Konrad -Adenauer- Stiftung

Außenstelle Bukarest

BRIEFING

ON THE CURRENT STATE OF EU ACCESSION CRITERIA IN ROMANIA

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The reform of justice in Romania is one of the toughest reforms expected from Romania and a key-point in ensuring EU membership.

After 15 years of inefficiency, lack of professionalism and integrity of legal professions generalized corruption and interference of the political sphere into the justice act, the justice reform was initiated in the beginning of the year by the current reformist Minister of Justice: Mrs. Monica Macovei, an outstanding legal expert and former human rights activist with the Helsinki Committee – Bucharest.

One of the first decisions of the Ministry of Justice was to initiate public debate on the National Anti-corruption Strategy 2005-2007 (SNA) and on an essential three-law package: Law on the Superior Council of the Magistracy (CSM), Law on the Organization of the Judiciary (JO) and Law on the Statute of Magistrates (SM).

The National Anti-corruption Strategy 2005 - 2007 considers the systemic problems within the Romanian judiciary, aims at guaranteeing the independence of justice, ensuring the quality and efficiency of the act of justice and the accountability for the act of justice.

The Strategy **reflects the unconditional political commitment for reform** of the justice system, by refining and rigorously implementing the legal framework, through legislative coherence and stability, and by institutional strengthening of the entities with important tasks in the field.

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Note! Transparency International (TI) Romania considers that the National Anticorruption Strategy (SNA) approved by the current government offers a viable framework for addressing "critical issues" in Romania. In a press release, TI Romania saluted the introduction in the Strategy of regulations regarding transparency of public funding, integrity tests, monitoring the publication of lists of donors to political parties, and elimination of criminal immunity for public notaries and bailiffs. Referring to the institutional strengthening of the National Anticorruption Prosecutors' Office (PNA), TI Romania appreciates the attention paid by the Strategy authors to PNA, calling for the allocation of appropriate financial and human resources to this institution. *Source: Ziua daily*

Although slow and marked by fierce opposition from within (which we consider to be an indicator of their impact), **reforms of the justice system are incremental**, **moving towards establishing a modern/effective justice system that is accessible, transparent, impartial, independent and efficient, able to implement the *acquis* and to align to European Union requirements** and to fulfill the commitments assumed in the framework of negotiations with the European Union, with a view to the November report and to accession in January 2007.

The Romanian Executive will assume responsibility in the Parliament for the justice reform law package in the first half of June.

A. JUDICIAL REFORM:

For the past 15 years, the justice sphere was marked by:

- *inefficiency*
- *arbitrariness*
- *corruption among the judges*
- *dependency on the political sphere*

This led to a very negative image of the Romanian justice system in the opinion polls. **A recent poll indicates that only 31% of the Romanians still believe in the reform of the Romanian Justice system**.

The **independence of the judiciary** is related to a very important package of three laws:

- law of the Superior Council of Magistracy (CSM),
- law on Judiciary Organization (JO)
- law on the Statute of Magistrates (SM).

Nevertheless, the reform of the judiciary with respect to its independence will not be achieved automatically once these three laws will be enacted. Other laws are necessary, such as the Public Ministry Law, the Statute of the clerks, the Magistrates' remuneration law' alongside with other procedural statutes.

The Ministry of Justice elaborated a first draft of the above-mentioned three-law pakage, but the Superior Council of Magistracy (CSM) – which is supposed to endorse it - postponed the discussion on grounds that the draft laws were not publicly debated before being sent to them. Not only that they were on MJ's web site for months, but they were also sent to them on the usual channels.

According to Reform of Justice Action Plan approved by Brussels, the Executive was supposed to adopt this three-law package by the end of April. The delay triggered by CSM may activate the safeguard clause which will postpone Romania's accession with one year.

Note! The modifications proposed by the Ministry of Justice are introducing two essential principles: efficiency of the justice act and accountability for the justice act. In other words, it ensures independence with accountability for the magistrates[1].

All the modifications, some of them more than others, are reason of war between reformist Minister of Justice, Monica Macovei and the CSM members.

[1] **Some of the modifications:**

- the heads of instances and of Prosecutor's offices will pass an exam for their positions (today they are appointed by CSM on basis of their CVs);
- the General Attorney of Romania and his/her deputies are appointed for a 3 year mandate, by the President of Romania, at the proposal of the ministry of Justice, after endorsement from CSM;
- revoking the General Attorneys follows the same procedure (today the GA can only be dismissed on disciplinary grounds and the verdict of indiscipline can only be given by a commission led by the G.A.);
- CSM members will have to choose between their position in the CSM and the positions of heads of judicial instances.(Senate changed this article expressly mentioning that only the CSM President and Vice-president will be banned from performing as judges or prosecutors. This means that all the other magistrates CSM members will continue to work in their courts and attend the CSM meetings only when asked to.

Thus not having a daily contact with the institution's activity; therefore, the CSM will be left in the hands of its headship and technical staff.

- The appointing of the General Attorney was one of the main reasons for fierce dispute between MJ and CSM. The latter accused interference of the political sphere (i.e. Ministry of Justice) into the justice system, although the current minister of Justice comes from the NGO sector, and is not member of any political party, but only supported by the Executive. Also, in the majority of the European countries the General Attorney is appointed by and subordinated to the Ministry of Justice
- **CSM members have little legitimacy in the public sphere**, since elections for this body were irremediably flawed. They took place at the end of 2004, under the former social-democrat administration, known for almost completely have subordinated the justice system. Elections were contested on procedural grounds by by the Association of Romanian Magistrates and other legal NGOs. Apparently, candidates were proposed by hierarchical chiefs and no challengers dared to run against official candidates.

Corruption is a very sensitive issue in the area of justice and perceptions on corruption within the judiciary is very high, people ranking judges as the second or the third in this respect.

