



Weekly Briefing

**Romania Political briefing:
New evolutions in the justice area
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New evolutions in the justice area

Evolutions related to the justice laws continue to draw the attention at both national and international level, as new decisions affecting the justice system are unfolding on the political arena in Romania. A law related to the prohibition of spontaneous protests was adopted by the High Court of Cassation and Justice, while an Emergency Ordinance increased the mandatory experience required for prosecutors in several key institutions. The report of the Venice Commission related to the justice laws warns that the criminal justice system in combating corruption and organized crime could be negatively affected by the changes to the two Criminal Codes. Finally, the Minister of Justice initiated the procedure for the dismissal of the General Prosecutor, based on a negative evaluation of his activity.

The justice laws continue to fill the debate on the public agenda and to capture the interests of the population, once with the new decisions of the Government and the Parliament in this area.

The High Court of Cassation and Justice decided that public meetings should be declared in advance when they are to be held in markets or in places adjacent to institutions or buildings of public or private interest. Such a measure is discouraging spontaneous protests. Therefore, protests similar to the one in February 2017 which led to the abrogation of the Ordinance 13, related to the decriminalization of abuse of service, could not happen again, only if they are declared. In the legislation there are provisions regarding the obligation to notify the authorities related to the initiation of a protest, but only within a public institution. This led to a lack of unitary practices of the courts in confirming fines for persons protesting near public institutions, therefore the measure was taken for improving clarity.

In the same period, the Government has adopted an emergency ordinance to amend and supplement some normative acts in the field of justice. One of the most important changes requires at least 10 years of experience as a magistrate for prosecutors in the General Prosecutor's Office, National Anticorruption Directorate (NAD) and the Directorate for Investigating Organized Crime and Terrorism. This could affect the composition of the panel of judges who deals with some of the major cases of corruption. The General Prosecutor Augustin Lazar positioned itself against the emergency ordinance, stating that it created many functional problems for prosecutors, especially for NAD. Therefore, the Public Ministry is analysing the suspicions of unconstitutionality in order to address to the People's Advocate, an institution that may refer the Constitutional Court of Romania (CCR).

Soon after, the Venice Commission issued two reports on amendments to the laws of justice and on the Criminal Code and Criminal Procedure Code in Romania. Both recommend a whole series of changes to these laws, as well as more transparency and more effective debate. The main concern is that many of the draft amendments to the Criminal Code and the Criminal Procedure Code seriously weaken the efficiency of the criminal justice system in combating corruption and organized crime. The recommendations addressed to the Romanian authorities stipulate an effective and comprehensive consultation process with the objective of submitting a sound and coherent legislative proposal which benefits from broad support within the Romanian society and takes full account of the applicable standards in the field, while following the instructions given by the Constitutional Court. Previously, the Constitutional Court declared unconstitutional over 60 articles of the Code of Criminal Procedure and is expected to review the constitutionality of the amendments to the Criminal Code by the end of this year.

With regard to the Codes, the Venice Commission states that it agrees with the plea raised by the members of the Parliament about the need to amend criminal legislation to comply with CCR decisions and to ensure respect for

human rights in investigations and judgments. On the other hand, the international forum draws attention to the fact that, at the same time, the law must ensure respect for Romania's international commitments on anti-corruption and, above all, to guarantee compliance with the rights of victims. One of the major highlights is related to the changes brought to the abuse of service, which the Commission considers to create the premises for de facto decriminalization.

In addition, the Venice Commission also adopted, with some amendments, the preliminary opinion issued in July on the draft Law 303/2004 on the Status of Judges and Prosecutors, Law 304/2004 on Judicial Organization and Law 317/2004 on the Superior Council of Magistracy. The opinion was previously required by President Klaus Iohannis. The opinion states that these three projects, which were promulgated in the meantime, entered into force and were even reviewed by an emergency ordinance, will have a negative impact on the efficiency, quality and independence of the judiciary, with also negative consequences on the fight against corruption.

Martin Kuijer, the responsible for the Venice Commission report, stated that there is a high level of uncertainty related to the amendments to the justice laws, in connection with the reasons behind some amendments, their real meaning and the changes they could enhance. Although the opinion of the Venice Commission is not mandatory for the Romanian Parliament as the institution is only an advisory body, the recommendations of the Venice Commission are closely followed by political entities, especially that the opinion was demanded by another body of the Council of Europe. The European Commission has clearly advised the Romanian authorities to take these recommendations into account, linking the measures and the Cooperation and Verification Mechanism report on the willingness to comply with the indicated guidelines.

The Minister of Justice initiated the procedure for the dismissal of the General Prosecutor for 20 reasons, as a result of the evaluation report of his managerial activity. According to the initiated procedure, the revocation

proposal goes to the Superior Council of Magistracy (SCM), where the Prosecutor's Section has to issue an advisory opinion. After that, the two documents are sent to the Presidential Administration in order for the head of state to make a decision related to signing or not the revocation decree. The announcement was made on the very day when President Klaus Iohannis discussed with parliamentary parties the possibility of a pact on justice.

A similar report of evaluation led to the dismissal of the chief prosecutor of NAD, Laura Codruța Kovesi, in May this year, based on a very controversial article in the Constitution stipulating that the activity of the prosecutors is unfolding under the authority of the Minister of Justice, following an interpretation of the Constitutional Court of Romania in this direction. The opinion expressed by the Venice Commission states that, on the contrary, the independence of prosecutors and increased role of institutions that could balance the influence of the minister, such as the head of state and the SCM, should be strengthened. Based on the same article and a similar procedure, now the General Prosecutor could be dismissed.

The main reasons raised for the dismissal were related to the fact that he supported the lack of a legal basis for the NAD prosecutor's assessment, the increase of delegations to executive or management positions, the lack of the evaluation of the professional performance criteria at the moment were the appointment to the post of general prosecutor was signed by the President, public speeches of a political nature and accusations against state authorities, the delays in the proposal for the head of NAD the decisions taken in the case of the 10 August protest. The results of the evaluation were contradicted by the former minister of justice who appointed the General Prosecutor related to the evaluation, while two associations of magistrates, the Judges Forum in Romania and the Prosecutor's Movement for the Protection of the Prosecutors' Statute sent a letter to the Minister of Justice requesting the abandonment of the revocation procedure. In this context, the President even required the dismissal of the minister of Justice, considering that the provisions of the recent Emergency

Ordinance, previously mentioned, are adding to the list of controversial decisions.

Related to the justice pact initiated by the President Iohannis, there were no major steps forward. The leader of the governing coalition rejected the role of mediator the President wanted to assume for parliamentary parties to reach an agreement to redress the laws of justice. Instead, he proposed a set of ten principles and seven questions for the President. The issue is still in suspense as another major event, the dismissal of the Chief Prosecutor, came to attention.

In the meantime, another attempt to dismiss the Minister of Justice through a simple motion in the Parliament was rejected. The document by which the Opposition demands the resignation of the Minister of Justice is focused on the fact that lifting the CVM in Romania becomes an increasingly remote target. The Minister's aim, as stated in the debates on the motion, is to propose a return to normality, which implies the reduction of the redemption and the recovery of the prejudices. The vote on this motion came in the context in which the public space discusses the possibility of the minister's reshuffle in the Government.