



# Weekly Briefing

**Romania Political briefing:**  
**The request of dismissal for the chief prosecutor of the National  
Anticorruption Directorate**  
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**The new concern of the Romanian political arena continues to be linked to the judiciary system, this time oriented towards the National Anticorruption Directorate (NAD). The Minister of Justice initiated the procedure for the dismissal of the chief prosecutor of NAD and the final decision is in the hands of the President Iohannis. Still, the opinion of both the Superior Council of Magistracy and the Prosecutor's Office attached to the High Court of Cassation and Justice indicate that there is no legal basis for such a procedure. The attention of the international arena is oriented towards Romania, as NAD is well known for its efforts in fighting corruption, and the chief prosecutor was several times honoured by foreign embassies for the activity in this area.**

The institution conducted in the last years an aggressive campaign against corruption that targeted even senior or high-ranking officials including ministers, former ministers and parliamentarians. Since the appointment of the actual chief of NAD, Laura Codruța Kovesi, the institution made more arrests and convictions than any other similar agency in the EU. In the last period, rumours emerged that the investigations of the Directorate usually involve power abuses and politically motivated convictions.

The changes to the laws of justice, drawn during the whole last year, could reduce the ability of prosecutors to investigate cases of abuse in the service. The supporters of changes consider that such measures will improve the fairness of the legal processes and prosecutions will only be initiated against suspects of serious deeds. Still, NAD thinks that these changes will seriously undermine the institutions' activity, as such type of cases accounted for more than half of the files investigated in the last year.

The chief of NAD accused in an international context that top politicians and businessmen are trying to undermine the institution, given that Romania already attracted the concern of the European leaders regarding the rule of law. The allegations to NAD were more frequent starting with the beginning of this

year and intensified in the last weeks, as several already defendants accused unusual pressure of the NAD prosecutors for indicting them and falsifying evidences. In the context of this scandal, the Prime-Minister asked the Minister of Justice to interrupt its official visit in Japan and provide a solution. Therefore, the Minister presented a report on the NAD activity, but focused on the efficient organization, behaviour, communication, assumption of responsibilities, managerial skills related to the DNA chief prosecutor during February 2017 - February 2018.

The report was not favourable for the chief prosecutor of NAD and listed 20 incriminating acts and facts. The accusations are related to the excess of authority, the discretionary behaviour, the defiance of the authority of the Parliament and the role and powers of the Government, the contestation of the decisions of the Constitutional Court and its authority. Among the main reproaches, the Minister mentioned:

- The involvement in legal conflicts of a constitutional nature. Out of the 13 conflicts since 1992, two took place in 2017 and were generated by the NAD for violating its limits of competency related to the government and the parliament and the infringed the principle of real collaboration. For example, through the investigation on the Government Decision 13 in 2017, which generated the largest mass protest since the Revolution in Romania, is considered that the Government was blocked in his activity of law maker. Through its conduct, NAD made use of an illegal competence, controlling the way in which a normative act is given.

- The chief of NAD was accused of vehement criticism related to some proposals for legislative changes, which later proved to be constitutional. Such types of comments eroded the image of Romania at international level and created a false image on the functioning of the rule of law. This led to misinformation among the leadership of the EU and the European Parliament, which had a debate on the justice changes in Romania earlier this year.

- The deterioration of Romania' image through the publicly declarations related to the fear that NAD could be abolished. Indeed, the NAD chief warned that the proposed changes to the laws of justice would have a very serious negative impact on the effectiveness of combating corruption and doubted that serious investigations targeting senior officials or high-ranking officials could still be run.

- The attempt to get convictions at any price.

- Contesting the authority of the Constitutional Court of Romania which generates a situation similar to the one in Poland that lead to the trigger of the article 7 in the European Union's Treaty. The Minister relates to some statements of Kovesi by which the Constitutional Court is accused that, through some decisions, impeded or made difficult the criminal prosecution.

