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Europe/Ex-USSR - Romania

Recriminalizing defamation

In an attack on free expression, insult and libel to be recriminalised in Romania

20 December 2013

The following is a joint statement, led by ActiveWatch - IFEX's member in Romania, signed by over 30 IFEX members and partners to the Prime Minister of Romania and other officials:

16 December 2013

H. E. Victor Ponta Prime Minister of Romania Office of the Social Democratic Party of Romania
Sos. Kiseleff, nr.10, Sector 1 Bucharest, Romania

CC: Valeriu Zgonea, Head of the Chamber of Deputies Crin Antonescu, Head of the Senate

Your Excellency,

We the undersigned 36 organisations, members and partners of IFEX, express our deep concern that the Romanian Parliament voted to recriminalise insult and libel as part of a wider amendment of the Penal Code, thus undoing the progress made by Romania during the last eight years to legally protect the right to freedom of expression. Criminalisation of insult and libel is a serious attack on this right, as it works to intimidate voices who criticise the structures of power in society and expose corruption, abuse and other wrongdoings.

These proposed changes may not take effect if Romanian President Traian Basescu vetoes them, as he has promised to do. In this case, the law will return to Parliament where it will be subject to a new voting procedure. We urge the President to follow through on his commitments, and ask Romanian authorities to do everything in their power to prevent these amendments from becoming law.

In 2006, the Parliament repealed offenses of insult and libel, a decision that was overruled in 2007 and 2013 by the Constitutional Court. However, Parliament voted on 10 December 2013 to reintroduce insult and libel to the Criminal Code.

The Organization for Security and Co-operation in Europe (OSCE) congratulated Romania after insult and libel were decriminalised. This initial decriminalisation also improved the rating of the country in international human rights rankings, such as that of Reporters Without Borders.

In 2011, a bill (PI-x 680/2011) was proposed to repeal a single article, Article 74/1. Under suspicious circumstances, this bill was radically changed the night before being adopted by the Chamber of Deputies during the plenum of 10 December 2013 (International Human Rights Day) by introducing, among other provisions, the offenses of libel and insult.

This decision, taken without any public consultation, rendered useless ten years of efforts to decriminalise insult and libel. It removes Romania from the list of democracies who reject the idea that a person can be imprisoned for her/his words.

We remind politicians that decisions of the Constitutional Court which are referenced as a pretext to introduce the offenses of insult and libel in the Criminal Code must comply with the European Convention on Human Rights (ECHR) and the jurisprudence of the ECHR - which have the force of law in Romania. Imposing an obligation for defamation to be criminally sanctioned is not supported by any article of the ECHR or by any judgment by the European Court of Human Rights.

On the other hand, due to the haste with which the amendments to the Criminal Code were

adopted, another obsolete article was passed, namely Article 207, or burden of proof. This article is in clear contradiction with ECHR jurisprudence, demanding those who make a statement to prove the absolute truth of the facts narrated - proof that is impossible in many situations, especially regarding journalistic investigations in sensitive or complex cases. According to the jurisprudence of the ECHR, (see the case Dalban v. Romania for example), those who make a statement, even false or exaggerated, cannot be penalised in any way if they prove the existence of a reasonable factual basis for their statement.

It is imperative that Articles 205-207, which recriminalise insult and libel, be removed from the Criminal Code. The current form of the law is a serious assault on press freedom and freedom of expression in general.

Signed,

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