (apparently, the figure is only 4.700). Yet such revolt was relatively justified. Other recent judicial pensioners, of all ideological persuasions, have retired even younger and received much more generous amounts.

[68] No lateral appointments are possible for the upper jurisdictional tiers. External (lateral) recruitment through competitions organised by the CSM, as an exception to the default INM selection, is only possible at the level of trial courts (*judecătorie*) and prosecutorial offices attached to the 176 trial courts.

[69] Only 15% of the pension benefits may be added to the salary under Art. 216 (2), Law 303/2022. The pension can after retirement be recomputed to take into account the added period of work, after reinstatement.

[70] See, e.g., the open letter by Viorica Costiniu, retired judge and honorary president of AMR, https://www.juridice.ro/790095/independenta-justitiei-nu-se-negociaza.html?fbclid=IwY2xjawLxavNleHRuA2FlbQIxMQABHgEL9FQYEVGO-NlEI9f94oulxazKKqCqV6yBebb8D0216ybmsSkBvZCEsFjv_aem_7HJnK-qaL76NC50-c08Q4w.

[71] Par. 45 (principle of remuneration commensurate with the importance of the functions) in the ASJP Case (Case C-64/16, Associação Sindical dos Juízes Portugueses v. Tribunal de Contas [2018] ECLI: EU:C:2018:117) is brandished, while the general conclusion that across-the-board cuts are permissible in times of crisis is conveniently ignored.

[72] Engagement of responsibility is the French-imitative procedure by which the executive forces the adoption of a law, a general political statement or a program. As regards laws, these are adopted if the Government is not brought down by a vote of no confidence tabled within three days.

[73] Decizia Nr. 479 din 20 octombrie 2025, M. Of. nr.1036 din 10.11.2025.

[74] What are the non-doctrinal determinations behind alignments and realignments is difficult to pinpoint with the requisite degree of scientific precision. In the October 2025 majority, one of the justices (the presumtive

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four simply left the room. The Constitutional Court cannot decide in the absence of a six-judge session turnout. The session was deferred repeatedly already, for Monday afternoon and subsequently for January 16, then February. In the meanwhile, a barrister affiliated with the ultranationalist AUR has challenged in administrative review, at the Court of Appeals of Bucharest, the appointments of two justices, who, according to her pleading, did not meet, when initially appointed in the summer of 2025, the constitutional requirement of 18 years seniority in the exercise of legal professions or in legal academic teaching.[75] An administrative court term initially tabled for 5 January was deferred, serendipitously coinciding now with another CCR term of January 16, then rescheduled it, as did the Constitutional Court. The CCR has, as of January 2026, rescheduled its session five times already.[76]

It is difficult to escape the impression that the legislative package lingering now before the Constitutional Court is subordinate once again to motivations lying underneath those ostensibly promoted by the government ("social justice"). The last legislative package aims to increase the retirement age to the general one (65 years) progressively, over 15 years, heighten the working years requirement from 25 to 35, out of which 25 spent in the magistracy alone, and reduce the calculation baseline of amounts to 55% of the baseline gross but no more than 70% of the last net salary (from 80% of the gross). Judicial pensions add up to a diminutive fraction of the service pensions.[77] A reform was adopted in 2023, under which the amounts of new judicial pensions can no longer exceed the values of net salaries, an outcome which, incidentally and in this specific respect, put the current practice formally in line with soft-law CoE recommendations.[78] Judges of the Constitutional Court, themselves the beneficiaries of "special" pensions, were not touched by the new measures. That judicial pensions benefit from constitutional-level protection has been established time and again (perhaps misguidedly) in CCR case law. In 2010, when

December "aisle-crosser") was the appointee of former, center-right President Iohannis, whereas the other four have been nominated by the Social-Democratic Party, which is also in the current coalition. In the center-right press, the four absentee judges are earmarked as "PSD judges", yet they are also distinct in other relevant respects. Three are former career magistrates, themselves beneficiaries of service pensions. The new CCR President, Simina Tănăsescu, mastermind of the December Sunday 28 session, was recently (summer 2025) elected with the votes of two recent "absconder-boycotter" justices.

