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Proposed reform of criminal justice legislation in Romania weakens the fight against corruption and other serious crimes according to Venice Commission

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Venice, 19.10.2018 – In an Opinion adopted today, the Council of Europe's [Venice Commission](#) expresses concern that many draft amendments to the Criminal Code and the Criminal Procedure Code in Romania seriously weaken the effectiveness of its criminal justice system to fight corruption offences, violent crimes and organised criminality.

The Venice Commission recommends that the Romanian authorities conduct an overall re-assessment of the amendments in both codes through a comprehensive and effective consultation process in order to come up with a solid and coherent legislative proposal benefiting from a broad support within the Romanian society and taking fully into account the applicable standards, and to follow the guidance of the Constitutional Court. On 12 October the Constitutional Court of Romania established that over 60 articles of the draft law amending the Criminal Law Procedure were unconstitutional and is expected to examine the constitutionality of the draft amendments to the Criminal Code later this month.

The Commission also adopted with some amendments the preliminary opinion issued in July on three drafts laws amending existing legislation on the statute of judges and prosecutors, judicial organisation and the Superior Council of Magistracy. This opinion criticises that these laws would adversely affect the efficiency, quality and independence of the judiciary, with negative consequences for the fight against corruption. The three laws have already been promulgated and entered into force.

The Opinion notes that the two government emergency ordinances just recently adopted by the Romanian government address issues covered in this opinion. Whilst the Commission welcomes as a positive step the postponement of the entry into force of the early retirement scheme for magistrates, which will provide Parliament time to reconsider this scheme, it did not examine other parts of this ordinance and reserves its position in this respect.

With regard to the draft amendments to the Criminal Code and the Criminal Procedure Code, the opinion underlines that although the public debate has focused on the risk that they may undermine the fight against corruption, their impact is much wider. According to the Commission, the reform could significantly affect the criminal justice system and its effective and efficient operation, in particular the investigation, prosecution and adjudication of other serious and complex forms of crime.

The opinion criticises the excessive speed and the insufficient transparency of the reform process, especially because there were more than 300 amendments, many of them radically reforming criminal policy. The haste in their adoption had a negative impact on the quality of the legislation, which contains contradictions that could cause legal uncertainty in the future.

The Commission also stresses that a more comprehensive process of discussion with legal practitioners and society at large would have been necessary, in particular taking into account that the amendments were questioned by actors such as the High Court of Cassation and that they were very divisive in Romanian society and institutions. In addition, considering the clashes between institutions (for example, the President of the Republic, the High Court of Cassation and the Prosecutor General versus the Parliament), the Commission highlights the need for more time to search for a broader support for the legislative package.

The opinion does not provide a detailed analysis of all amendments to the Criminal Code and the Criminal Procedure Code, but only those which raise the most serious concerns.

The Commission in particular recommends to the Romanian authorities:

Criminal Procedure Code

- to thoroughly review the amending law as a whole to ensure that the reform will not have a negative impact on the functioning of the criminal justice system.
- While all the amendments should be thoroughly reviewed, to amend in substance the rules on communication on on-going criminal investigations (Article 4), starting a criminal investigation (Article 305), evidentiary thresholds and inability to use certain forms of evidence (Articles 139, 143, 153, 168), and the right to be informed of and participate in all prosecution acts (Articles 83 and 92)
- to reconsider the final and transitional provisions.

Criminal Code

- to reconsider and amend the provisions regulating corruption-related offences, in particular bribery (Article 290) – the Opinion stresses that the draft amendment would discourage bribe givers from co-operating with law enforcement -, influence trading and buying (Articles 291 and 292), embezzlement (Article 295) and abuse of service (Article 297);
- to reconsider and amend some other provisions with a more general impact, such as those on the statute of limitations (Articles 154-155) – according to the Opinion, the proposed amendment creates a high risk that in complex cases the crimes at issue be time-barred before the investigation and trial can be carried out-, false testimony (Article 273) and compromising the interests of justice (Article 277 CC);
- to reconsider and amend the provisions on extended confiscation measures (Art. 112¹) and the definition of public servant (Art. 175), ancillary penalties (Article 65), in order to bring them in line with the country's international obligations.

The as-adopted opinion will be made available electronically on the Venice Commission website by Monday afternoon 22 October.

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