

## EUROPE OF OR WITH REGIONS: REGIONALISM IN ROMANIA

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**Abstract:** *The scope of this paper is to examine Romania in the larger context of the Council of Europe and EU regional, trans-frontier and cross-border cooperation. The research will be divided into three main parts: it will begin from the national level and will then expand into the Council of Europe and EU levels. The paper will dive into issues of local structure, financial and administrative powers, controversies and cooperation projects. The conclusions will attempt to draw a comparison – in terms of attributes, structures and goals – between the two systems and to depict the image of Romania’s failures and successes.*

**Keywords:** *Romania, regionalism, cross-border and trans-frontier cooperation, Council of Europe, the EU*

### 1. NATIONAL LEVEL

Romania became a member of the Council of Europe (hereinafter CoE) on 7 October 1993 and ratified the European Charter of Local Self Government (hereinafter ECLSG) on 28 January 1998. This came into force on 1 May 1998. Romania made a reservation regarding article 7 paragraph 2 and an interpretative declaration regarding article 4 paragraphs 4 and 5 of the Charter, the latter one concerning the notion of “region”. In accordance with the existing law, communes, towns and municipalities fall under the ECLSG and the counties are to be equated with “regions”.

This section will investigate the regional administration and distribution of power in Romania, resorting to domestic law, but also to the basic framework provided by the CoE. It will deliberately not take into consideration the prospective territorial re-organization of Romania.

### 2. THE 6<sup>TH</sup> GENERAL REPORT

The 6<sup>th</sup> General Report on the implementation of the ECLSG is illustrative in the sense that it reflects the difficulties of monitoring a large number of states having various and distinct local and regional structures. Just to mention a few:

- the parliamentary legislation differs, some countries having an upper house (such as Romania);
- the means through which local authorities are consulted varies. It might be through national associations (Germany, Austria) or even directly. All local authorities may be consulted directly or just those affected;

- the political multi-mandate-holding is also an issue, expressing a mixture of consultation and lobbying;
- the delegation of powers and responsibilities to local authorities vary greatly, making the assessment task more difficult;

There are certain aspects on which member states seem to have agreed, such as the consultation of local authorities on legislative, decision-making and financial aspects (6<sup>th</sup> General Report on implementation of ECLSG, paras 53-54), the local authorities' right of association at national level (6<sup>th</sup> General Report on implementation of ECLSG, para 61). However, it is not the placement of legislation that is an issue, but rather its compliance. Some countries undermine the principles enshrined in the Charter and recognized in their domestic law by, *inter alia*, giving a less important value to associative structures or by downgrading the consultation process.

Romania is mentioned in the 6<sup>th</sup> General Report and it would have been strange not to, since the Rapporteur, Emil Calota, is a Romanian national. It is outlined that, even though consultation is a general requirement in Romania, there is no domestic obligation that local authorities should be consulted at different *legislative* stages. Also, it is stated that a referendum is necessary, under Romanian law, for territorial reorganization or the changing of local boundaries. The consultation of local authorities on their financial allocations implies joint advisory bodies in which representatives of national governments and associations of local authorities participate. Furthermore, Romanian legislation (but not the Constitution) recognizes local authorities' right of association at national level. In this sense, there are six national associations of local authorities (five of which represent communes, towns, municipalities). There is a trend for central bodies to consult local authorities in Romania, which stresses the consolidation of democratic change. Consequently, there exists an inter-ministerial committee on relations with public administration, including the minister for administration and internal affairs, the deputy minister for public administration, the finance minister and minister coordinating the government general secretariat, three representatives of the federation of local authorities and five representatives of the national union of Romanian district councils. This committee is chaired by the prime minister.

