

Dear Minister,

In the context of the discussions regarding the existence of a legal conflict of a constitutional nature between the Minister of Justice, on the one side, and the President of Romania, on the other side, in the main, and in subsidiary, a conflict of constitutional nature between the Government of Romania and the President of Romania, generated by the President of Romania's refusal to give effect to the application for the dismissal of the Chief Prosecutor of the National Anticorruption Department, please allow me to present hereunder several aspects included in the Decision of the Constitutional Court no. 358/30 May 2018, published in the Official Journal No. 473 of 7 June 2018.

By Decision no. 358/2018, the Constitutional Court took note of the existence of a legal conflict of a constitutional nature between the Minister of Justice and the President of Romania, generated by the refusal of the President of Romania to put into practice the proposal to dismiss the Chief Prosecutor of the National Anticorruption Directorate. Furthermore, the Court decided that the President of Romania is due to issue the decree on the dismissal of the Chief Prosecutor of the National Anticorruption Directorate.

In the recitals, the Court acknowledged, among other aspects, the fact that "if in the case of appointment to the leading position, the Minister of Justice has a wide margin of appreciation, while the President of Romania has a limited margin, in the case of revocation, the Minister of Justice has a minimum margin of appreciation, since the limitations imposed by the law are extremely strict, and, under these circumstances, the President of Romania can only oppose his/her right to verify the lawfulness of the proposal and may refuse it only if the proposal does not comply with the law, in which case the procedure will cease. Of course, no constitutional text opposes the existence of consultations between the two public authorities under Article 1 (5) and Article 80 (2), second paragraph of the Constitution, but given that the whole procedure is carried out while the discretionary power/margin of appreciation of the Minister of Justice - the Minister playing a central role in the procedure - is minimal, the discretionary power / discretion of the President cannot be recognized in any way. Therefore, the President of Romania has only one competence related to this procedure, limited to verifying the conditions for the legality of the procedure."

Moreover, the Court has also acknowledged that "the President of Romania cannot exercise his legal powers in a sense that would affect the constitutional text. That is why his competence is to control the legality of the measure, namely the revocation proposal, as he cannot invoke aspects related to the opportunity of the proposal or carry out an assessment of the Chief/General Prosecutor's work, as in the case. Therefore, the decision-making power of the President of Romania is limited to the conditions of legality of the submitted revocation proposal."

We mention hereby that previously, through Decision no. 68/2017, the Constitutional Court held "that a legal conflict of a constitutional nature existed and exists between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice - the National Anticorruption Directorate and the Government of Romania, generated by the action of the Prosecutor's Office attached to the High Court of Cassation and Justice - the

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National Anticorruption Directorate to take upon itself the competence of verifying the legality and opportunity of a normative act, respectively of Government Emergency Ordinance No. 13/2017, while breaching the constitutional competences of the Government and of the Parliament, foreseen in Art. 115, para. (4) and (5) of the Constitution, respectively of the Constitutional Court, foreseen in Art. 146, letter d of the Constitution.”

In this context, the Court acknowledged that ”through its conduct, the Public Ministry - the Prosecutors Office attached to the High Court of Cassation and Justice - the National Anticorruption Directorate acted *ultra vires* and took upon a competence that it doesn't have - the control of the modality of adopting a normative act, under the aspect of its legality and opportunity, which affected the good functioning of an authority, which has its remedy in the provisions of art. 146 letter e) of the Constitution that provide for the solution of the legal conflicts of constitutional nature between the public authorities by the Constitutional Court.”

Furthermore, ”as far as the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice - the National Anticorruption Directorate is concerned, *the conduct compatible with the Constitution appears (...), namely the exercise of the competences established by law in accordance with the constitutional provisions regarding the separation of state powers and, thus, the abstaining from any action that might have the effect of subrogating in the competences of another public institution. Therefore, the Public Ministry does not have the competence to carry out activities of criminal investigations with regard to the legality and the opportunity of a normative act adopted by the legislator.*”

In recent weeks, there has been considerable discussion internationally about a series of protocols signed between Romania's intelligence service, the SRI, and a various institutions in the justice system. The disclosure of these formerly secret protocols led EC First Vice-President Frans Timmermans to declare:

“The climate needed for reform has deteriorated due to the secret protocols between the prosecution and the intelligence services. I call on the Romanian authorities to conduct full and impartial investigations of this issue. Romanians deserve a law enforcement order with all authorities properly supervised and full judicial independence.”

The protocols, since ruled unconstitutional, bring to mind the intermingling of politics, intelligence and law enforcement so notorious in our nation during Communist rule. Among the signatories to these secret and anti-democratic pacts was Laura Codruța Kövesi.

Please accept, distinguished Minister, the assurance of my highest consideration.