[75] One of the two, justice Busuioc, was formerly the President of the Audit Court, selected by the Senate, promoted by the PSD, the other, justice Dragoş, was appointed by President Dan and, albeit a distinguished administrative lawyer, has technically held his chair at a political science faculty. Both are fresh (summer 2025) appointees. Hypothetically, should the CAB find fault with the eligibility conditions, the appointment acts could be suspended and (should either or both resign) the terms could be vacated, so that the appointing authority can replace them. The Bucharest Court of Appeals did not suspend the decrees. It has decided however repeated continuance-deferments of a solution on the merits, in muted "dialogue" with Constitutional Court session adjournments relating to the judicial pensions' objection.

[76] The CCR last adjourned to ponder over an interlocutory application by the High Court to have the law referred by the Constitutional Court, through preliminary reference, to the European Court of Justice. The latter should pronounce whether the domestic measures breach EU law guarantees of effective judicial protection and independence under Art. 19 (1) TEU, Art. 2 TEU, and Art. 49 CFREU. The application is available at https://www.iccj.ro/wp-content/uploads/2026/02/Solicitare-de-sesizare-a-CJUE-pentru-emiterea-unei-hotarari-premilinare-privind-pensiile-magistratilor.pdf (To date, developments keep unfolding. How and if the concrete issues – pension cuts/seniority and age increase– will be decided is largely irrelevant to my argument.)

[77] Called "special" in vernacular, such pensions include also those of the military, the police, intelligence services, the Constitutional Court judges themselves and assistant magistrates of the CCR, etc. For the vast majority of the other service pensions, amounts are calculated at 65% of the gross, computed however against significantly lower incomes.

[78] See, e.g., the 1998 European Charter on Judges, at https://rm.coe.int/090000168092934f or more recent positions by the Consultative Council on European Judges, such as the 2024 Bureau opinion (CCJE-BU(2024)1), available at https://rm.coe.int/ccje-bureau-opinion-on-slovenia-february-2024-/1680ae8e5c

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other such retirement benefits were scrapped, during a round of Global Financial Crisis-induced austerity cuts, magistrates were the only category spared.[79]

It may reasonably be suspected, albeit impossible to prove, that an accelerated increase in the retirement age and seniority conditions, coupled with a drastic decrease in benefits, might be hoped to effectuate another generational trend, by generating a wave of early retirements at the upper echelons of the court system and–or widespread corporate dissatisfaction with the current leadership. Thus, one could obliquely and potentially reverse a current doctrinal-philosophical tendency, that will be scrutinised in the last juncture of this argument.

IV. The age of rights (and its limitations)

Towards the tail-end of the high-water-mark Romanian anticorruption, the CCR rendered a decision according to which the statute of limitations provision of Article 155 (1) in New Criminal Code (NCC),[80] which had entered into force in 2014, replacing the Criminal Code of 1969, had to be interpreted in the sense that only criminal procedure acts communicated to the accused would interrupt the statutory limitation periods.[81] The consequence of an interruption is that the term begins to run anew. This being an interpretive, *verfassungskonforme-Auslengung*-type decision, criminal panels drew divergent conclusions as to its practical effects.[82] In 2022, notified with another exception, the CCR rendered a "simple" unconstitutionality decision, holding that failure by the lawmaker to amend the criminal code had resulted in common courts' confusion as to the effects of its prior case-law, divergent application, and thus a highly detrimental impact on legality. It further held that such failure had created a situation where no possibility to lawfully interrupt limitation periods had existed between the moment of the publication of its prior decision and until whenever the state of constitutionality would be reestablished by the lawmaker. The statute of limitations had therefore run uninterruptedly from 2018 onwards.[83] The government now promptly intervened through a decree-law (Emergency Governmental Ordinance) to amend the code and bring it into accord with the decision.[84]

What followed soon thereafter was a preliminary ruling by the ÎCCJ, which added yet another four years to the automatic non-interruption, 2018–2022, of the limitation period. The argument of the Supreme Court that *lex mitior* requirements, derived also from the legality of incrimination principle, dictated the extension of the constitutional effects drawn by the CCR from the failure of the lawmaker to adjust the Criminal Code to its 2018 holding, all the way to the entry into force of the NCC in 2014. This, in turn, led to a cascade of criminal proceedings being closed in first instance or on appeal. Where definitive

[79] Decizia Nr. 873 din 25 iunie 2010, M.Of. nr. 433 din 28.06.2010.