### **3. REGIONAL ADMINISTRATION AND DISTRIBUTION OF POWER IN ROMANIA**

The most recent report regarding local and regional democracy in Romania dates from 3 March 2011. It follows a monitoring visit in Romania and two information reports in 2002 and 2003. The local and regional democracy in Romania was the topic of a recommendation in 1995. The 2011 study report admits that there have been positive changes in the country's development with regard to local and regional democracy since Recommendation 12 (1995). At the same time, it underlines that drawbacks still exist concerning the mechanisms for consultation with local communities on matters that affect them, the attribution of funds to local communities commensurate with their responsibilities, the granting of a special status to Bucharest, as made clear by the Congress of Local and Regional Authorities (hereinafter CLRAE) Recommendation 219

(2007). With regard to this last aspect, the co-rapporteur considers that since the districts of the municipality of Bucharest have their own budgets, they should benefit from legal personality.

The regional administration and distribution of power is made clear in Chapter II, entitled: The administrative-territorial structure of Romania – authorities and powers. It makes recourse to art 3.3 of the Romanian Constitution, according to which “the territory is divided into communes (*comune*), which may include one or more villages, towns (*orașe*) and counties (*judete*). There are a total of 3219 administrative-territorial units (Cg (20)9, Local and regional democracy in Romania, Chapter II, para.14). Under the conditions specified by law, some towns are designated municipalities. The administrative-territorial units comprise two (infra-state) levels: on the one hand, the intermediate administrative level (*judete*) and on the other, the local administrative level which is constituted of communes (*comune*), towns (*orașe*) and municipalities (*municipii*).” These territorial units represent entities with legal personality, can therefore legally have their own assets and are subject to public law.

The intermediate level consists of 41 counties and the municipality of Bucharest. The authorities are:

- The County Council (Consiliul Județean): composed of members that are elected for a term of 4 years. It mostly fulfills social, economic and administrative functions. It has a number of social, health and educational units in its charge (directly dependent and financially supported by the Council).
- The Chair of the County Council (Președintele) is also elected and is in charge of the executive function. He intermediates the activities of the Council with other public institutions or with individuals.
- The Prefect (Prefectul) is the representative of the Prime Minister in the territory and is appointed. He supervises the legality of the acts drafted by the local authorities.

The local level comprises 2 858 communes and 320 towns, out of which 103 are municipalities. The problematic aspect of the local level is the status of the capital, Bucharest, that is a municipality, but it is also integrated into a county. This means that it has attributions at both levels. Furthermore, Bucharest is made out of 6 districts that have separate mayors and City Councils.

The authorities are:

- The Local Council (Consiliul Local): composed of members that are elected for a term of 4 years. It has more deliberative functions.
- The Mayor (Primarul) has executive functions and is elected for a term of 4 years. There are one mayor and one vice-mayor (or, as the Report calls them, “deputy mayors”) for communes, towns and the districts of Bucharest. There are one mayor and two vice-mayors in the case of the residence of the counties and the municipality of Bucharest (Dobre, 2011).

As already mentioned, Romania equates counties with regions within the meaning of the Reference Framework for Regional Democracy. This is the object of the interpretative declaration concerning art 4 paragraphs 3 and 4 of the Charter.

Also, a separation is made between:

- territorial administration of the State (intermediate, only devolved (*déconcentrés*) services): 41 counties plus the municipality of Bucharest (Simina Tănăsescu *et al*, 2011);
- self-governing local public administration - local and county level; decentralization at the local authority level (Cg (20)9, Local and regional democracy in Romania, Chapter II, para.17);

It must be stated that there is no hierarchical connection between the local council and the mayor or the local authorities and the county council ((2009 Structure and Operation of Local and Regional Democracy in Romania, para 17).

The distribution of powers at the national, regional and local levels is emphasized by a comprehensive table included in the 2009 document on Structure and Operation of Local and Regional Democracy in Romania (2009 Structure and Operation of Local and Regional Democracy in Romania, para 18).

Additionally, the financial powers are better outlined by the 2009 Structure and Operation of Local and Regional Democracy in Romania (2009). The document mentions the Local Public Finance Act and it qualifies it as a step forward in the process of making the financial distribution more transparent.

