

Prosecution office to investigate environmental crimes - ‘unconstitutional’ on procedural grounds

On 30 September 2020, the Constitutional Court of Romania (CCR) approved the plea of constitutional non-compliance by the Romanian government for the Draft Law no. 121/2020 on the organisation and operation of the Directorate for Investigating Environmental Crimes (DIIM) and ruled that the draft was unconstitutional.

The CCR found that the draft law's establishment procedure was an infringement of art. 138 par. (5) of the Romanian Constitution, which states that “no budget expenditure may be approved without establishing the source of funding”.

This ruling does not reflect the actual existence of adequate financial resources at the time of the law's adoption, but addresses the fact that an expenditure must be fully foreseen in the state budget in order to be covered with certainty during the budget year.

In order to comply with the Constitutional procedure for adopting a normative act involving a budgetary expenditure, it is sufficient for the act's initiators to prove that they requested the financial statement from the government. However, not receiving the financial statement from the public authority (that is obliged to provide it) within the legal term does not impede the legislative procedure.

The CCR acknowledged that the financial statement was not requested in the legislative procedure, neither by the legislative proposal's initiators nor by the Chamber of Parliament in which amendments were proposed and adopted. It further ruled that the constitutional provisions regarding the establishment of the financing source were violated since the non-fulfilment of this obligation naturally leads to the conclusion that the adoption procedure was based on an uncertain, general source of financing, lacking an objective and real character.

For more information on the Draft Law, environmental protection regulations and general advice on criminal defence issues in Romania, contact your regular CMS advisor or local CMS experts **Mihai Jiganie-Serban** and **Anca Elena Ion**.

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