

Romania's Digital Strategy, Including its Judicial Aspects

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Abstract

In this study the author's aim is to outline the Romanian judicial organisation and the digital strategy of the Romanian state, with a special focus on the cyber threat, which is so important nowadays. The subject of the research is also an important area because the European Union has proposed a regulation on artificial intelligence in 2021. The main conclusion of the study is that the National Strategy emphasises the need to adapt legislation to digitalisation. It is also important to underline that Romania plans to participate in a project on anonymisation and pseudo-anonymisation of court decisions in order to make use of open data.

Keywords: Romania, Digital Strategy, Judicial Organisation, Courts and European Union

1. Introduction

The aim of the study is to outline the Romanian judicial organisation and the digital strategy of the Romanian state, with a special focus on the cyber threat, which is so important nowadays. The subject of the research is also an important area because the European Union has proposed a regulation on artificial intelligence in 2021 [1].

The Structure of the Romanian Justice System

The organisation of the judiciary system in Romania and its principles, structure and organisation are laid down in the Romanian Constitution and in Law No. 304. of 2004. on the Organisation of the Judiciary. The judicial system is composed of the following courts:

the Supreme Court of Cassation and Justice;

- the Courts of Appeal;
- the tribunals;
- the specialised courts;
- the district courts and
- the military courts [2].

With regard to the hierarchy of the courts, the Constitution states that „the administration of justice shall be through the Supreme Court of Cassation and Justice and the judicial authorities established by law”, [3] which, by this narrow provision, essentially leaves the definition of the organisation of the courts and the designation of the judicial authorities to the organic laws. In Romania, therefore, the following levels of judicial authority exist under the Law on the Organisation of Courts:

- local (city-level) courts,
- (county-level) tribunals,
- the Courts of Appeal and
- the Supreme Court of Cassation and Justice.

The Constitution also entrusts to the organic law the regulation of the jurisdiction of the judicial authorities and the composition and functioning of the judiciary, the rules of procedure and the Supreme Court of Cassation and Justice. With regard to the latter, the highest judicial authority, the Constitution only states that it shall ensure, in accordance with its powers, that the other judicial authorities interpret and apply the law in a uniform manner. The interpretation of the Romanian law and the unification of judicial practice have traditionally been considered to be a supreme judicial competence.

In comparison the Public Prosecutor's Office is a public authority assisting and participating in the administration of justice, under the authority of the Minister of Justice. The constitutional function of the Public Prosecutor's Office is to ensure the maintenance, protection and observance of the public interest, the public order and the rights of citizens [4].

The Supreme Court of Cassation and Justice is the highest court in Romania. It ensures that the law is interpreted and applied uniformly by the other courts. The fifteen courts of appeal are subordinate to the courts of law and specialised courts. The forty-two tribunals operate at the county level and in Bucharest and, more generally, in the

seat of each county. The four specialised tribunals operate as separate courts for cases relating to minors and family law, as well as for commercial cases. There are 176 district courts subordinate to the above courts of law. Each court is headed by a president. The specialised divisions of the court are headed by a head of division. In each court, a senior of department decides on general matters relating to court management. Military jurisdiction is provided by the four military tribunals, the Bucharest Military Regional Court and the Bucharest Military Court of Appeal [5].

Justice and Digitalisation

The Supreme Council of the Judiciary is the body that ensures the independence of the judiciary under the Constitution. It also ensures compliance with the law and with the criteria of competence and professional ethics in the exercise of the judicial and prosecutorial functions. The Ministry of Justice contributes to the proper functioning of the judicial system, ensures that justice as a public service is administered under proper conditions and protects the rule of law and the rights and freedoms of citizens [6].

The following legal databases are available online:

- the case law of the Supreme Court of Cassation and Justice is published on the website of the Supreme Court of Cassation and Justice;
- summaries of court decisions are published on the court portal;
- the Romanian legal database, maintained and managed by the Romanian Legislative Council, contains all the provisions of Romanian law (laws, government decrees, government decisions etc.).

It is important to mention that, access to legal databases is free of charge [7].

According to the National Strategy for Romania's Digital Agenda 2020 (hereinafter: National Strategy), the main areas covered by the National Strategy are:

- e-government, interoperability, cybersecurity, social media platforms,
- education, health, culture and integration,
- trade, research, development and innovation,
- broadband and digital services infrastructure.

The National Strategy provides details on the monitoring and evaluation of the Digital Agenda. In contrast to the

above, the National Strategy is relatively brief on the subject of justice, indicating that the process of social inclusion is a multidimensional set of measures and actions in the following areas:

- social protection, employment, housing, education, health,
- infocommunication,
- mobility,
- security, justice and
- culture.

The aim is in Romania to ensure active participation in all economic, social, cultural and political aspects of the fight against social exclusion. The National Strategy identifies as one of the key issues to be addressed at horizontal level in all fields of action: reviewing and updating existing legislation to overcome institutional and legislative barriers.