The Structure and Operation of Local and Regional Democracy document praises the progress made by Romania in terms of local and regional cooperation, thus going in the same direction as the monitoring report from 2011. It mentions that, as regards the financial distribution, the legislative process puts forward clear and objective criteria. In this sense, the local authority is based financially on:

- the amount of money raised by means of taxes, quotas and contributions at the local level;
- money coming from the state budget;
- grants sourced in the state (or other) budget(s);
- donations and sponsorship (2009 Structure and Operation of Local and Regional Democracy in Romania, para 23);

#### **4. COE LEVEL**

This section will analyze the CoE legislation in the area of regionalism and trans-frontier cooperation, and it will look into one of the trans-frontier cooperation projects developed by Romania, Hungary and the autonomous province of Vojvodina.

##### *The Congress of Local and Regional Authorities*

The origins of what we now know as the Congress of Local and Regional Authorities can be traced to the Conference of Local Authorities, which was first appointed pursuant to resolution 56 (29) by the Committee of Ministers (Kiefer, 2010). As the name suggests it, it was a simple conference, gathering European representatives, and not a consultative or a standing body of the CoE. A number of other conferences followed, strengthening the position and importance of such meetings and “serving as a consultant regarding *local* democracy”. Furthermore, a Charter was drafted (and later revised) and the Conference was renamed the Conference of local and *regional* authorities, thus bringing together representatives of European regions, alongside with local authorities. A cornerstone in the development of the Congress was resolution 82

(13), by which the Conference was granted a permanent status (Resolution 82 (13), art 1 para a), thus recognizing the increasing role of the development of local democracy. Additionally, statutory resolution 94 (3) rebranded the Conference into a Congress. The rebranding was not a simple procedural step, but a substantial one, turning the Congress into an independent organ of the CoE. It stated, in its 4 brief articles, that the Congress should be a consultative body, aiming, *inter alia*, at “ensuring the participation of local and regional authorities in the implementation of the ideal of European unity” (Statutory resolution 94 (3), art 2, para a). The scope of the Congress was expanded by means of statutory resolution (2000) 1, which introduced country-by-country reports and the monitoring of the implementation of the European Charter of Local Self-Government principles (Statutory resolution (2000) 1, art 2.3). The 2010 reform created 3 additional committees: the Monitoring, the Governance and the Current affairs Committees, which play an important role in the monitoring procedures carried out by the Congress. The new priorities focus on 5 fields: monitoring of local and regional democracy, observation of local and regional elections, targeted post-monitoring and post-observation assistance, the local and regional dimension of human rights and streamlined thematic activities.

What Andreas Kiefer makes it clear is that different European countries and regions get to decide *if* and *how* to participate under the umbrella of the CoE. No country is forced to regionalize (Kiefer, 2010) or to participate. Also, the regions’ chances to have an input on the Congress’ / PACE’s / Committee of Ministers’ work rely on the region’s drive to provide the political and administrative capacities. Only if more such regions follow suit and get to participate, will bold projects and drafts, such as the European Charter of Regional Democracy become a reality at the European level.

#### *European Charter of Local Self Governance*

The Explanatory Report indicates that the purpose of the ECLSG is, on the one hand, to make good the lack of common European standards in the field, and, on the other, to assure that the parties apply basic rules guaranteeing the political, administrative and financial independence of local authorities. In other words, the ECLSG à-la-carte system aims at preserving the multitude of different communal governments in the member states (Bohner, 2003), while also putting forward necessary principles and rules of local self-government. The result of this unique mixture permits member states to choose their obligations individually: “Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following” (ECLSG, art 12.). With this system, the Congress made sure to adhere to the multitude of diverse national structures and layers of sub-state authorities (Explanatory Report of the ECLSG, art 12).

The mandatory provisions are nuanced by the Explanatory Report, such as, *inter alia*, constitutional and legal foundations for local self-government (Explanatory Report of the ECLSG, art 2), concept of local self-government (Explanatory Report of the ECLSG, art 3), administrative supervision of local authorities’ activities (Explanatory Report of the ECLSG, art 8.2), local authorities’ right to associate (Explanatory Report of the ECLSG, art 10.1), legal protection of local self-government (Explanatory Report of the ECLSG, art 11), etc.

