

Romania: anti-corruption institutions are getting weaker

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On 4 July, the Romanian parliament hastily passed controversial changes in the Criminal Code and the Code of Criminal Procedure, and on 9 July President Klaus Iohannis dismissed Laura Codruța Kövesi from the position of chief prosecutor of the National Anticorruption Directorate (DNA) because he had to comply with the Constitutional Court's decision. Attempts have been underway for a long time in Romania to weaken the anti-corruption system. These moves prove they have been clearly intensified recently. This system was so far viewed, for example by the European Commission, as a model to be emulated. This process is aimed at protecting the interests of members of the government camp, above all, Liviu Dragnea, the president of the co-governing Social Democratic Party (PSD), who may face imprisonment on charges of abuse of power since two sentences have been passed against him. In this context, the government has taken a dual-track approach: on the one hand, by amending legal regulations it has limited the catalogue of corruption crimes and has reduced the penalties than can be imposed for them, and on the other, it has been making efforts to replace the holders of the key positions in the prosecution authorities.

The weakening of the DNA

On 9 July, the Romanian president, Klaus Iohannis, signed a decree dismissing Laura Codruța Kövesi from the position of chief prosecutor of the National Anti-corruption Directorate (DNA). The motion to dismiss Kövesi was put forward already in February this year by the minister of justice, Tudorel Toader. However, the president refused to sign the document, declaring he was fully satisfied with the work of the DNA head so far and that he had confidence in her. Nevertheless, at the end of May, the Romanian Constitutional Court passed a decision ruling that the president had to grant the motion brought by the minister of Justice. At the same time, the governing centre-left coalition threatened it would launch a procedure to suspend Iohannis, unless he complied with the Constitutional Court's ruling. A special meeting of the coalition was planned for 9 July during which a final decision regarding this issue was to be passed.

The DNA was established at the time when Romania was preparing for EU accession. This institution has prosecution and investigative powers and specialises in prosecuting corruption, especially among senior government officials. Laura Codruța Kövesi, who directed it from 2013, until recently was one of the key figures in the Romanian anti-corruption system. The spectacular successes of the system could be credited to her to a significant extent. Evidence collected by the DNA was used as grounds for sentencing Liviu Dragnea in two cases (in 2016 and 2018) and enabled the launch of proceedings against the

former prime minister and PSD leader, Victor Ponta, and the mayor of Bucharest, Sorin Oprescu (linked to PSD), amongst other officials. During Kövesi's term in office, the DNA contributed to sentencing 37 officials (including nine ministers and former ministers, 27 MPs and senators, and one member of the European Parliament). Most cases conducted by the DNA concern politicians from the left section of the political scene. However, its prosecutors have also investigated individuals originating from right-wing circles linked to the former president Traian Băsescu (who nominated Kövesi) and President Iohannis (who is Kövesi's political protector). The DNA's high effectiveness (over 90% of cases it has launched have ended in sentencing verdicts) have made it and its head very popular among the Romanian public.

Kövesi's removal is beneficial from the point of view of the governing camp and will almost certainly affect the DNA's effectiveness. It should not be ruled out that the government's political influence on this institution will increase soon. The choice of the DNA's new chief prosecutor is a prerogative of the minister of justice (the nomination is granted by the president upon the minister's motion). The DNA's activity has been incessantly criticised for a long time by the centre-left whose politicians – often with tacit support from a section of the opposition – have been making efforts to curb the competences of this institution. Members of the government camp, above all Dragnea, are claiming that the cases conducted by the DNA resemble a witch hunt and are aimed at eliminating political opponents. They are also promoting the thesis of the existence of a so-called 'parallel state', i.e. an informal deal between the president, the services and a section of the judicial system, and the anti-corruption prosecution authorities, which are struggling against the government and making attempts to influence the country's policy in an undemocratic manner.

The criticism of legislative changes

On 4 July, the governing coalition pushed through controversial amendments of the Criminal Code and the Code of Criminal Procedure, for example, changing the definition of 'abuse of office'. The amendments undermine the effectiveness of the prosecution authorities in combating corruption and have been introduced above all in the interest of the centre-left politicians who are facing or may face criminal corruption charges. The key figure in this context is the leader of the co-governing party PSD and the speaker of the Chamber of Deputies, Liviu Dragnea, who on 21 June was sentenced (the sentence is not legally binding) to three and a half years in prison for abusing his position in local government to fictitiously employ two Social Democrat activists at a local office.

