



Weekly Briefing

**Romania Political briefing:
The Amendments to the Justice Laws
Oana Cristina Popovici**

China-CEE Institute

Kiadó: Kína-KKE Intézet Nonprofit Kft.

Szerkesztésért felelős személy: Chen Xin

Kiadásért felelős személy: Huang Ping



1052 Budapest Petőfi Sándor utca 11.



+36 1 5858 690



office@china-cee.eu



china-cee.eu

Changes to the justice laws envisaged by the Government ruling coalition drew impressive protests in several cities on Sunday, the 5th on November, generating the second wave of manifestations on this theme since the beginning of the year and threatening the legitimacy of the actual Government. The justice proposals seem like a break in Romania's road for fighting corruption and are hard to understand considering the EU appreciation related to the National Anticorruption Directorate's (DNA) activity. Moreover, Romania's justice system is under the special monitoring of the EU's Cooperation and Verification Mechanism (CVM), therefore such shortfalls should not appear.

The ruling coalition, formed by the Social Democratic Party (PSD) and the Alliance of Liberals and Democrats Party (ALDE), seem to have a keen interest in accelerating the adoption of such measures, even without conducting impact studies, organizing public debates, taking into account the opinions expressed by the affected institutions or the international recommendations. Under such circumstances, the coalition can be suspected of hidden reasons meant to obstruct the justice, given a similar try at the beginning of the year that have led to the largest street protests since the Revolution in 1989.

Several legislative proposals generally related to the status and career of magistrates and the functioning of justice institutions were registered on 31st October 2017 at the Chamber of Deputies, with the aim of being approved in the emergency procedure in the Parliament.

Previously, on August 23rd, the Justice Minister Tudorel Toader announced several changes for the justice law, presented as general ideas and principles that would induce a series of important mutations for prosecutors and judges. Initially, the proposals were meant to receive the approval of the Government, based on which to be submitted to the Parliament and adopted through a normal procedure. At that moment, their transformation into laws was expected to last at least two years.

The proposals were immediately and severely criticized by different stakeholders, the main reason being that Romania's judicial system would regress to the level registered before its efforts to join the EU. The President Klaus Iohannis considered such proposals as "an attack on the rule of law, on the independence and proper functioning of justice, and on the fight against corruption". The US Embassy in Romania expressed its concerns related to the independence of justice, drawing attention to the democratic values, good governance and strengthening the rule of law that form the basis of the Strategic Partnership between the United States and Romania.

The proposals submitted on October 31st affect the most important laws concerning the justice system: the Law 303/2004 on the status of judges and prosecutors, the Law 304/2004 on judicial organization, the Law 317/2004 on the organization and functioning of the Superior Council of Magistracy (SCM). The main aspects are targeting:

- The increase of the training period for the auditors of justice from two to four years, and of the probation period at two years, instead on one year;
- Changes related to seniority in case of appointment to management positions;
- Changes related to the suspension of magistrates;
- The establishment of a special section for investigating the offenses committed by magistrates within the Prosecutor's Office attached to the High Court of Cassation and Justice;
- The reorganization of the Judicial Inspection as an autonomous institution into the National Council for Integrity of Judges and Prosecutors and Judicial Inspection; at present, it is framed within the SCM.
- Increasing the magistrates' liability: while at present, the state has the possibility to claim damages from the magistrate in case of a judicial error, under the new legislation the state will be obliged to do so;
- Court decisions will be drafted within 90 days of pronouncement, for avoiding cases when such decisions took over one year;

- Changes regarding the revocation of the elected member of the SCM.
- Changes in the appointment of chief prosecutors for the main legal institutions: the Justice Minister will make the proposal to the SCM, which may refuse it only once.

DNA rejected in block the proposals, while the Forum of Judges launched a call to the European Commission for including recommendations related to independence of justice in the Country Report that will be released in November 2017.

The main critics related to the proposed changes in laws

• *Politicization of the justice*

The establishment of a special section for investigating the crimes of magistrates would limit the competencies of DNA as regards the corruption acts committed by the magistrates. In addition, the lack of impact studies and of statistical evidence pointing to a widespread phenomenon of criminality among magistrates does not support the creation of such a special section. Moreover, experts in the field fear that the Judicial Inspection will become a political tool for the Justice Minister in appointing the chief prosecutors, transforming the Prosecutor's Office into an institution subordinated to political interests.

A similar tendency of politicization is identified in the procedure for the appointment of chief prosecutors for the rest of the legal institutions. The fact that SCM can refuse only once the Justice Minister proposals for the heads of institutions could lead to political appointments of prosecutors. Moreover, this situation would limit the possibility for the General Prosecutor to establish its own working team in order to follow its managerial plan and objectives. At present, this appointment is one of the attributes of the President of Romania, at the proposal of the SCM.

• *Supplementary pressure for the human resource in the judiciary system*

The provisions related to the magistrates' liability risk to build one of the most severe European legal liability regimes in the absence of a professional

liability insurance scheme. The actual legislative framework regulates the magistrates' civil, disciplinary and criminal liability. In addition, imposing the obligation for the state to claim the damages from the magistrate found in a judicial error adds a supplementary pressure on its activity. The experience proves that judicial error is the result of a complex set of circumstances that cannot be foreseen (such as considering evidences that could not be initially envisaged).

The increases in seniority requirements could generate a malfunction related to the evolution of the human resource in magistracy, following the delay in entering the system given the extension of the training period for magistrates.

Other circumstances that proved to be suspicious

• *The lack of transparency, cooperation and interinstitutional dialogue*

The legislative initiative assumed by the Ministry of Justice should have been proposed to the Government, in order to allow the line ministries affected by the changes to conduct the impact studies related to the statute of the magistrates and the organization and functioning of the courts and of the SCM.

• *The shortcuts used for adopting the proposals*

Instead of following the above-mentioned procedure which represents the legal mechanism for drafting and adopting normative acts, the Minister of Justice forwarded his proposals to the Special Parliamentary Commission on Justice. Therefore, the law project is not presented in the Government or in the legal committees of the Parliament, but to a special Commission of the Parliament, which was launched at the end of September 2017.

It is true that the Commission's establishment decision no.69/2017 states that its main activity is to ensure the unification and legal stability in justice, having thus the competence to verify all the normative acts under parliamentary procedure in this field. Still, the main goal of the Commission at its launch was to ensure the amendment of the Criminal Codes in accordance with the decisions of the Constitutional Court.

Moreover, another unwonted issue is that the president of this special commission is Florin Iordache, the former Minister of Justice and the author of the 13 Ordinance on Justice that caused the massive protests at the beginning of the year.

•The refusal to submit the project proposals for the justice laws for getting an opinion from international experts

The Justice Minister announced in mid-October that he will not request an opinion on the justice laws proposals from the Venice Commission, the consultative body of the Council of Europe, composed of independent experts in the field of constitutional law. His decision was motivated by the fact that the draft amendment to the laws of Justice became a parliamentary initiative. At the end of November, the PSD president, Liviu Dragnea, claimed that the amendments will be adopted in the actual parliamentary session, with or without the Venice Commission's endorsement.

In a recent meeting between the Romanian Justice Minister and Frans Timmermans, the EU responsible for the Cooperation and Verification Mechanism, on the 8th November, the EU official suggested to allow international experts from the Venice Commission to consult the draft amendments to the Romanian justice laws.

The problem is yet to be ended as the legal procedures are continuing. Moreover, it risks being overlooked in the background by the public opinion due to other important decisions of the ruling coalition related to the fiscal framework.