Conversely, non-mandatory provisions give local authorities great leeway in view of the subsidiary principle: “the administrative structures of local authorities and their familiarity with local conditions may make them appropriate bodies to implement certain functions”(Explanatory Report of the ECLSG, art 4 para 5). They also reflect the idea that the degree of self-government enjoyed by the particularities of each country is an expression of genuine democracy.

*The Reference Framework - principles for regional authorities*

Initially, CLRAE proposed a European Charter of Regional Self-Government that would take the ECLSG as a model. However, this did not lead to any result, as the Committee of Ministers rejected the proposal.

Since the draft European Charter of Regional Democracy was adopted only in 2008, it was meant to reflect and offer a response to the European developments in terms of regionalisation. It also included the principle of loyalty and respect of territorial integrity of the state, the principles of good governance, participation of citizens and the reaffirmation of respect for local self-government. The Reference Framework, as compared to the ECLSG, places greater emphasis on the principle of subsidiarity (which is also defined), on the principle of social and territorial cohesion and the need for solidarity among the actors of a state. It sets out that there is no (necessary) hierarchical relationship between regional and local authorities. Moreover, it takes into account the concept of “regional interests”, “covering such regional activity sectors as culture and training, social protection and health care, balanced, sustainable development, nature conservation and the protection of biodiversity and economic policies” (CoE Reference Framework for Regional Democracy, p 4).

The Reference Framework is intended to transcend “the scope of Article 13 of the European Charter of Local Self-Government in order to help governments strike the best possible balance in the apportionment of powers and responsibilities among different tiers of government” (CoE Reference Framework for Regional Democracy, p 3).

## **5. THE EUROPEAN OUTLINE CONVENTION ON TRANS-FRONTIER COOPERATION BETWEEN TERRITORIAL COMMUNITIES OR AUTHORITIES AND THE THREE ADDITIONAL PROTOCOLS**

The European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities aims at the achievement of greater unity between member states and the development of frontier regions. It has been in force since 22 December 1981, having been presently ratified by 37 parties. No reservations to the provisions of the Protocol are allowed (The European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities, art 7).

to the Convention and the Protocols, each Party undertakes to facilitate and foster trans-frontier co-operation between territorial communities or authorities within its jurisdiction and territorial communities or authorities within the jurisdiction of other Contracting Parties. It should also strive to promote the conclusion of agreements and arrangements that may prove necessary for this purpose, taking into account the different

constitutional provisions of each Party (The European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities, art 1).

Furthermore, states should encourage any initiative by territorial communities and authorities inspired by the outline arrangements between territorial communities and authorities drawn up in the CoE (The European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities, art 3.1) and should ensure that the territorial communities or authorities concerned are informed of the means of action open to them under the Convention (The European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities, art 3.1).

Territorial communities or authorities or other bodies - referred to under article 3, para 1- may set up a trans-frontier co-operation body in the form of a "Euroregional co-operation grouping" (ECG) on the territory of the member States of the CoE, Parties to the Protocol, under the conditions provided by it (The European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings, art 1.1). In any case, individuals cannot be members of an ECG (The European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings, art 3.1).

Romania ratified the European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities in 1980 and this entered into force in 1981. Protocol 1 was ratified in 1998, entered into force in 2003, while Protocol 2 was ratified in 1998 and entered into force in 2001. There is no available information regarding the ratification of Protocol 3.

Romania declared that the application of the Convention is subject to the limitations set out by inter-state agreements. The Convention will be applied only to the territories (counties) situated at the frontiers. It also mentioned that the authorities in charge with the application of the provisions of the Convention are județele / Consiliile Județene and, at the local level, the communes / the towns / Consiliile Locale.

