Romania's Constitutional Court issued the reasons behind its decision regarding the unconstitutionality of the country's adopted lustration law.

The court said that the law's measures are excessive, compared to the goal it seeks to achieve. The law would violate the individual's right to being considered innocent until proven guilty and it would enforce a collective sanction, based on generic, politically motivated culpability.

On June 7, the Court ruled the country's lustration law was unconstitutional, after the normative act was challenged by several lawmakers. The provisions of the law found unconstitutional are those which prohibit former members of the state's repressive apparatus from holding various public positions. The Court found that the law breaches the citizens' right to be elected and violates the constitutional principle according to which laws can "only act for the future".

According to the law, all former members of the Romanian Communist Party (PCR) and of the communist State Council and Council of Ministers, diplomats, state secretaries, party secretaries, police inspectors, as well as people who worked for the secret Securitate police from March 6, 1945, until December 22, 1989, will not be allowed to occupy public positions for five consecutive years starting from the moment the lustration law is enforced.

Lustration was a problematic issue in all former communist bloc countries but, in Romania's case, such a law would be legally inefficient and solely serve a moral purpose. The decision cites a 2004 case tried by the European Court of Human Rights, whose ruling found that Latvia's late adoption of lustration measures rendered its restrictive measures unjust. The Court's decision also criticizes the law's ambiguous wording, which would render the act difficult to enforce.

On May 19, Romania's Chamber of Deputies adopted with 203 to 40 votes and 12 abstentions the country's lustration bill which became law as it had already been adopted in the Senate on April 2006.

In 2009, three years after the lustration law was adopted by the Senate the head of state stressed the steps he had taken in recent years to condemn communism and declassify Securitate files must be carried on and sealed with the lustration law.

Romania's government reduced the minimum investment requirements for companies eligible to receive state aid to EUR10 million from EUR30 million previously.

Companies that wish to receive state aid must create at least 100 new jobs, compared with a 300-job cap initially imposed. According to government estimates, the more flexible terms will lead to additional state aid to companies worth EUR200 million. Some 5,000 new jobs are likely to be created thanks to projects that benefit from state aid.

Romanians who gain income from freelance activities will pay a 16.5% social security contribution, as any other employee, but only for sums that amount to five average gross salaries per year, namely 10,000 lei

People who gain income from independent activities will pay a 10.5% social security contribution, a 5.5% health insurance contribution and a 0.5% contribution to the unemployment fund.

The amendments include, among others, taxes on vouchers granted to employees, a duty levied on severance payments, as well as a 16% tax on the interest earned on bank deposits. The state will collect a 25% tax on the net income from gambling, regardless of the amount. The current tax on gambling income is 20% for gains up to 10,000 lei and 25% for gains exceeding that amount. The revised Fiscal Code also reduces to 20% from 40% the level of deductible expenses for copyright works, calculated on the gross income.

The European Commission as sent a reasoned opinion to Romania and several other member states which have not informed the Commission of the adoption of all regulatory changes required for the implementation of the Services Directive.

The EC has issued a reasoned opinion in order to speed up the process of implementing the Services Directive in Romania, Austria, Belgium, Cyprus, France, Germany, Greece, Ireland, Luxemburg, Portugal, Slovenia and the United Kingdom.

The Directive 2006/123/EC was supposed to be implemented in all European Union countries by December 28, 2009 and covers a wide range of economic activities, such as retail, construction, tourism and the services of many regulated professions, which represent around 40% of EU GDP and employment. According to EC estimates, the directive will significantly contribute to the EU's single market, its main source of economic growth and job creation. The directive requires EU countries to remove unjustified or disproportionate legal and administrative barriers which hinder the set-up of a business and the provision of cross-border services in the EU. It also aims to dismantle barriers affecting service recipients who want to access services from other member states.

The EC's reasoned opinion is the second stage of the EU infringement procedure. If member states do not provide a satisfactory response within two months, the Commission may refer them to the EU's Court of Justice.

Romanian government agencies which were not created on the basis of European Union directives or through organic laws will be converted into ministry departments.

The conversion will also involve a reduction of staff. Agencies not required by the European Union and those not created through organic laws will be converted into ministry departments. Every ministry will have a single control centre" supervising the public bodies under its authority.

Romania's Constitutional Court issued the argument behind the ruling, which says that the current state of the country's economy justifies the postponement of paying wage rights won in court by public sector employees.