[80] "The limitation periods are interrupted by any procedural act [accomplished in the case.]"

[81] C.C.R., Decizia nr. 297 din 26 aprilie 2018, M. Of. nr. 518 din 25 iunie 2018. An English-language case synopsis is available on the Court's website, at https://www.ccr.ro/wp-content/uploads/2021/03/Decision-No-297_2018.pdf.

[82] *See* F Peirone, "Time Clash: the Court of Justice Limits the Temporal Scope of Lex Mitior: ECJ (Grand Chamber) 24 July 2023, Case C-107/23 PPU, Lin" (2024) 20(4) European Constitutional Law Review 593–614. https://doi.org/10.1017/S1574019624000361, for an illuminating synthesis-analysis (also) of the academic debates on the meaning of the 2018 decision and its impact on practice. From a practical point of view, the question was whether an expertise, witness deposition, change of prosecutor or change of prosecutorial office would or not produce limitation-interruptive effects.

[83] Decizia nr. 358 din 26 mai 2022, M. Of. nr. 565 din 9 iunie 2022. At Para. 76.

[84] Ordonanță de Urgență nr. 71 din 30 mai 2022 pentru modificarea art. 155 alin. (1) din Legea nr. 286/2009 privind Codul penal. M. Of. nr. 531 din 30 mai 2022. In the Romanian constitutional system, EGOs are government decree-laws adopted on a plea of necessity. They are roughly similar, other things being equal, to Italian Art. 77 decree-laws.

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convictions had already been passed against the grain of these apex courts solutions, they were questioned in extraordinary appeals and closed. As the termination of criminal proceeding (*încetarea procesului penal*) is not the equivalent of an acquittal, the civil limbs of such trials, for recovering damages produced by a corrupt act or a VAT fraud, remained in principle unaffected.[85]

The CJEU interjected itself in Romanian anticorruption affairs relatively late, at the point when internal judicial polarisation had already matured into irreconcilable positions. More concretely, the impact of a cluster of CCR decisions reached the Court in Luxembourg, through references that, as formulated, presented any normative dent in the effectiveness of the CVM-driven fight against corruption as contrary to the rule of law. Some judges and some judicial associations understood the rule of law through anticorruption policy effectiveness lens, in a purely risk-driven paradigm: putting as many of the high-placed "corrupt" in jail, for the longest terms, no matter how. By the same token, the CCR itself was beginning to play with the concept of constitutional identity, in its initial "translation" of normative limitations applicable to high-corruption proceedings.[86] Early responses by the CJEU were also formulated in risk-averse terms, originating from path-dependencies[87] towards emphasising "primacy, unity and effectiveness of EU law" in a zero-sum manner and as a trump card to all normative arguments from rights. The apex court of the Union went so far as to join separate clusters of Romanian references, to expedite a primacy–unity–effectiveness answer and brush aside (partly) legitimate concerns raised by Romanian reformulations of what the CVM may have entailed.[88] Yet, suddenly, its position changed in *Lin I*.[89] The abrupt way this happened has prompted Romanian authors to categorise the judgment as a "tidal turn." From a domestic perspective enculturated in a specific vision of anticorruption as an absolute and unalloyed good, the sudden jurisprudential shift could certainly be read also in this key.[90]

The judgment seeks to reconcile, somewhat Solomonically, risk and normativity: Romanian courts do not have to set aside Constitutional Court judgments, as regards the effects of the two constitutional decisions on the limitation period running uninterrupted 2018–2022. Romanian courts can however disregard the interpretation given by their apex court, ÎCCJ, should a "systemic risk of impunity" to the financial interests of Union arise from the extension of the statute of limitation "backwards," to 2014–2018. The legal criterion for this distinction was the familiar, *Taricco*-style wedge driven between substantive rules of criminal law, covered by the legality of incrimination principle, on the one hand, and procedural rules, not subject to retroactivity, on the other.[91] Notably, the CJEU sidestepped altogether the issue of corruption, raised by the referring court, noting

[85] In domestic Romanian debates, the two institutions (termination of criminal proceedings and acquittal) were confused-conflated, especially as, at the level of phenomena, the closing of many high-stakes corruption files intersected a spike in high-profile acquittals.

