
Press release

The Criminal procedural code amendments: new threats to the human rights

The Open Society Foundation and the Center for Juridical Resources express their deep concern for the future of the rule of law in Romania. Under the pretence of fighting against corruption and of respecting some so-called EU request, the recent modifications brought to the Criminal procedural code represent, in fact, severe transgressions of the human rights, especially of the person's right of a private life, the right of defence, with serious consequences upon the country's democratic evolution.

1. We consider as unacceptable the possibility offered to the prosecutors to intercept the correspondence and to make phone recordings for 48 hours without a mandate emitted by a judge. This fact is even more severe as the Ministry of Justice (who initially requested for this thing to be possible for 72 hours!!) did not offer any serious argument for such a serious restraint of the right of a private life, and thus for the infraction of the Art. 8 from the European Convention on Human Rights, besides the eternal excuse regarding the fight against corruption, the organized criminality, and, eventually, the terrorism. We underline the fact that accomplishing these goals, of an importance we do not contest, must take place without abdicating from the principles of the rule of law, of a functional democracy, based on the human rights respect.

2. It is also unacceptable the interference in the attorney-client relation, by intercepting their phone conversations, the confidentiality specific to this relation being essential for assuring the right of defence, guaranteed by the article 6 from the European Convention on Human Rights.

3. Continuing the present practice of the phone recordings being made by RIS (Romanian Information Service) including in the cases instrumented by the prosecutor, is another breach in the person's right – recriminated or inculpated – of a private life and of defence and, implicitly, of a right and equitable process.

The justification of the existence of the gear only at RIS is a lousy excuse for a state that pretends to respect the rule of law. The endowment of the Prosecutor's Offices with the specific gear, even more expensive, would have been more appropriate for the principles Romania should function on. The intrusion of the secret services – even by the simple fact of recording – in the Prosecutor's offices' activity, therefore in that of the judicial authority, is inadmissible.

Instead of modifying the national security law and the present draft laws permitting the RSI agents to intercept communications, the phone ones included, for 48 hours without a mandate, the Ministry of Justice opted for the opposed solution, by increasing the sphere of the persons that can do that, by including the prosecutors. It is the reason for which the Ministry of Justice never expressed a critical point of view regarding the exaggerate rights of the information and contra information agents, the intercepting of the phone conversation without a mandate included.

Besides the breach of the human rights above-mentioned, we underline another severe consequence of these latest legislative decisions: instead of a justice reform that would have strengthened the judge's role, make him more accountable, and implicitly increase the public trust in the judicial power, the present regulations lead to a undermining of the judge's position, to their qualification as negligible quantities, based on a prosecutor's punctual interest. Instead of an evolution towards a functional rule of law, with an efficient Prosecutor's Office but controlled by the judicial power, there is the risk of getting in that point in which the old Prosecutor's Office will strengthen. Such a criminal policy, more appropriate to a police-state, will not bring us any closer to the European Union, because not by restraining the human rights we will become compatible with EU's standards and requests. In a functional democracy, as Romania wishes to be, it is mandatory for the fight against any type of criminality to take place only by respecting the democratic rules and the human rights.

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