The Constitutional Court ruled constitutional a provision of a Government emergency ordinance regarding the payment of salary rights won in court by public sector employees, whereby foreclosure procedures against the state are cancelled during the three stages set to pay salary rights.

The court also disallowed the challenge filed by the Ombudsman against two articles of Government Emergency Ordinance no.18/2010, which stipulate that salary rights won in court will be paid in three yearly instalments, starting 2010 and ending 2014. The Romanian Government had argued that the payments must be postponed because of the heavy toll they will impose on the 2009 state budget. The Court's ruling sanctioned the Executive's decision and explained that "the emergency Ordinance was adopted in order to mitigate the effects of a generalized state of economic crisis."

According to the judges in order to preserve the stability of the state budget, the Government had no alternative but to issue an emergency ordinance. The Government acted in observance of article 115, section 4, of the Romanian Constitution. The Court highlighted that this temporary measure is warranted by the current extraordinary circumstances, adding that the Cabinet should not abusively employ such methods in the future.

The Romanian Government intends to set a limit of EUR 10,000 on damages paid to former political detainees during the communist regime.

According to a draft government emergency decree, moral damages will be up to EUR 10,000 for people politically convicted between March 6, 1945 and December 22, 1989 or people who were subject to political measures, EUR 5,000 for the surviving spouse and descendents in the first degree and EUR 2,500 for descendents in the second degree. Under the draft, the amendments brought to Law 221/2009 on political sentences and connected administrative measures will only be applied in the case of trials where no irrevocable court ruling, which may compel higher damages, was issued by the coming into force of the emergency decree.

Law 221/2009 on political sentences and connected administrative measures ruled in court between March 6, 1945 and December 22, 1989 was approved in 2009 and former political detainees can file for moral damages during a three-year period.

The Romanian Government decided that owners of multiple homes would pay 65%, 150% and 300% more on the yearly home tax, set in ratio with the number of homes owned.

The tax will be 65% higher on the second home, 150% higher on the third home and 300% higher on the fourth home and other homes owned. Owners have until December 31, 2010 to pay the taxes and individuals who pay the taxes in full until September 30, 2010 will benefit from a reduction set through decisions of local councils adopted for 2010.

The current Tax Code says individuals who own two homes pay 15% more on the yearly home tax, those who own three home pay 50% more, owners of four homes pay 75% more, while owners of five or more homes pay 100%.

According to the draft, individuals who own two or more houses, which they are not renting out to any third parties, will have to pay 50% of the yearly tax on their second home to the local budget. Owners of three homes will have to pay 100% of the tax on the third building, while those who own four residences will pay 200% of the tax on the fourth home.

A Romanian Government emergency decree amending the competition law enlarges the powers of the Competition Council and brings the country's competition procedures and norms in line with EU regulations in the field.

The amendments to the competition law give the Competition Council the power to sanction between 5,000 lei and RON 40,000 local or central authorities for not submitting the requested

documents or for providing incomplete information. Under current law the Competition Council can sanction only economic operators.

The emergency decree states that economic agents must notify the competition authority of their intention by taking over or merging companies. Under current regulations, competition authorities are notified on such economic operations only after documents are signed. Another amendment to the law stipulates that the decisions of the Competition Council can be cancelled by the Bucharest Court of Appeals only if the entity sanctioned pays a bond amounting to 30% of the fine appealed in court. The Government decree also stipulates that economic agents that admit to having infringed competition regulations will have the fine reduced by between 10% and 25%.

The new provisions of the law stipulate that the competition authority can forward to courts their standpoint on the cases regarding breaches of competition regulations. National courts must announce the decisions ruled in cases regarding breaches of the Treaty on the Functioning of the European Union, to the European Council, through the Competition Council.

The decree also simplifies the way of calculating authorization fees for economic mergers. The fee is set at 0.04% of the turnover reported by the respective economic agents in Romania, but cannot exceed the equivalent in lei of EUR100,000.

According to the emergency decree, prohibitions regarding agreements signed between competitors, which might affect or restrict competition on the local market, will not apply to companies whose amassed market share does not exceed 10% on any relevant market, or for companies whose separate market share does not exceed 15%.

Romania requested derogation from EU regulations to apply reverse taxation on intra-community trade with cereals, fruit, vegetables, meat, sugar and bread.

Reverse taxation for cereal, fruit, vegetables, meat, sugar and bread will be applied ten days after the Council announces its approval, and only on the products for which Romania requested derogation, the Finance Ministry said in a press release.