[86] See Iancu-Deaconu 2025, *supra*.

[87] CJEU (Grand Chamber), judgment of 26 February 2013, Case C-399/11, *Melloni,* EU:C:2013:107. See, on the location of Romanian references and particularly the *Lin* I judgment in the continuum of EU law evolutions, seeking to reconcile rights (normativity), on the one hand, with a fusing of direct effect and primacy *and* a relaxation of primacy criteria, M Bonelli, "Growing pains: Direct effect, primacy and fundamental rights after *Lin*", (2024), 61 (Issue 4) Common Market Law Review 1045-1076, https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/61.4/COLA2024068

[88] B Iancu: *Goat, Cabbage and Wolf: Primacy in Romania, VerfBlog,* 2022/1/07, https://verfassungsblog.de/goat-cabbage-and-wolf/, https://doi.org/10.17176/20220107-195122-0

[89] Case C-107/23 PPU, *Lin*, Judgment of the Court (Grand Chamber) of 24 July 2023, ECLI: EU:C:2023:606

[90] ES Tănăsescu, B Selejan-Guțan, "A Turn of Tide in the Fight against Corruption in Romania: the CJEU between Systemic Risk of Impunity and Fundamental Rights" (2024) 25 ERA Forum 567–91 https://doi.org/10.1007/s12027-025-00820-4.

[91] Case C-105/14 *Criminal proceedings against Ivo Taricco and Others,* ECLI: EU:C:2015:555; Case C-42/17 *Criminal proceedings against M.A.S. and M.B.,* ECLI:EU:C:2017:936.

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in passing that the main proceedings, concerning VAT fraud and thus Art. 325 (1) TFEU and the PFI Convention, raised issues that had nothing to do with corruption and the CVM.[92] Save for the slight towards the High Court, this was a major turnabout in the CJEU's stance towards the CCR and a significant backtracking, albeit by omission, on the issue of corruption.

The High Court refused to accept this partial compromise and doubled down on its initial ruling, issuing a new preliminary decision[93] according to which the substance–procedure distinction drawn by the Court of Justice is not and has never been sustainable in Romanian law.[94] The High Court muses also about the incidental *Bosphorus*-doctrine-derived limitations applicable to Romania's EU membership and the interplay between these and the fundamental rights imperatives set forth in the national fundamental law.[95] This is in its own terms an almost impeccable doctrinal construction. One can easily understand its normative seduction. The lines between substance and procedure are tenuous, the argument that *lex mitior* does not fall under Art. 49 in the EU Charter of Fundamental Rights was assailable even when initially iterated, the Charter professedly operates as minimum common denominator. As noted in a recent study on the location of the *Lin I* judgment as an inflection point in EU law evolutions, the more the Court of Justice relaxes standards of applicability, the more necessary it becomes for it to embrace a more comprehensive[96] and liberal-constitutional[97] view of normativity. The main question is if these judgments reflect a genuine passion for and investment in constitutional normativity or rather an interest in using it for other purposes, such as bringing about a "risk of impunity."[98]

Once corruption has been carved out of the dialogical interchanges of apex domestic courts with the European Court of Justice, this crucial question must be answered domestically. For now, the school of thought that currently dominates the apex judicial institutions in the system appears to pay little heed to the external consequences of their normative attachments.[99] Conversely, its systemic-risk-driven critics appear to want

[92] Case C-107/23 PPU, EU:C:2023:606 (*Lin I*), at Para 65: Moreover, since, according to the information brought to the Court's attention, the acts at issue in the main proceedings do not constitute corruption, it is clear that the interpretation of Decision 2006/928 is also irrelevant for the purposes of the answer to be given to the first and second questions referred for a preliminary ruling.

[93] I.C.C.J., Compl. DCD pen., Decizia nr. 37/2024, (M. Of. nr. 697 din 18 iulie 2024).

[94] Incidentally, this reasoning was backed most recently, once again, by AG Sánchez-Bordona, in his opinion on the yet undecided *Lin II* case. Opinion, 18/12/2025, C-280/25 (*Lin II*) ECLI:EU:C:2025:994.

