

Prosecutors, Democracy and the Rule of Law:

Reflections on the Review of the Statute of Prosecutors in Romania

The current statute of prosecutors in Romania is an ambiguously mixed one. The Romanian Constitution and the subsequent legislation grant the prosecutor a status role that is two-fold: independent magistrate and representative of the Executive power, subject to hierarchical control. The consequences of this two-fold nature are a lack of unitary interpretation, ambiguity, and a confusion over the proper function, status and role of the prosecutors within the justice system. At the declarative level, the widespread opinion among the main public actors is that the prosecutor should and must protect the public interest. Opinions are split with regard to the practical manner through which this objective can be best attained.

Given the challenges regarding the transformation of the profession of a prosecutor in post-totalitarian societies and in view of the EU-required fight against high-level corruption in Romania, it has become imperative that the statute of prosecutors be clarified as soon as possible, in order to clearly establish prerogatives and responsibilities.

The abovementioned *status quo* of the statute of prosecutors is one of the reasons for holding an international conference - "Prosecutors, Democracy and the Rule of Law: Reflections on the Review of the Statute of Prosecutors in Romania" on September 28-29, 2007. The conference was organized by the Association of European Judges and Public Prosecutors for Democracy and Fundamental Rights (MEDEL), in partnership with the National Union of

Judges from Romania, the Rule of Law Program South East Europe of the Konrad-Adenauer-Stiftung, the Friedrich-Ebert-Stiftung Romania, the Romanian Ministry of Justice, the General Prosecutor's Office, and Transparency International - the Romanian Chapter. The availability of so many prominent institutions to be involved in the organizing of the conference reflects, on the one hand, the importance of the topic and, on the other, the openness towards plurality and the wish to place the event under the sign of non-partisan and non-biased premises.

The purpose of the conference was to discuss and debate relevant aspects regarding the statute of prosecutors in the European member states, to highlight the existing deficits/challenges of the legislative framework, and to formulate possible solutions for a higher degree of independence of the prosecutors. The conference proved to be a very good forum for reflection upon the independence of the prosecutors and its utility.

Foreign experts: The MEDEL declaration

Throughout the first conference day, foreign experts from Western European countries including Germany, Italy, and Portugal, presented their respective systems. At the end of the conference they adopted a declaration which stated, *inter alia*:

"We are convinced that the exercise on part of public prosecution of its basic functions in promoting the Rule of Law and protecting

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
DIRECTOR
CORA MOJOC
PROGRAM ASSISTANT

Contacts

Dr. Stefanie Ricarda Roos
Rule of Law Program South East Europe
Konrad-Adenauer-Stiftung
Str. Sf. Elefterie 27
RO – 050524 Bucharest
Romania
Phone./Fax: +40 21 410 82 35
stefanie.roos@kas.de
officerspsoe@kas.ro

fundamental rights and public interest must be accompanied by solid guarantees against any undue influence. We recall that corruption of public powers is able to undermine the very idea of the Rule of Law, and the fight against it is essential in a modern political democracy. To this end, we are fully aware of the need to design a system of accountability of public prosecutors with regard to the discharge of their duties. However, on the other hand, we must stress the importance that any mechanism devised in order to assess the work of public prosecutors should exclude any interference from other powers of the State, and especially from the executive branch." (See full declaration at http://www.kas.de/upload/auslandshomepages/rumaenien/statute_prosecutors_declaration2.pdf.)

Participation of Representatives from Romanian Institutions

The second conference day was dedicated to debates among the main Romanian actors in the justice system: the Ministry of Justice, associations of magistrates, the Bucharest Bar Association, the National Anti-corruption Department, and the Legal Committee of the Romanian Chamber of Deputies. The main absentees were the General Prosecutor's Office and the Superior Council of Magistracy. These important absences pointed out once more the difficulty of bringing together the main actors, even for debates concerning essential aspects of their own profession. The positive aspect regarding the participation of representatives from the abovementioned institutions was the fact that the representative of the main decision-making body on the topic (i.e. the President of the Legal Committee of the Lower Chamber of the Parliament, Mr. Sergiu Andon) was present all throughout the two days of the conference. This is especially worth-while mentioning as it is generally rather difficult to have Members of Parliament involved in such events, despite

the fact that they are the essential decision-makers in terms of legislation.

Results of the debate

An in-depth analysis of the positions taken at the conference by the various participants reveals the following opportunities and challenges of starting such a debate:

Challenges

There is always the danger (and the current practice demonstrates this) of modifying laws based on persons/personal motivations rather than on principles. Legislative coherence is still desirable. Correct justice acts continue to remain misunderstood by the subjects of the justice system due to the lack of legal culture among the ordinary citizens. Overwhelming workload for the prosecutors is still an issue.

Moreover, a clear definition of the authority of the Ministry of Justice in relation to the prosecutor's office is missing; a visible self-regulatory system is absent; the statute of the prosecutor is ambiguous.

The prosecutor is suspended between the Constitution and their organizational law; the judiciary is in an endless transition; reform projects fail to materialize; formal consultations with magistrates do not exist. Their position is not known.

Opportunities

Prosecutors do not hold back when it comes to starting investigations/inquiries; there are legislative guarantees and no monopoly of accusation in Romania; problem solving is slowly starting to be done at the level of principles, not on a personal level. There are signs that a culture of dialogue is starting to grow.

Debates, such as the current one, are regarded as the beginning of a reform process. They are also seen as a chance to be-

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CORA MOJOC
PROGRAM ASSISTANT

gin elaborating on well-documented studies, given the fact that we must know how others have dealt with similar issues in the past. These are opportunities to initiate the dialogue between prosecutors and judges in order to clearly define the essential terms. The statute of prosecutors must have a strong theoretical basis in order to strengthen its organizational culture. Also, it has been noted the evolution of the international co-operation in the European judicial space will determine the future of the profession in Romania as well.

Impact and follow up

The conference represented the initiation of the first major public debate on the topic. It also contributed to a constructive dialogue between otherwise adversarial actors.

At the end of the conference, a declaration was proposed by the National Union of Judges from Romania. This declaration could be the starting point for the reform process of the statute of prosecutors (see full declaration at http://www.kas.de/upload/auslandshomepages/rumaenien/statute_prosecutors_declaration1.pdf).

Contacts

Dr. Stefanie Ricarda Roos
Rule of Law Program South East Europe
Konrad-Adenauer-Stiftung
Str. Sf. Elefterie 27
RO – 050524 Bucharest
Romania
Phone./Fax: +40 21 410 82 35
stefanie.roos@kas.de
officerspsoe@kas.ro

The organizers published a supplement of the conference in a national newspaper with large circulation (*i.e.* Ziua newspaper). For next year, as part of the follow up, a publication of the main documents of the conference, in English and in Romanian, is planned.