Reverse taxation entails that transaction taxes will be paid by beneficiaries and not by entities that delivered the merchandise. According to a Government Emergency Ordinance on fighting tax evasion, reverse taxation measures will be applied only temporarily, until December 31, 2011.

Romanian President Traian Basescu signed the decree promulgating the amended Law on the Statute of public servants, after the Constitutional Court ruled that several of its articles were unconstitutional.

On June 23, Romania's Chamber of Deputies adopted the articles of the report drafted by the Chamber’s committee for legal matters upon re-examining the law on the statute of public servants and the provisions declared unconstitutional by the Constitutional Court were eliminated from the report.

Deputies in the committee decided to eliminate several articles which targeted, among others, to introduce in the category of public servants the positions of “executive director and assistant executive director at the level of prefect offices, the apparatus of the public local authorities and public institutions in their subordination, the positions of director and assistant director within the public decentralized services of ministries and other special bodies of the central public

administration within administrative-territorial units, as well as specific public positions assimilated to them."

Romania's private pension regulator CSSPP plans to amend two norms regarding mandatory and voluntary private pensions, which regulate the procedures needed to authorize the setting up of private pension companies and funds.

The regulator said that the draft acts include provisions regarding supervisory boards and enlarge upon collaborations or other similar workplace relations at the level of the management staff. In light of this, the new provisions represent a big step toward regulating the corporate governance at the level of administrators and preventing cases that might generate conflicts of interests and ultimately affect the contributors and beneficiaries of private pension funds.

The amendments brought by the new draft acts include, among others, the individual licensing of people proposed as members in the managing boards, as directors in the supervisory board and in the managing board and the unfolding of a socio-professional interview in order to evaluate the people nominated to carry out management/administration attributions.

Other amendments target to include, in the provisions of the norm, the requirements targeting the people proposed to fill in positions of internal control and risk management, as well as the distinct provision regarding the withdrawal of license for members in the managing board , supervisory board, directors and the directorate.

Romania's Transport Ministry plans to postpone the implementation of the country's electronic road toll system until October 1 2010.

The country's roads authority CNADNR had initially announced that the electronic road toll system would be implemented starting August 1. End-December 2009, CNADNR selected Romanian companies Novensys Corporation/UTI Systems to ensure the computerized system needed to issue, manage, monitor and control road toll stickers, for 35.96 million lei. The auction was challenged and CNADNR signed the contract in June this year.

According to a draft emergency decree drawn up by the Ministry, because of the complexity of the implementation procedures, the electronic road toll system will not be available starting August 1 2010.

UTI Group is owned by Romanian businessman Tiberiu Urdareanu and provides solutions targeting IT&C, security, electrical installations and military systems. Novensys is one of Romania's largest integrators of information management solutions provided by Microsoft, Oracle or Motorola. It is headquartered in Bucharest and also has offices in Cluj, and Timisoara.

Most of the cases Romania lost at the European Court of Human Rights are because of the country's inconsistent jurisprudence when it comes to enforcing laws regulating ownership rights.

Catalin Predoiu, the Minister of Justice said that inconsistent decisions ruled by Romanian courts in cases regarding ownership are as a consequence of the incoherence of the laws. The minister highlighted the fact that the law regulating ownership was amended almost one hundred times back in the 1990s.

Predoiu said appeals are meant to ensure consistency regarding court rulings, adding that Parliament is the one that should ensure coherent laws. The minister stressed that, sometimes, unfair rulings are triggered by the laws themselves.

Romanian homeowners have six months to insure their homes, as the country's law on mandatory home insurance has entered force.

The country's Insurance Pool against Disasters, or PAID, estimates that it will conclude about one million mandatory home insurance contracts over the next six months.

"It would be good if we exceeded 10% (of the total number of homes in Romania) in the next six months. That means we would have one million insured by January," PAID general manager said.

PAID has started issuing mandatory home insurance policies, and the first such policy was concluded by Interior Ministry state secretary Mihai Capra.

Under the law, mandatory home insurance premium range from EUR 10 to EUR 20. The insured value will not exceed EUR 20,000, and the minimum level of insurance was set at EUR 10,000 with a maximum of EUR "20,000. Failure to insure homes will be punishable with a fine of between 100 to 500 lei, more than the premium. The mandatory home insurance covers risks such as earthquake, floods and landslides.

Mandatory home insurance policies will be issued by PAID, a joint stock insurance-reinsurance company that will manage the risk fund meant for paying the damages in case of natural disasters. In September 2009, 13 insurers signed the documents establishing PAID and their contribution to the PAID's share capital was of EUR 4.545 million.