Note! Last year, 83% of judges answered "yes", when questioned if, in the activity of judgment, they have been subject to pressures of any nature. They stated that most frequent forms of pressure have been caused by media (37%), followed by political pressures (19%), direct influence (16%) and the one exerted by the administrative leadership of the courts (6%)[2].

In order to ensure the capacity of the judiciary system to resist illegal pressures, it was found out that **safeguards for independence** must be provided. From this point of view, 81% of the judges answered that, safeguards are either insufficient or non-existent. At the same time, 94% of judges said that there is no protection regarding possible risks, which may occur during their activity.

[2] There are very little data in this respect, and no comprehensive study. The data we present comes from a study of 2004. The Ministry of Justice (during the last administration) tried to assess the judiciary's integrity and resistance to corruption, although the methodology employed has been highly questionable: questionnaires sent to the courts' presidents who distributed them to the judges under their authority, as well as collected them afterwards. 3403 judges, representing over 99% of the magistrates in the 15 Appellate Courts in the country participated in the evaluation

B. ANTI-CORRUPTION MEASURES:

The National Anti-Corruption Prosecutor's Office (PNA) has failed to produce the results and generally to meet the purpose for which it was created, mainly due to a focus on small cases of corruption.
There is controversy regarding the need for this institution, its place in the judicial system, as well as some of its decisions.

The representatives of the European Council and of the European Commission repeatedly indicated that **PNA is an inefficient structure**. One of PNA's representatives declared, however, in a press conference that "there is no provision in the law specifically indicating that PNA must be efficient."

- **One critical topic that arose during last year was the need for PNA independence.** The head of Office has referred to its accountability to Parliament as unnecessary and burdensome, as it increases the amount of work the organization needs to deliver regularly. This statement was perceived as an attempt to evade accountability to Parliament, in order to remain subordinated only to the Government.

- **The anti-corruption legislation was publicly advertised as a success by the former Government**, although from the very beginning serious criticism has been levied about the inefficiency of its enforcement in the absence of sanctions, narrow definitions, and inefficient structures. There was a lot of vagueness in the formulations, as well as unwillingness to investigate.

- Conflict of interest provisions are applied only for dignitaries and civil servants, excluding managers of state-owned companies. There are also omissions in the Emergency Ordinance (EO) concerning public procurement**. The conflict of interest issue is the source of many deeds which can only be described as corruption**. The definition of conflicts of interest is vague and covers only a couple of persons (husbands, wives, children) but not other relatives, nor business partners, or party friendships.

C. FREEDOM OF EXPRESSION:

Ministry of Finance(MF)'s re-scheduling long overdue payments owed to the state budget by privately-owned broadcasting corporations is no longer practiced and the MF started executing the media in debt.

There were clear indicators that the special treatment given by fiscal control bodies to media companies has resulted in a *de facto* editorial self-censorship within TV stations

during past years and in the 2004 coverage of the electoral campaign.

The restrictive influence on the editorial agenda and reporting style of most private TV stations has already been verified by monitoring reports carried out by independent media watchdog organizations, as well as by other domestic and international NGOs.

Note! Minister of Justice announced the intention of eliminating calumny from the Penal Code. Presence of calumny as a criminal offence in the Penal Code is considered as an excessively punitive measure which hinders the right to freedom of expression of the citizens and of the media. Maintaining calumny as a criminal offence was often criticized by the European Union and various international organizations, as an element which leads to self-censorship and limitation of the critical tone of the media.

The Penal Code was adopted by the end of June 2004. While "insult" was eliminated, "calumny" continues to be a criminal offence, the punishment being a penal fine of 10 -120 days. The fine may not be transformed into days of imprisonment, but the criminal offence will continue to be inscribed in criminal records thus having long term consequences for the convicted person.

D. MINORITIES/ANTI-DISCRIMINATION:

The draft law on Minorities is reason of disputes not only for among the representatives of various minorities, but also among various political parties or NGOs.

The draft law on minorities is a creation of all the MPs of the recognized national minorities and it stipulates, besides the concept of cultural autonomy,

- usage of maternal language in schools
- usage of maternal language in public administration and justice
- preservation of privileges for the current political actors of the minority communities, especially for the ruling UDMR party.

Civil society accused the draft law of being a normative act which does not protect the interests of all national minorities, but only those of the Hungarian minority. The Executive decided to assume responsibility in the Parliament only for the laws regarding reform of justice and property. The law on minorities will have to pass through the usual procedures in the

parliament.

Note! Marko Bela, leader of the Hungarian Democratic Alliance in Romania (UDMR), stated that there are divergent opinions in the governing coalition on the draft legislation on minority rights, especially on the issue of decision-making rights in education, culture and press. He said the coalition partners seemed unwilling to grant minorities rights to make decisions in these areas, opting instead for mere consultation rights. Marko said the version of the legislation favored by his party would provide important prerogatives for all minorities in general, and in particular for the Hungarian minority, since it would give them the opportunity to participate in decision making on cultural identity in key areas - education (in the mother tongue) and culture. Marko added that the ratification of this draft law would grant the principle of cultural autonomy. The Government has decided to ask the view of both the Venice Committee and the National Minorities' High Chancery with the Organization for Security and Cooperation in Europe (OSCE) about the legislation draft. Source: Bucharest Daily News

- Discrimination continues to be a problem, as the institutions which must safeguard minority rights are weak and indecisive, and legislation continues to include discriminatory provisions or offers inadequate protection.

  In 2003 and 2004 the anti-discrimination law has been amended, and due to the sustained advocacy of several NGOs with the Human Rights Commission of the Senate, and in spite of some opposition expressed by the National Council for Combating Discrimination, **several improvements have been made**.