#### *Trans-frontier cooperation*

The relevant domestic law in Romania regarding trans-frontier cooperation is:

- Law 215/2001 on local public administration (this also regulates trans-frontier cooperation and sets out a general framework for cooperation)
- Law 590/2003 regarding the conclusion of treaties

Before entering a trans-frontier agreement, the local authorities must obtain an "avis" from the Ministry of Foreign affairs and "inform" the Ministry of Public Administration (2006 Report on the current state of the administrative and legal framework of trans-frontier co-operation in Europe, p 116).

The rules concerning the recognition of legal personality of trans-frontier cooperation bodies are an interesting aspect in Romania. According to Law 215/2001, local and regional authorities may set up trans-frontier cooperation bodies having legal personality. The applicable law would be public law. However, legal personality is not a necessary condition and the lack of it "is not generally regarded as an obstacle to cooperation" (2006 Report on the current state of the administrative and legal framework of trans-frontier co-operation in Europe, p 116).

In 1997, when Romania was still not a EU member, the Euro region Dunărea-Criș-Mureș-Tisa (DKMT) was created on the basis of a Cooperation Protocol signed by the Presidents of 9 local structures (8 County Councils from Romania and Hungary and the Autonomous Province of Vojvodina). DKMT thus includes similar levels of authority, such as counties and provinces: Hungarian megye (counties), Serbian province of Vojvodina and Romanian județe (counties), aiming at the development and the broadening of relationships between “local communities and local governments” (DKMT website). In 2003 a common “development association” was established, that is a “public utility company to ensure the implementation of development aims” (DKMT website).

The territory of the Euro region is 71 879 square km and the population is 5.3 million people.

Presidents of Hungarian and Romanian County Councils and the Executive Council of the Autonomous Province of Vojvodina represent the Forum of Presidents. Cooperation is done by means of a specialized committee, directed by a president (chosen from the members of the Forum of Presidents). The DKMT Euro region has 10 working groups in the following fields:

- Economy, infrastructure and tourism
- Urbanism, nature and environmental protection
- Culture, sports, NGOs and social issues
- International relations, information and mass communication
- Catastrophe prevention
- National health
- Healthcare
- Industrial park
- Tourism
- Agriculture (Cretan, 2005)

#### *Assessment*

The CoE regional and trans-frontier cooperation has two major downfalls. The first one is related to the evaluation of the cooperation: building up structures is expensive and, hence, evaluation (efficiency) is the key factor. However, this is not so easy to do, due to the lack of transparency of actions and activities undergone under the umbrella of the Madrid Convention. The second (and interrelated) downfall concerns the difficulty of identifying where the money comes from and who takes the decision to allocate it. There are numerous projects where it is extremely difficult to assess the source of financing, leading to a lack of transparency and accountability.

#### EU level

Romania has been a member of the EU since 2007. This country has undergone many significant changes since that moment, but still remains one of the European countries with the lowest absorption rate of EU funds (Pop, 2013), caused by the lack of practical experience, knowledge or interest.

There are actually few projects undergone either under the CoE, or the EU system and those that are pursued, have a suspicion of fraud cast upon them. Due to some negative reports and to the European’s Commission expression of worry, funds were ceased and Romania received no support from Brussels for six months. Payment resumed



from April 2013, but not integrally, since more and more cases of corruption and ill-use of EU fund were discovered (Pop, 2013).

## 6. THE INTERPLAY BETWEEN THE EU AND THE COE

The roles, structures and goals of CLRAE in the CoE and the EU's Committee of Regions (hereinafter CoR) are similar, but yet different. The actors of CLRAE are local and regional politicians, democratically elected at the national level. The basis of CLRAE can be cursorily found in the Statute of the CoE, where it is mentioned that the CoE can set up consultative bodies.

On the other hand, the CoR operates under the EU umbrella and it encompasses governors, mayors, democratically elected politicians at national and regional level. Furthermore, the Committee is mentioned specifically in the EC Treaty and in several subsequent legal instruments.

