

With Romania due to join the European Union (EU) on 1 January 2007, a number of crucial steps were taken in 2006 to change the country's legal framework and implement laws corresponding to EU requirements. Yet, additional legal reforms are still necessary, for example a total overhaul of the criminal code, which was adopted in 1968 and has been repeatedly amended during the past decade but remains outdated.

Amendments to the criminal code approved by parliament in 2006 brought some welcome changes – such as decriminalization of “insult” and “defamation,” while others were controversial. Among the latter was the introduction of criminal liability of legal entities, an entirely new concept, which potentially leaves room for arbitrary interpretation and the effects of which therefore are difficult to predict.

The implementation of the criminal code amended in 2004 and due to enter into force in 2005 remained suspended because of criticism by judges that they were unfit for application. Moreover, the Ministry of Justice was reportedly drafting yet another new criminal code, the contents of which remained unclear at the end of the year. This ambiguous legal situation had a negative impact on the work of prosecutors, judges and lawyers and contributed to public mistrust toward the judiciary.

Another matter of concern was the handling in parliament of a draft bill aimed at creating a powerful instrument to fight white-collar corruption. The draft, which was prepared by the Ministry of Justice, provided for the establishment of an independent “national agency for integrity” with considerable powers to review conflicts of interest and incompatibilities of public officials and their revenues/assets. However, during the consideration of the draft in the parliament, discussion did not, as expected, focus on how to amend some problematic provisions of the bill,

but the very essence of the draft bill was opposed by an ad hoc coalition of MPs from both ruling and opposition parties opposed. As a result, the Senate adopted a seriously watered-down version of the draft, which deprived the new agency of all real powers and, thus, turned it into a useless tool. Protests by NGOs, media and well-known personalities were to no avail. At the end of the year, the draft was pending in the Chamber of Deputies.

Secret services

While there was an urgent need to reform the distorted system of secret services, both the manner in which it was initiated in 2006 and the contents of the bills gave rise to concern.

Draft legislation on security and intelligence activities was initiated by the Supreme Council of the National Defence, i.e., de facto secret services themselves, although they do not have any constitutional right to draft laws. A package of four draft laws became public only in April when the parliament refused to add it to its agenda because of the secret and irregular process in which it had been prepared and transmitted to the parliament.

APADOR-CH strongly criticized the four draft bills. The organization was, *inter alia*, concerned that the draft laws provided for an excessively vague definition of threats to national security; a high level of secrecy of the organization and work of the secret services; weak parliamentary control of the secret services; and lack of guarantees for protection against abuse of the right of individuals by the secret services. These proposed changes in general would not serve the purpose of a genuine reform of the intelligence services but would indeed be contra-productive.

Following a broad public debate, the government prepared its own version of bills on the topic, which reflected many proposals made by APADOR-CH. These

draft bills were submitted for comments to the secret services, various ministries and experts and it was expected that a final version of the draft laws would be submitted to the parliament at the beginning of 2007.

Police misconduct

Police, sometimes assisted by *gendarmes*, used excessive force against individuals who had allegedly committed offences.

- ◆ During at least two police raids – one of a Roma neighborhood in the town of Lugoj and the other of the supporters of a football team in Bucharest – people were shot at and injured by police officers. The police justified the use of firearms by police officers in the Roma community as legitimate self-defence. In the latter case the police half admitted the excessive use of force.

- ◆ In July, two elderly people who had had an argument with neighbors were handcuffed and severely beaten by the police officers who arrived.

- ◆ In August, a suspected thief was shot and killed when running away in Bucharest. The case was under investigation at the end of the year.

- ◆ In September, a mentally disabled young man was seriously beaten in a police station by officers who were allegedly attempting to extort a confession from him. This case, too, was still investigated at year's end.

APADOR-CH concluded that a major underlying problem was that legislation in force allowed for the use of force or firearms even if suspects do not pose any threat to the life or physical integrity of others. The organization called for an overhaul of these provisions.

On a positive note, at the end of the year it appeared that such brutal police interventions stopped altogether.

A project implemented by APADOR-CH showed that there had been no tangible results of the work of the Public Order Territorial Authority (POTA), an external instrument established in 2002 to monitor police, and that it remained largely unknown not only to the public but also to police. The results of POTA monitoring results are due to be published in March 2007.