In the field of e-commerce, the National Strategy foresees the preparation of a regulatory framework that would allow the preparation of the settlement of disputes caused by:

- online tools,
- in online media and
- outside the courts, in accordance with court procedures in line with the EU recommendations.

According to the National Strategy, Romania will provide better public services through eGovernment 2.0. Although significant progress has been made in Romania in recent years (both in terms of access and implementation of key IT systems), most initiatives have faced barriers in terms of adoption, quality, legislation and consistency. By focusing on new or improved services, but with a coherent model implemented to ensure greater impact in the socio-economic context, and by rethinking the motivation for the delivery of public services, this intervention will lead to results that will benefit society. In a coordinated manner at ministerial level, all public institutions will review existing legislation, regulations and workflows to identify possible areas for the introduction of e-services.

One important element of digitalisation is the use of social media. According to a recent survey by TNS Digital Life, 42% use social media at least once a week and 27% use it every day or almost every day in Romania. These proportions illustrate how many people can be reached through online social media platforms. The following chart illustrates the above:

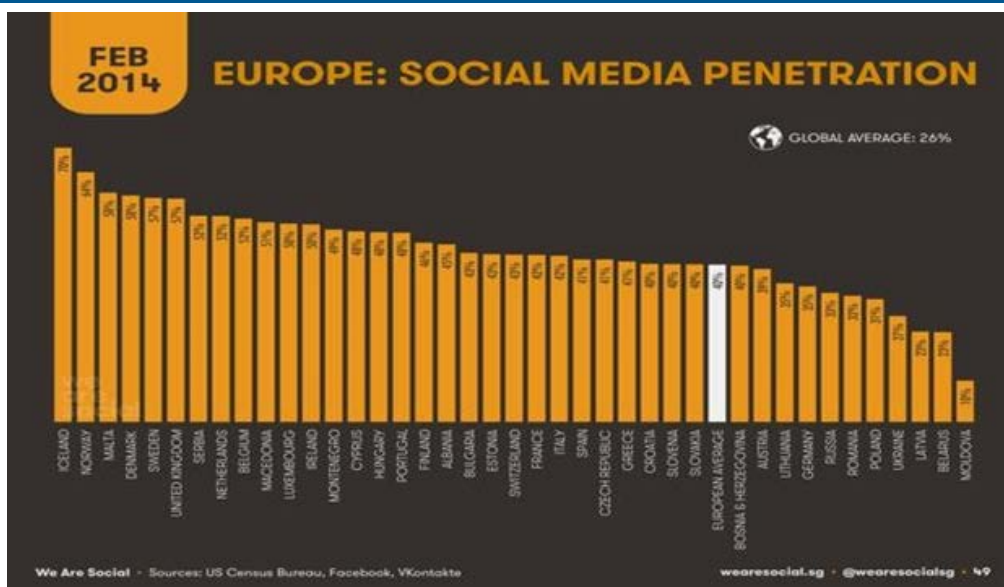


Figure 1: Use of Social Media in Eu Member States.

According to the literature, the digitalisation process in the field of justice in Romania has flourished in recent years, initiatives in this area require extensive coordination and consolidation, interconnection and effective functioning, and training is needed, and society is already aware of the challenges and possible inequalities. Although Romania is currently in the early stages of digitalisation, largely limited to a duplication of judicial efforts already in physical form, the dilemma of extending the digitisation process is beginning to emerge. What are the trends of the digitisation process in the field of justice, what efforts should be made and what should be the goal of digitalisation, are the questions that are currently being sought. It is believed that digitisation should remain at a technical level that solves certain logistical or speed problems, and that this tool should be retained only for support aspects and for certain procedures requiring urgency. The possible aggravation of the trend towards moving court activities and procedures to a purely virtual environment and replacing human resources with artificial resources will affect the very essence of law, destroying its foundations and the ideology behind its operating mechanism. To sum up, although the impact of the digitalisation of justice seems in Romania positive, facilitating its integration into the digital age and aligning it with sectors providing essential services to citizens and requiring modernisation, digitalisation that is not strictly enforced and goes beyond its definition could seriously undermine constitutional rights.

The Role of EU Digitalisation in Romanian Legislation

According to the Romanian National Strategy, in order to support Europe's economic recovery, but above all to ensure economic growth, sustainable, smart and socially inclusive growth, the European Union has developed the Europe 2020 Digital Agenda, which has as its main objective been the creation of a Digital Single Market. Some of the objectives set out in the Digital Agenda for Europe have been taken over by Romania and adapted to the Romanian context, as far as they are relevant and in line with the strategic ICT vision of the European Union. This action aims to develop ICT in

Romania at the level of the Romanian region and to create the preconditions for Romania's ICT integration into the EU Digital Single Market.