[95] Art. 20 of the Romanian Constitution, in its initial, 1991 form, instituted in the field of human rights a monist solution with the absolute primacy of international human rights law. When the Constitution was revised in 2003, in view of EU and NATO accessions, a safeguard clause was added ("unless the Constitution or national laws comprise more favourable provisions"), by virtue of which the provision was in effect "renationalised."

[96] M Bonelli, *supra*, at p. 1067: "A mature legal system should arguably not simply promote effectiveness and primacy at any cost and empower national judges via disapplication with few limits and little consideration for other values and interests."

[97] Ibid, at p. 1074: "Accepting limitations to primacy and effectiveness in order to ensure a high level of protection to fundamental rights is a sign of maturity of a constitutional order, not of weakness . . . ."

[98] The Advocate General considers such risk to be more of a conjecture and, in the very narrow scope of analysis remaining after the elimination of corruption crimes from the systemic equation, the assertion may be correct. Opinion, 18/12/2025 (*Lin II*), C-280/25, ECLI:EU:C:2025:994. At Para 122: "The data provided at the hearing by the Romanian Government, while they are not broken down exhaustively, suggest that the number of criminal cases involving tax evasion discontinued in the period from 2014 to 2025, on the basis of the expiry of the relevant limitation period for criminal liability on account of the application of the more lenient law, is very small. They do not support the fear of a systemic risk of impunity for conduct of that kind."

[99] Even as comprehensive *institutional* studies are lacking, the aggregate impact of the statute of limitations decisions by the CCR and ÎCCJ judgments is not lost on most Romanians. A swathe of high-ranking politicians escaped responsibility as a result of these solutions. Thousands of cases were closed by prosecutors or courts, among them many common crimes but also files concerning crimes committed by familiar high-profile figures.

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simply a precise return to the presumptive "golden age" of anticorruption, the *status quo ante* (pre-2018), without taking much stock of the reasons for its demise. The country has already run through the familiar crescendo of successful anticorruption campaigns.[100] Given the need for such campaigns for social and political mobilisation, it is an open question if anticorruption law and politics can seize anew upon a comparable degree of public passions and interests. It is unclear also whether such a return would be at all possible in a significantly different social and political context,[101] in the absence of the external conditionality that made the anticorruption crusade possible to begin with, and arguably against the grain of European standards[102] and emerging trends.[103]

V. Conclusion: normativity-risk interplays

The accession of Romania and Bulgaria to the Union marked a paradigm shift in the definition of enlargement law, from a form of quasi-constitutional normativity to risk-abatement. Ostensibly, the underlying hope was that risk-abatement (a corruption-free equilibrium) could provide another way towards achieving "democracy and the rule of law." From the very beginning, the Commission receded into risk-management writ small, as revealed by the fact that, while Bulgaria and Romania were placed under almost identical formal CVM requirements, Romania alone engaged into implementing them. Moreover, even as anticorruption resulted from a European conditionality, and the CVM acted as supreme point of ascription, legitimation, and justification for the policy, the Commission itself appears to have left local players to their own devices, as long as a form of stability was produced by the anticorruption institutions.

Stability was purchased in often unorthodox ways, as is arguably the case in most if not all anticorruption campaigns. This does not mean that droves of innocents went to jail[104] but that selectivity and the forcing of procedures to produce results and mitigate risks inevitably led to a decrease in credibility. This invited in turn the opposite, now equally detrimental strategy, a manipulation of normative arguments to generate control and produce impunity.

The culprits are now routinely rebranded by "their" media outlets as "victims of anticorruption." Many other "victims" were acquitted.

[100] I Krastev, *supra*, at p. 69: "If in the beginning of the campaign the suspicion is that the corruption is almost everywhere, already in the middle of the campaign the suspicion is that corruption is almost everything. The final stage is the conviction that almost everybody is corrupt."

[101] Whereas street protests did occur in the trail of the public scandal that followed the release of the *Recorder* documentary, they drew exponentially less participation in comparison to the hundreds-of-thousands-strong anticorruption protests during the height of the campaign in winter 2017. There are many reasons for this loss of traction in social interest, including fatigue and disenchantment.