Conditions in prisons and detention facilities

A new law on prisons entered in force in October, thus replacing an obsolete law on prisons from 1969. Many of the changes APADOR-CH had asked ever since it began monitoring prisons in 1995 were included in the new law. Among these were provisions requiring that each prison be supervised by a specially appointed judge and that detainees be classified on the basis of clear criteria, as well as provisions prohibiting prison staff from using chains and limiting the number of situations in which they can resort to handcuffs. APADOR-CH also noted that a number of provisions on medical care and education in prisons will, if adequately implemented, bring prison conditions closer to the European standards.

Actual prison conditions, however, remained a concern. Although overcrowding has decreased over the last few years, it was still a problem, one reason being the lack of alternatives to imprisonment for first time or petty offenders. The medical care offered in prisons was below normal standards and educational programs failed to prepare prisoners for social reintegration upon release. Likewise, the country's probation system, which could have played an important role in the reintegration of released prisoners, did not function properly because of a lack of resources.

The trend towards more openness by police that began in 2005 continued in

2006 and was also reflected in the fact that APADOR-CH was permitted to enter police lockups without prior notice; it conducted five such visits during the year. It documented deficiencies in material detention conditions, e.g. inadequate space per detainee, low-quality food, superficial medical assistance and no real daily physical exercise. In addition, it expressed concern about violations of the confidentiality of discussions between detainees and their lawyers, an infringement of due process rights.

Freedom of expression, free media and access to information

In a major development relating to freedom of expression, defamation was de-criminalized, as a result of which defamation could only become the subject of civil lawsuits. However, it remained a concern that the moral damages awarded in civil cases were often high, thereby encouraging self-censorship among journalists.

Another matter of concern was that the new law on religious freedom adopted by the parliament in December prohibited defamation of religious symbols. Many NGOs, including APADOR-CH, cautioned that this provision may result in violations of the right to freedom of expression. The president signed the bill into law on 20 December.

The law on access to information was amended so as to extend the scope of entities that are obliged to provide information of public interest upon request, among

others to commercial companies where the state is the main or sole shareholder.

In terms of implementation of the law, problems remained with respect to obtaining sensitive or complex information. APADOR-CH won two important legal cases on such matters. In one of these cases, the government was ordered to release copies of the minutes of several meetings, which it had argued were classified. In the other case, the Bucharest City Hall was ordered to make available copies of public procurement contracts, which contained confidentiality clauses limiting access.

Freedom of religion and religious intolerance

In a July decision, the European Court of Human Rights accepted the friendly settlement of the parties in a case involving the organization of Jehovah's Witnesses and 14 of its members. The applicants were represented by APADOR-CH.¹ As part of the settlement, the organization of Jehovah's Witnesses was officially recognized as a religious denomination in Romania, as a result of which all the rights and obligations provided for by national law with respect to such denominations became applicable to it. The government also undertook to ensure non-discriminatory religious assistance in penitentiaries and places of detention and recognized that past criminal convictions of Jehovah's Witnesses on conscientious objection grounds represented an infringement of the European Convention.²

SOURCES FOR FURTHER INFORMATION:

- ◆ Association for the Defence of Human Rights in Romania - the Helsinki Committee (APADOR-CH), at www.apador.org

Other organizations:

- ◆ Centre for Legal Resources, at www.crj.ro
- ◆ ACCEPT, at www.accept-romania.org
- ◆ Pro Democracy Association, at www.apd.ro
- ◆ Institute for Public policy, at www.ipp.ro
- ◆ Romanian Academic Society, at www.sar.org.ro
- ◆ Media Monitoring Agency, www.mma.ro
- ◆ Centre for Independent Journalism, at www.cji.ro
- ◆ Roma Center for Social Intervention and Studies, at www.romanicriss.org
- ◆ Pro Europa League, a www.proeuropa.ro

Endnotes

- ¹ L'Association religieuse "Témoins de Jéhovah – Roumanie" (*Organizatia Religioasă "Martorii lui Iehova-România"*) et autres c. Roumanie, decision of 11 July 2006, at www.echr.coe.int.
- ² Military service is no longer compulsory in Romania.