The amendments were passed by the Romanian parliament instantly. This is proof of Liviu Dragnea's huge determination. He hopes that the legislation amendments will help him avoid serving the prison sentence and maintain his position as the PSD's president. From Dragnea's point of view, it is essential that the new regulations take effect as soon as possible because the appeal against his sentence will begin to be considered in September. Pursuant to the new regulations, it will be possible to sentence for abuse of power only those individuals who have abused their official position in order to gain financial benefit for themselves or their immediate family. A further condition is that the crime has to be committed during working hours. The upper limit of the penalty that can be imposed for this crime has also been reduced from seven to five years.

Both the content of the new regulations and the procedure of their implementation have been extensively criticised by President Iohannis and opposition circles. Iohannis who, considering the weakness of the opposition groupings, is the strongest political opponent of the Social Democrats, has branded the new amendments passed by the parliament as 'toxic and harmful'. He also refused to promulgate them and contested them at the Constitutional Court. A similar decision was made by representatives of the opposition.

The changes to the rules of combating corruption are also being closely watched abroad, although the government's moves have not provoked any consequences in relations with Bucharest's main partners, at least for the time being. The European Commission issued a statement on 4 July expressing its concern about the situation in Romania, emphasising the importance of combating corruption and maintaining an independent judiciary system. It also pointed out that if the new Romanian regulations are found to be contrary to European law and international standards, it will not hesitate to take action to ensure such compliance. One day later, the secretary general of the Council of Europe appealed to the government in Bucharest to refrain from passing the new regulations before the publication of the opinion of the Venice Commission. Earlier, on 28 June, twelve embassies of Western European countries, the USA and Canada also appealed to the Romanian government to refrain from passing legislative changes that may weaken the fight against corruption there and undermine the principles of the rule of law.

The position of President Iohannis

There is no doubt that Iohannis's decision will adversely affect (at least in the short run) his popularity. The Constitutional Court's decision ordering the president to sign the decree dismissing Kövesi put Iohannis in a difficult situation where he had no good way out. In his desire to maintain his position of guardian of the constitution and protector of the rule of law, he could not challenge the court's decision, especially given the fact that in September the same institution will decide on the compliance of the recent amendments of the Criminal Code and the Code of Criminal Procedure with the constitution. Iohannis was likely aware of the fact that the decision to dismiss the head of the DNA will not be understood by a significant part of the incumbent government's opponents who believe that the president, capitalising on the high public support for himself and the head of the DNA should have delayed signing the decree or should have refused to comply with the court's decision altogether. President Iohannis will doubtless want to regain the trust of this part of the electorate by maintaining a clearly critical stance on the governmental changes affecting the judiciary system and prosecution authorities. The dispute between the government and the president will escalate as the time of the presidential election planned for the end of 2019 approached, since Iohannis will seek re-election.

The internal and external consequences

There is no doubt that the government camp is determined to permanently neutralise the anti-corruption institutions, which it views as a threat. The government's moves are primarily subordinated to the motivation of Liviu Dragnea, who is determined to avoid serving a prison sentence at any price, since this would most likely mean the end of his political career. However, the success of the coalition's moves will depend on the reaction from the public

and the Constitutional Court's decision concerning the laws pushed through by the parliament in early July. If these are deemed unconstitutional, the political centre-left will most likely be unable to pass the necessary legislation amendments before the final court decision is passed in the case of Dragnea. The reaction of the Romanian public will also affect the scope of the changes in the anti-corruption system. Both the modification of the criminal law and the dismissal of Kövesi are likely to provoke protests across the country. However, the scale of the protests is difficult to predict, given the fact that this is the summer holiday season, and considering the disappointment with the decision made by Iohannis, who had so far been viewed as one of the main representatives of the anti-government opposition. The Romanian government camp is also taking foreign reactions into account, but these do not play such a great role as the domestic variables. The weakening of the anti-corruption system will also beyond any doubt provoke an increase in tension between Bucharest and the European Commission. However, it does not seem that the coalition is interested in raising the temperature of the dispute and using it in political games. Given the great popularity of the EU in Romania and the high level of confidence in its institutions, any attempt at entering into open conflict with Brussels would not be supported by the broader public. Therefore, it should be expected that, even though Bucharest will not make concessions as regards the issues that are fundamental for its interests, it will be willing to take into account some of the suggestions received from abroad.