Therefore, the Minister of Justice initiated the procedure of dismissal of the chief prosecutor NAD for unlawful acts and deeds in a state governed by law.

During the last years, Laura Codruța Kovesi was several times honoured for her activity by the foreign embassies in Romania. The Sweden ambassador decorated her with a special honour granted by the King of Sweden for the fight against corruption in Romania. Sweden is one of the countries that contributed directly with funds to support the anticorruption fight in Romania. Kovesi has also been decorated twice by the French Embassy for its efforts to fight corruption, the last time in 2016. In 2014, the NAD chief prosecutor was also awarded by the United States Embassy in Bucharest for the implications in the reform of justice and the rule of law. The appreciation at the international level for Laura Codruța Kovesi is meant to attract even more the attention on the situation in Romania.

Several reactions emerged after the announcement of the Minister of Justice.

- The association VeDemJust (Voices for Democracy and Justice), which is a think-tank for the whole justice system, launch very fast an opinion destined to the Superior Council of Magistracy (SCM) related to the Minister's report. The

main conclusions states that the practices in the case of dismissal are ignored, as there are used non-public information or rumours in the media for making a decision before a complete evaluation report of the institution. Its publication was made before the notification of SCM, which put an important pressure on this institution and alters the image of the most representative figure in the anti-corruption fight over the last five years.

- The event generated again a wave of protests. In Bucharest, 4,000 people gathered in front of the government, despite the bad weather, and thousands others protested in several other cities. In addition, more than 87,000 people have signed an online petition requesting President Klaus Iohannis not to revoke Laura Kovesi.

- Romania was in the spotlight of the international media, which generally see in the dismissal of the NAD chief prosecutor an attack to the anti-corruption fight in Romania.

The normal course of actions, after the initiation of the dismissal procedure, is to ask for the advisory opinion of the SCM, and after that, the President has the final decision on this proposal.

This week, the SCM deliberated and gave a negative opinion on the dismissal procedure, thus rejecting the revocation of the chief prosecutor of NAD. The meeting of SCM meant a confrontation of the two parts involved in the conflict, the Minister of Justice and the NAD Chief. The vote in the SCM meeting was 6-1 against the request for revocation, the vote "for" being that of the Minister of Justice.

Soon after this decision, the Prosecutor's Office attached to the High Court of Cassation and Justice launched a press release, announcing its agreement with the decision of SCM. In their opinion, there is no legal basis for taking a measure of such a magnitude.

Now, the decision is in the hands of the President. The SCM advisory opinion is advanced to the President, who will take the final decision also taking into account the Minister's report on the NAD chief. Currently, Laura Codruța

Kovesi is at her second mandate, which is the last one that is due to end in 2019, in the absence of a revocation. The President already manifested its appreciation for the NAD activity in several times; therefore his positioning is somehow predictable. In addition, in the recent visit of the first Vice-President of the European Commission at Bucharest, Frans Timmermans draw the attention that neither the Minister of Justice nor the politicians should investigate the magistrates. Instead, the judiciary courts are the only ones who can do this, following the principle of separation of powers. The Vice-President appreciated the efforts in the justice area made so far and encouraged similar progress, in order to raise the cooperation and verification mechanism (CVM) until 2019. Still, a similar direction of reforms in the judiciary system should be followed, paying attention not to reverse the trend.

Still, the decision is not easy; the government party already announced that, if the President will not make the revocation decision, the Constitutional Court of Romania will be notified. The reason is that, by refusing to sign the dismissal of the NAD chief, the President triggers a constitutional legal conflict between the Presidency and the Government. In a simpler way, the President should support the decision of the Government, according to some interpretation of the law. Now, the President could decide without taking into consideration the Constitutional Court's opinion, if someone will ask for such a notice. In this case, the suspension procedure could be triggered in the Parliament for the President and the political crisis will deepen, moving in the background other stringent priorities.