[102] Case C-762/23. Judgment of the Court (Seventh Chamber) of 5 June 2025. *RL and Others v Curtea de Apel București.* ECLI:EU: C:2025: 400. The judgment concerns a severance payment due upon retirement, whose repeal was not deemed to infringe European guarantees of judicial independence. The CJEU makes however *obiter* reference (Para. 38) to the soft law guidelines, according to which judicial pensions should hew closely to the last net salary.

[103] G. Szabó, Dániel: Paying Judges Properly: CJEU's Criteria on Judicial Remuneration in Hungary, VerfBlog, 2025/3/07, https://verfassungsblog.de/judicial-remunerations/, https://doi.org/10.59704/b85e0a8dd922d7cd. In the broader EU context, Romanian attempts to tinker with judicial pensions are (at first glance) redolent of Hungarian developments, aimed at suppressing independence.

[104] See, e.g., M Mendelski, "15 years of anti-corruption in Romania: augmentation, aberration and Acceleration" (2020) 22 (2) European Politics and Society 237–258. The author draws the wrong conclusion from an otherwise excellent diagnosis, by dedicating his study to "the victims of Romanian anticorruption." The "victims" of selectivity were arguably, for the most part, not the accused, indicted, convicted but the ideal of impartial and equal justice for all as such (and thus the public itself).

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Institutional structures adapted to achieve the result of neutral, apolitical anticorruption enforcement have generated in time the opposite result, that of internal, quasi-political factionalism within the judicial system. Legal epiphenomena of these institutional tensions reached the European Court of Human Rights in the *Kövesi* and *Dănileț* judgments, generating partly paradoxical solutions, difficult to accommodate with existing jurisprudential doctrine or with traditional representations of the role of prosecution services and of judicial independence proper.

The Court of Justice was inserted late in this situation, when the unmanaged perpetuation of the CVM had already produced what AG Bobek himself, as he then was, aptly characterised as a "can of worms."[105] The CJEU did not attempt to strike a balance but sought to mitigate risks, by walking the familiar path of "primacy, unity, and effectiveness." In so doing, the court lent unmitigated European support to a domestic camp, in an already highly polarised system. When the Luxembourg court rediscovered fundamental rights and sought to strike a balance between normativity and risk, normative arguments had already been confiscated and instrumentalised by the opposing faction, for now systemically victorious. Most importantly, the main legal and political point of EU ingress into the fight against corruption, the CVM, had by then already disappeared.

Domestically, the only point of unity between the various factions is the preservation of the current state of play, generated by the accretion of political strategies aiming to tinker with retirement compensations, to either put a dent in the campaign or, contrariwise, promote or revive it. The latest attempts to resurrect anticorruption in its pre-CVM-abrogation form, primarily by lowering pensions and heightening age and seniority conditions to nudge a generational change is, against its backdrop, eerily familiar to Romanian observers. It appears to be, in other words, a restaged version of a familiar show, played against the backdrop of an eerily similar anticorruption politics décor.[106] Leaving aside the general Heraclitean problematics of trying to walk in the same river ever twice, the original paradigm as such delivered neither long-term risk-mitigation (systemic stability through the sustainable, consistent and rational abatement of impunity risks), nor a credible and recognisable form of constitutional normativity (democracy, separation of powers, fundamental rights, and the rule of law).

[105] Opinion of Advocate General Bobek delivered on 23 September 2020 (AFJR). ECLI:EU:C:2020:746. Para 140: "There is naturally the underlying, deeper issue of proportionality, which surfaces occasionally within arguments on the extent to which it is appropriate and/or necessary to maintain what was intended to be a temporal post-accession system 13 years later and counting. However, that particular can of worms can be safely left untouched in the context of the present proceedings, where none of the parties suggested that the material conditions for the ongoing applicability of the MCV Decision, set out in the previous two points, would no longer be satisfied."

[106] In the context of current austerity measures (which are, in principle, objectively needed to balance the budget deficit), vulnerable categories topped the priority list. So did the already chronically underfunded national education system, predilect victim of anticorruption-impassioned Romanian governments. In other words, anticorruption policies remain ensconced in the familiar neoliberal tropes of Romanian anticorruption politics.

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