The Romanian government will re-launch the privatization of several companies that will be revamped through layoffs and cancellation of state debts.

The list of companies includes plane maker Avioane Craiova (AVIO.RO), the Mangalia Shipyard (STNM.RO), Cupru Min Abrud, Moldomin Moldova Noua and ISCIR-CERT, amongst others, all of whom are owned by the Economy Ministry.

Avioane Craiova's privatization failed twice, in 2008 and 2009, and the government will again try to sell its stake, after solving the issues that caused the two previous failures, namely the reduction of staff, the clarification of various litigations and the cancellation of debts owed by the plant to the former Yugoslavia. Some of these issues are included in the company's current restructuring program.

The Economy Ministry owns 80.9% of Avioane Craiova, which ended 2009 with a loss of 19.4 million lei and debts of RON 49.2 million.

For technical analysis institute ISCIR-CERT, the government received letters of intent from Czech TUV SUD Central Eastern Europe and French Dekra Industrial. The initial privatization attempt failed because the European Commission banned the use of a privatization law involving state aid. Thus, the new privatization attempt will use an amended law. ISCIR-CERT ended 2009 with RON110,000 in profit and no outstanding debts.

A new privatization attempt targets the Mangalia Shipyard, since the association agreement with Mangalia Naval Systems, concluded in 2008, is not considered beneficial. The shipyard posted a loss of RON 2.5 million in 2009 and its debts stood at RON 14.4 million end-December, including RON12.7 million to the state budget.

Cupru Min Abrud was put up for privatization twice in 2008, and the government is hard-pressed to a find a solution in order to prevent the unit's shutdown. Cupru Min registered a loss of RON2.57 million end-May 2010 and debts of RON64.8 million. The company requires a EUR 78 million investment upgrade.

The European Commission might allow Romania to resume exports of pork and pork products on the European Union market, following a request sent by the Romanian authorities.

Romania's pork exports to the European Union markets have been banned since 2003 due to swine flu. The Romanian Department for European Affairs (DAE) has advised that European Union checks will soon be carried out to see what the development of the disease is after Romania halted vaccination. DAE added that a decision of the EC regarding the resumption of pork exports depends on the checks.

In 2007, the European Commission extend to December 31, 2009 the ban imposed on Romanian firms regarding pork deliveries to the European Union citing problems with the eradication of swine flu.

Owners of deteriorated homes in Romania will be obliged to finance exterior work, such as repairs, plastering or painting, and will be temporarily exempt from the payment of property taxes if they finance the work themselves, but will otherwise face a fine or even prison.

A draft order has been prepared whereby owners of property will be obliged to finance exterior works. The work will be done either at the homeowner's own initiative or at the request of local authorities. This obligation will not apply to buildings which have undergone technical inspections and have been found to have a high seismic risk, or to buildings which have been thermally rehabilitated or are pending thermal rehabilitation.

The owner will have six months to carry out the "intervention work" from the moment they receive a notice from the local authorities. The deadline can be extended by two months, but only with the mayor's consent, and depending on the project's nature and size. Building owners will be compelled to allow the work to be supervised by foremen or specialized consultancy firms.

The repair work shall be financed exclusively by the building owner, except when the owner can prove that their income is below the net monthly average salary, in which case the local authority will cover the cost, in part or wholly from the local budget.

Should the owner refuse to carry out the work or to allow access, the council can make a decision whereby the work will be performed and the money will be obtained later from the owner, through a court order. Owners who do not observe this obligation, or do so improperly, can be fined between 2,000 and 10,000 lei and may even face a prison sentence in case of damages to third parties.

The owner will be exempt from paying the year's property tax on the building undergoing rehabilitation, if the work is self-financed. The buildings which require such work must be determined by mayors 90 days after the draft ordinance enters force.

In the document, the government argues that given the increasing frequency of violent meteorological events and the age of current buildings, there is a rising trend of serious accidents caused by collapsing buildings which endanger public safety because of their "advanced level of deterioration."

The document also says unrepaired buildings negatively affect the view of urban areas, the quality of the environment and life in the community and decrease the social, economic and tourist interested in the affected areas. In addition, most buildings are located in central, historical areas with high population and tourist interest, thereby posing a high risk for the public.

Hammond, Bogaru and Associates are an international law firm based in Bucharest, Romania. We can be contacted on +40 21 326 6053 and more information regarding the Firm can be found on our web site www.hbalaw.eu.