

The public debate in Romania about the Government Emergency Ordinances concerning pardons and the Penal and Penal Procedure Codes

▪ Last week, the Romanian Government launched a public debate concerning two projects of Emergency Ordinances.

Currently, "the public debate" is just an e-mail address where you can write your opinion. There is no announcement from the Ministry of Justice with respect to an actual, physical "public debate" on this topic.

- The first is concerned with pardoning the sentences for crimes which constitute a minor social danger (excepting violent crimes and corruption-related crimes).

Actually, this Emergency Ordinance refers to:

- The total pardoning for punishments up to 5 years, provision which could apply to charges of corruption and abuse of office or blackmail committed by someone holding public office.
- All inmates over 60 years of age will be released, regardless of the crime committed (some articles mention that for some severe crimes this will not apply)
- People who denounce criminal acts will no longer have legal protection if the denounce occurs later than 6 months after the crime has been committed
- Punishments will be pardoned even for those serving suspended sentences (such as PSD leader Liviu Dragnea, convicted for electoral fraud)
- The second concerns amendments to the Penal and Penal Procedure Codes, in order to adapt it to the recommendations from the Constitutional Court.

This Emergency Ordinance not only adapts the Penal and Penal Procedure code to the recommendations of the Constitutional Court but also takes the teeth out of the abuse of office charge by:

- Limiting punishment for abuse of office from 2-7 years in prison to 6 months - 3 years in prison or fine

- Setting a 200.000 RON (45.000 EUR) threshold for damage. There is no crime if the damage is smaller than this.
 - Criminal action in case of abuse of office can only start if there is a complaint (which has to be filed within the 3 months after the crime was committed by the person who has been damaged)
- The reasons behind the two projects:
- **Romania was condemned by the European Court of Human Rights (ECHR) for the conditions in its prisons and risks paying almost 100 million Euros in fines, if it does not take urgent measures to improve said conditions. Romanian prisons are overcrowded, the objective of the Emergency Ordinances concerning the pardons being specifically to reduce the number of inmates convicted for crimes which do not entail major social dangers.**

It is strange to think that the ECHR recommendation is to pardon inmates, not to actually improve prison conditions - which the Emergency Ordinances do not do.

- **In the case of amending the Penal and Penal Procedure Codes, the objective is to harmonize the legislation with Constitutional Court Decisions, specifically in the case of articles which were deemed by the Court as unconstitutional.** Consequently, Romania has a penal legislation which does not correspond in its entirety to the provisions of the Constitution, which can affect the activity of the Judiciary. In the case of this ordinance, we are talking about a necessary decision, given that the legislative attempts to this end have lagged behind.
- The Emergency Ordinance concerning collective pardoning is unconstitutional (art 73: amnesty and collective pardoning must be adopted only through Parliament)
 - Pardoning cannot be applied to suspended sentences (according to Law 546/2002), which the Emergency Ordinances aim to do.

▪ **The Government started a debate on the two projects specifically to reach a common point with the institutions, parties and society concerning the form of the two initiatives**

DNA (Anti-Corruption Directorate), the General Prosecutor's Office, The President of the High Court of Cassation, DIICOT (Organised Crime and Terrorism Investigation Directorate), National Union of Judges already criticised the proposed Emergency Ordinances.

▪ **In spite of the clear intentions of the Government to solve urgent problems and to open up the debate to society, the opposition parties have claimed that these proposals would serve to protect corrupt politicians, which is false. The leaders of the opposition parties have instigated the population to public protests, using a whole disinformation and propaganda campaign, built during the last week with the purpose of spreading false information about the projects.**

○ The PNL and USR leaders, as well as PMP MPs have openly taken part in these protests and have emphasized their political component.

○ Romanian President Klaus Iohannis has called for the withdrawal of these projects and has chosen to take part in the protests. We believe that, through its significance, this gesture is a first for a Romanian President and goes beyond the constitutional role of the president, which is that of a mediator. Moreover, the president's gesture can have unpredictable consequences, affecting the normal course of what was supposed to be an open public debate.

▪ **The attempt of the opposition parties to take political advantage of a positive and transparent Government decision can bring negative effects for Romania's image and to the democratic process.**

• **More than 25 PSD MPs, local councillors and mayors will be acquitted if the Emergency Ordinance to change the Penal Code is adopted.**

▪ We underline the fact that this action of the opposition parties and of the president comes against the background of the adoption, by the PSD-led Government, of several measures with major economic and social impact (wage and pension increases, as well as tax reductions). One of the

objectives of the opposition actors is to affect the good functioning of the Government.

▪ We remind you that this cabinet came into office after a categorical electoral success obtained by PSD during last December's elections, when almost 50% of Romanian voters supported our party. Consequently, a solid parliamentary majority was built with other parties – together we wish to implement a progressive program based on economic growth and social justice. Since the elections, we have been confronted with a lack of dialogue from the opposition and the President, which has affected the democratic climate in Romania.

• The changes contained in the Emergency Ordinances could be adopted via regular legislative procedure, especially since PSD has a "solid parliamentary majority [...] built with other parties". However, as opposed to normal laws, Emergency Ordinances immediately become law, produce effects which cannot be annulled and cannot be contested at the Constitutional Court

▪ **Our desire is for the current atmosphere to become peaceful and for the opposition parties to accept the result of the popular vote and cooperate with the new parliamentary majority, instead of looking for any method to block it and instigate people against it. We will continue to respect the law and put our governing program into effect, hoping to be able to count on your support should the current situation deteriorate.**