

I have taken note of the joint statement made today on the fight against corruption in Romania. I would like to emphasize from the start that the fight against corruption is one of the priorities of the Government that I am leading, and I fully agree with your assessment regarding the Cooperation and Verification Commission's report which is a matter of great interest both for the European Union and for us.

I will send you through our Standing Delegation the legislative texts adopted by the Government, on amending the Criminal Code, and the draft law on pardon. I want to say from the very beginning that in fact, it is about two different issues: the first package comprising two draft laws that the Government will send to Parliament and that will go through the ordinary legislative process. Both draft laws aim at bringing the Romanian legislation in line with the provisions of Directive 343/ 2016 of the European Parliament and the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

With respect to pardon issue, I inform you there is already a procedure within ECHR pertaining to a pilot decision on the overcrowding in the Romanian prisons and the poor detention conditions, situation which can lead to a significant fine for Romania (around EUR 80 million per year- according to the estimates made by the Minister of Justice in the former Cabinet).

I would like to underline that both draft laws will enter the ordinary parliamentary debate procedure, thus ensuring the full completion of all steps provided by the Romanian Constitution.

The third legislative document refers to the adoption of the Emergency Ordinance amending the Criminal Code and the Criminal Procedure Code. The choice of the adoption procedure of a Government Emergency Ordinance is grounded in Constitution which provides in the Article 147 paragraph (1) that "the provisions of laws and ordinances in force, as well as those of the regulations, found to be unconstitutional, cease their legal effects within 45 days from the publication of the Constitutional Court's decision if, in this interval, the Parliament or the Government, where appropriate, do not bring the unconstitutional provisions into line with the Constitution and within this deadline, the provisions found as unconstitutional are suspended by law.

The Constitutional Court's decision 405/2016 found that the provisions of article 246 of the Criminal Code of 1969, are constitutional as regards

the abuse of office offence, only if the phrase “defectively performs” in the contents of this law means “performs by breaching the law”. The Court also found that at present, any act or omission of a person falling within the qualities required to the active subject, regardless of the severity of the offence committed, may enter the sphere of the incrimination norm. This finding made the Court have reservations in appreciating that this was the intention of the legislator when incriminating the abuse of office. The Court also found that the deeds that under current regulation, can fall within the abuse of office offense, do not have the intensity needed to trigger the application of criminal penalty.

With respect to the threshold value, I mention that this was introduced on the Constitutional Court’s recommendation. The Constitutional Court (CCR) found that the legislator hadn’t provided a value threshold of the damage or a specific intensity of the injury, which prompts the Constitutional Court to conclude that, regardless of the damage’s value or of the injury’s intensity resulting from the deed, the latter can be an offence of abuse of office if the other constituents are also fulfilled. Establishing the RON 200,000 ceiling was not arbitrary; the starting point was in the provisions of Art.183 of the Criminal Code, which define the notion of extremely serious consequences of an offence, where we find the amount of RON 2 million. We considered that a ten times smaller amount for the abuse of office offence, is in line with the Constitutional Court’s Decision, the Venice Commission’s decisions and the ECHR jurisprudence. It is worth mentioning that by establishing a ceiling of RON 200,000, the liability is not removed, but it will continue to be an administrative and disciplinary liability, and the damage will be fully recovered, this being also in line with the recommendations of the European institutions.

As you know, the lack of coherence between a constitutional decision and the provisions declared unconstitutional, could lead to a legal vacuum, as well as to a non-unitary interpretation and enforcement of these provisions.

We took into account the Venice Commission’s 2013 recommendations on the relationship between the political ministerial liability and the criminal liability, according to which the national penal provisions on the „abuse of office”, „abuse of power”, and similar expressions should be

interpreted in a restrained sense and enforced at high level, so that they can be invoked only when the deed is serious.

It is essential that the Parliamentary Assembly of the Council of Europe, retaining what the Venice Commission's report presented, invited the legislative bodies of the Member States whose criminal legislation still includes general provisions on "abuse of office", to consider repealing or redrafting such provisions in order to limit their scope, in line with the Venice Commission's recommendations. I mention that the abuse of office hasn't been removed from the legislation, but the intention was to replace the phrase 'defectively performs' of the art.246 of the Criminal Code of 1969 and of the art.297 paragraph 1 of the new Criminal Code with the phrase 'performs by breaching the law', in accordance with the mandatory decisions of the Constitutional Court.

These are the main elements that prompted the need of a GEO, which will be subject to the Parliament's debate, approval, amendment or repeal.

We look forward with interest to knowing your opinion on the texts, and the Justice Minister is ready to provide you with all the needed clarifications, including by an eventual visit to Brussels. Also, the Minister of Foreign Affairs, who will be in Brussels on the occasion of the Foreign Affairs Council, will be honored to have a talk with you on this matter, if your schedule allows it.

In conclusion, I wish to assure you of my availability to continue the dialogue with you, including in Brussels, and I firmly reiterate the commitment of all the institutions and decision-makers from Romania to continuing the fight against corruption. In these endeavours, we rely on the support of the European Commission, as well as on its balanced and fair assessment, which takes into account the national constitutional framework and the specific substance of the legislative provisions, not only the reactions from the public and media environments.