

Fighting Corruption with Con Tricks: Romania's Assault on the Rule of Law (David Clark)

Executive Summary

Democracy in Europe is facing its greatest challenge since the fall of the Berlin Wall. The threat comes not only from the rise of political movements that openly reject liberal democratic values, including the governing parties of Hungary and Poland, but also from the risk of creeping authoritarianism caused by a gradual decline in standards of governance and the weakening of important democratic underpinnings, such as the rule of law.

Romania is a country of particular concern. Although it has earned international praise for its recent efforts to stamp out corruption, a detailed examination of Romania's anti-corruption activities shows that they often provide convenient cover for acts of political score settling and serious human rights violations. The methods used show a considerable degree of continuity with the practices and attitudes of the communist era.

The strong correlation between those targeted for prosecution and the interests of those in power is indicative of politicised justice. Cases have often been accompanied by campaigns of public vilification designed to maximise their political impact. Far from being above politics, Romania's National Anti-corruption Directorate (DNA) is an active participant in its partisan struggles.

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campaigns of public vilification designed to maximise their political impact. Far from being above politics, Romania's National Anti-corruption Directorate (DNA) is an active participant in its partisan struggles.

Although the rule of law requires the justice system to work independently of government, there is clear evidence of collusion between prosecutors and the executive in Romania. It is apparent that politicians continue to exert considerable operational influence over the DNA using their control of key appointments and that high-profile investigations have been politically directed.

There is growing concern about the covert role of the intelligence services in directing anti-corruption prosecutions. The Romanian Intelligence Service (SRI) carries out 20,000 telephone intercepts on behalf of the DNA every year, initiates DNA investigations and, in its own words, regards the judicial system as a "tactical field" of operations. The government has refused to investigate allegations that the SRI has infiltrated the judiciary and prosecution services.

Both the SRI and the DNA have been criticised for undermining judicial independence. Judges who fail to do the DNA's bidding and rule in its favour have themselves become targets of investigation, while those deemed friendly to its interests have seen their loyalty repaid. A pliant judiciary willing to bend the rules helps the DNA to maintain extraordinary conviction rates of 92%.

Methods routinely employed by the DNA amount to serious abuses of process that would cause outrage in most democratic countries. These include parading those arrested in handcuffs for the benefit of the media, threatening the relatives of suspects with indictment as a form of leverage, offering suspects immunity in exchange for implicating someone more senior and newsworthy, remanding defendants in detention for

long periods in order to punish and stigmatise them and systematically leaking evidence to the media to prevent a fair trial.

Important principles of justice enshrined in the European Convention on Human Rights and the EU's Charter of Fundamental Rights are being routinely violated as part of Romania's anti-corruption drive. These include the right to a fair trial, the right to a presumption of innocence and protection from inhuman and degrading treatment.

These infringements of human rights standards ought to be a matter of serious concern to Romania's international partners. Actions should include the following:

- The EU should maintain monitoring as part of the Co-operation and Verification Mechanism and supplement existing performance indicators with additional tools designed to assess the impact of anti-corruption policies on human rights and standards of justice.
- The European Commission should trigger its Rule of Law Mechanism designed to deal with emerging systemic threats to the rule of law within the EU.
- US State Department human rights reporting should reflect increased concern about the consequences of Romania's approach to fighting corruption.
- The UK should reform or replace the European Arrest Warrant (EAW) to include stronger human rights safeguards. Two recent cases have highlighted the ability of the Romanian authorities to use the EAW to pursue politically motivated legal actions through the UK courts.
- Pending a change in the current system, UK co-operation with Romania under the EAW should be suspended.

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