The Europe 2020 Digital Agenda is structured as follows:

- Pillar I - Digital Single Market - enabling free, cross-border online access to services.
- Pillar II - Interoperability - enables the integration of the tools, applications, data and services needed for cross-border interaction.
- Pillar III - Confidence and security - increasing internet users' trust in services and confidence in online transactions to encourage the use of ICT services.
- Pillar IV - Fast and ultra-fast internet access - aims to invest in broadband infrastructure, i.e. broadband investment to make use of the latest electronic technologies and services.
- Pillar V - ICT research and innovation - encourages adequate funding to increase the benefits, i.e. to develop a competitive advantage in ICT.
- Pillar VI - Increasing Digital Literacy, Skills and Inclusion - bridges the digital divide for all consumers so that they can benefit equally and enjoy the full benefits of ICT services.
- Pillar VII - The benefits of ICT for EU society - focuses on ICT's ability to reduce energy consumption, support care for the elderly, revolutionise health services and deliver better public services.

The Europe 2020 strategy, the EU's growth strategy for the next ten years launched in 2010, addressed the gaps in Europe's growth patterns and aimed to create the conditions for a smarter, more sustainable and inclusive environment. It set out five key common overarching objectives to be achieved at EU level by 2020:

- employment - 75% of the 20-64 age group must be in employment;
- R&D - 3% of EU GDP should be spent on R&D;
- climate change and energy sustainability;
- education - at least 40% of 30-34-year-olds should have completed tertiary education;

- combating poverty and social exclusion - reducing the number of people at risk of poverty and social exclusion.

In Romania a standardised and real-time exchange of data should be established between the Ministry of Public Finance, the Ministry of Justice, the Ministry of Health, the Ministry of Labour, Family and Social Affairs, with a positive impact on all economic operators and public institutions. Among central government authorities and institutions, the National Strategy indicates cooperation between the Ministry of Justice and the National Institute for Science and Research and Communication.

Pursuant to Law No. 362. of 2018. on ensuring a high common level of security of networks and information systems, as amended by the Romanian Emergency Ordinance No. 119. of 2020., the National Cybersecurity Incident Management Centre - CERT-RO (hereinafter CERT-RO), after consultation with the Inter-institutional Working Group on the determination of thresholds for determining the significant disruptive impact of events at the level of networks and information systems of operators of essential services, submits for approval, by Government Decision initiated by the Government, the following:

thresholds for determining the significant disruptive impact of events at the level of networks and information systems of operators of essential services, as follows:

- thresholds in line with the cross-sectoral criteria;
- sector-specific criteria and thresholds for each sector and subsector identified;
- technical rules for determining the impact of events.

In addition, CERT-RO is developing proposals to amend the legislative framework to encourage the development of cybersecurity infrastructure that provides functions or services of public benefit to the information-society. It will also continue to develop partnerships with relevant bodies in the fight against cyber incidents and set up EU-wide cyber incident response synthesis teams to speed up the response to attacks. Complementing and harmonising national legislation, including the establishment and application of national minimum-security requirements in the field of cyberinfrastructure, is an important process in this context. The importance of this area is increased by the fact that the European Union has adopted new directives on digitalisation, of which the NIS2 provides that the exclusion of public authorities from the scope of the directive should only apply to organisations whose activities are primarily related to national security, public security, defence or law enforcement, including the prevention, the investigation, the detection and the prosecution of criminal offences, but public bodies whose activities are only marginally related to these areas should not be excluded from the scope of this Directive.

Romania is planning to participate in a project on anonymisation and pseudo-anonymisation of court decisions for the use of open data in the framework of the e-Justice Action Plan 2019-2023. Furthermore, as regards voice

recognition AI, Romania intends to participate in a project under the e-Justice Action Plan 2019-2023.

2. Summary

According to the above the main areas covered by the National Strategy for Romania are therefore:

- e-government,
- interoperability,
- cybersecurity,
- social media platforms,
- education,
- health,
- culture and inclusion,
- trade,
- research,
- development and innovation,
- broadband and
- digital services
- infrastructure.

The National Strategy details the monitoring and evaluation of the Digital Agenda. In contrast to the above, the National Strategy in Romania is relatively narrow in its focus on the justice dimension, indicating that the social inclusion process is a multidimensional set of measures and actions in the areas of:

- social protection,
- employment,
- housing,
- education,
- health,
- ICT,
- mobility,
- security,
- justice and
- culture.

A standardised and real-time exchange of data may be established between the Ministry of Public Finance, the Ministry of Justice, the Ministry of Health, the Ministry of Labour, Family and Social Affairs, with a positive impact on all economic operators and public institutions. Among central government authorities and institutions, the National Strategy indicates cooperation between the Ministry of Justice and the National Institute for Science and Research and Communication.

However, the National Strategy emphasises the need to adapt legislation to digitalisation. It is also important to underline that Romania plans to participate in a project on anonymisation and pseudo-anonymisation of court decisions in order to make use of open data, as part of the e-Justice Action Plan 2019-2023. Furthermore, as regards recognition of AI, Romania intends to participate in a project under the e-Justice Action Plan 2019-2023.

Finally, it is worth mentioning that according to the European Commission's 2023 EU Justice Scoreboard, Romania is rather in the middle of the EU in terms of digital justice, taking into account the data on the digitalisation of justice. A practical

question in this area is: what will the digital world do with a possible internet pandemic like COVID-19, which could seriously damage databases...?

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