

CORRUPTION AND JUSTICE IN ROMANIA – REPORT ADVISES EU TO MAINTAIN CONTROLS

BRUSSELS - LONDON, 25 April 2009: A new report on the state of reform in Romania's justice system, published in Brussels on 25 April, finds that progress has slowed down since Romania joined the European Union (EU) in 2007 and that the anti-corruption fight has stalled. A similar conclusion was reached with regards to Bulgaria, and the report advises the EU to continue its monitoring of the two countries' reform efforts.

The report – commissioned by the Centre for European Policy Studies, a leading think-tank based in Brussels, and the Open Society Institute Bulgaria – comes two months ahead of the European Commission's yearly summer report on Romania's efforts under the Cooperation and Verification Mechanism (CVM). The CEPS report's author, Dana Denis-Smith, advises that the CVM, a three-year mechanism designed to press Romania and Bulgaria to continue the reform of their justice system after accession, should be renewed when its term comes up for renewal in 2010. The findings of the CEPS report – "Making justice count: Romania's progress toward rule of law" were presented to EU policy-makers and practitioners, some of which are directly involved in working with Romania under the CVM, during a one day conference in Brussels, on 24 April.

"Romania's justice reform is very patchy", said Dana Denis-Smith, director of Marker Global, a London-based consultancy, during yesterday's conference. "Without a clearer strategy on how reform should be carried out, results will not improve and the European Commission is correct in continuing to monitor Romania's progress. Within the current economic climate and an expected drop in the standards of living of the average Romanian, a better justice system is even more crucial - it is not uncommon that crime rises in times of economic decline and in order to tackle this rise Romanian authorities need a systematic and strategic approach", Denis-Smith added.

Apart from a comprehensive analysis of the existing literature on the subject, the 40-page report is the result of extensive interviews with local actors involved in reforming the justice system, including government officials as well as civil society representatives. The report makes a series of recommendations (*see below*) to EU and Romanian institutions, to help progress Romania's efforts in fighting corruption, improving the effectiveness of the courts system and diminishing political influence over the judiciary.

The report is part of a wider CEPS research project – "Safeguarding the rule of law in an enlarged EU" – and provides an independent assessment of domestic governance and rule of law in an enlarged EU, taking as case studies Bulgaria and Romania and opening up a similar debate in relation to issues and opportunities for safeguarding the rule of law across all EU Member States.

REPORT RECOMMENDATIONS

1.1 Recommendations to national institutions

Legal certainty

1.1.1 Ministries should build their administrative capacity to commission and implement policy analyses, cost-benefit analyses and public consultations as is already required by the legislation;

1.1.2 Set up a legislation “drafting unit” (by unifying the current ministry drafting units) staffed by a mixture of lawyers/ political scientists and NGO representatives to check for consistency and possible conflicts of law in all or, at least at the start, key new legislation.

1.1.3 Put in place a more transparent and participatory process of drafting and adopting regulations that involves consultations with professionals and NGOs;

1.1.4 The requirement that the parliament and its Law Select Committee have to give their consent to charges being brought against a MP should be removed;

1.1.5 Address the confusion present in the Constitution by constitutional change with regard to whether prosecutors are magistrates or executive agents – more clarity and a political decision is needed in order to separate the two judiciary categories;

Transparency and accountability of institutions

1.1.6 Introduce and enforce a clear definition of “connected persons” for the purposes of public appointments to avoid conflicts of interests; the National Integrity Agency (ANI) can oversee the correct application of this definition;

1.1.7 The methodology applied by the anti-corruption authorities is not sufficiently professional and streamlined – they need to access a wider range of sources to build up their cases for prosecution and not rely on the media/ state agencies alone;

1.1.8 Ensure that anti-corruption bodies are fully staffed and, if there is a lack of suitable candidates, outsource for services via a transparent procurement process;

1.1.9 Enforce security rules and institutions rules equally so that leaks do not happen to be later used as political weapons;

Independence and professionalism in the judiciary and other institutions

1.1.10 Introduce more control over the storage of documents in court proceedings and allocate responsibility to the judge/ court clerks if leaks occur during a trial.

1.1.11 Human resource should become a priority in all judiciary institutions – introduce and monitor a civil service HR

policy to ensure consistent staff quality; make this a top priority, ahead of just modernising technology;

1.1.12 Introduce a truly transparent system for the selection of personnel at all (and in particular at the top) levels in the legal sector. Clearly established criteria for the assessment of performance do not seem to exist/ or if they do, they are not applied;

1.1.13 Introduce staggered elections for the Superior Council of the Magistrates (CSM) -every 2 years - in order to renew the CSM composition by one third and force magistrates to be more active in the profession's electoral process;

1.1.14 Extend the time in office of the CSM president to 2 years, with a restriction that one may not be elected during the first 2 years of their mandate, but can be re-elected for a second term;

1.1.15 Introduce the possibility that CSM members could be revoked at any time during their mandate if they do not actively participate and contribute to CSM;

Protection of human rights

1.1.16 Better enforcement of decisions from ECJ/ ECHR;

1.2 Recommendations to EU institutions

1.2.1 The CVM should not be lifted at the end of the 3-year monitoring period; although it is useful that the formulations of the BMs are broad to cover more rather than less of the reform needed, this broad formulation is often used by the Romanian government to hide their lack of progress. Some more precise form of monitoring/ defining further some of the elements that form each of the BMs might result in more accountability within the national institutions;

1.2.2 The CVM should not be annually renewable;

1.2.3 If renewed for the medium term (another 3 years minimum), the CVM benchmarks should become more flexible and more defined to allow for the areas where progress is registered to be dropped without having to drop the whole monitoring process [and to allow the possibility to introduce new areas, as needed];

1.2.4 If cuts of EU funds are envisaged as a potential sanction on Romania, I would advise on a carrot and stick approach: the stick is that Brussels cuts all funds for Romania, and the carrot is that Romania may draw on that money in order to fix the justice system—once the judiciary functions properly, the money may be accessed in all other areas, and Romania would have already had a core of well-versed people with regard to accessing EU funds.

For a full version of the report, please go to: http://shop.ceps.eu/BookDetail.php?item_id=1833

ABOUT THE REPORT'S AUTHOR

Dana Denis-Smith is the Managing Director of Marker Global. She has extensive experience of running business intelligence assignments across Eastern Europe and Russia in order to assist investors mitigate risks associated with fraud,

corruption and organised crime. Prior to setting up Marker Global, Dana worked as an English-qualified solicitor with law firm Linklaters in London and Amsterdam. She started her career as a journalist and worked for a number of business intelligence and media organisations in Russia and Romania as well as for The Economist Group in London.

Dana is educated in London at the London School of Economics and BPP Law School and is a member of the London-based Institute of Directors, the Royal Institute of International Affairs and the Law Society of England & Wales.

FURTHER INFORMATION

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