There are two possible roles and contributions:

- consultative role (with different levels of contribution);
- decisional role (veto);

The Congress has a consultative input, but no role at the decisional level. It can only make proposals, but, in the end, the decisions are taken in the CoE, by the Committee of Ministers. It means that the decisional power remains with the states, implying that every proposal must be endorsed by more parties.

At the EU level, the situation is different. The CoR is a consultative body with elements of impact on the decision-making process.

With regard to cross-border or trans-frontier cooperation, most projects are financed by the EU. In practice, it is extremely difficult to identify projects initiated under the Madrid Convention, since many are informal and, hence, are not online-advertised. Furthermore, an equally important factor is that the majority of projects are a result of the politicians' initiatives. This can be easily derived as well from the Romanian case study.

When the Madrid Convention failed to work properly (when Protocol 3 gained limited endorsement), the issue was transferred to the EU level. The rapidity with which this was put forward at the EU level can be explained by the necessity to move funds and power from the center to the periphery and to have a smooth collaboration at the borders. Once again, the idea was that the partners should also be accountable for the money they received. In this sense, the EU could get the money back if it was not used for the designed project and it was leaked to different other sources.

Impact-wise, the EGTC Regulation does not presuppose any ratification. In itself, it only requires *implementation* at the national (or regional) level, also needing no act of transposition into national law.

To sum up, from a legal point of view, the CoE has the front spot, being part of a well-established, albeit weaker, legal structure that benefits from many ramifications. From a financial point of view, however, the CoR seems to be more powerful. It will be interesting to assess how this interplay, interconnectedness and spillover will develop in the future in the area of regional, cross-border or trans-frontier cooperation.

*Cross border cooperation - Banat Triplex Confinium European Grouping of Territorial Cooperation*

The above-mentioned will be exemplified by the Limited Liability European Grouping of Territorial Cooperation (hereinafter EGTC) Banat Triplex Confinium, that was set up on 5<sup>th</sup> January 2011 between Romanian and Hungarian regions. It is now open to Serbian municipalities as well. The EGTC has legal personality, since it was registered 5 January 2011 at the Municipal Court. It is based in Mórahalom, Hungary. The cooperation had already begun in 2009, when 50 mayors decided to improve cross border cooperation.

The members of the BTC EGTC are 37 Hungarian and 37 Romanian local governments, and eight Serbian settlements as observer members are in the organization. The aim is to foster economic and social cooperation, especially in the fields of: agricultural innovation, renewable energy, infrastructure and education. However, the EGTC's "main aim is the implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund" (BTC website).

The EGTC is already developing projects, which can be summarily found on the Banat Triplex Confinium website. The site is not helpful in terms of constitutive convention, statute or accountability for the projects undergone. Further information might be available in the Banat Triplex Confinium annual report (2011), which is only published online only in Hungarian.

The financial aspects are, once again, not very transparent and not easily available. In 2011 the EGTC developed one project under Romanian – Hungarian cross border cooperation and another one under Serbian – Hungarian cooperation. The latter one was partially financed by the European Regional Development Fund and by the Instrument for Pre-Accession Assistance.

The ETT 2011, which ended in May 2012, received 5.000.000 HUF (around 17,000 euros) funding by the Administration and the Ministry of Justice on behalf of the Fund Manager Alexander Wekerle. From the available documents it is not clear whether this was the entire budget for the year under discussion, adding to the murkiness of the money going in and out of such projects.

**Conclusions**

The research shows that there have been major changes in the Romanian society since the country became a member of the CoE and of the EU. As similar to other young members of the EU, it is not the placement of legislation that is an issue, but rather its compliance in practice.

Drawbacks still exist concerning the mechanisms for consultation with local communities on matters that affect them, the attribution of funds to local communities commensurate with their responsibilities, the granting of a special status to Bucharest, as made clear by the Congress Recommendation 219 (2007).

There exists, furthermore, no domestic obligation that local authorities should be consulted at different *legislative* stages. Interestingly, it is stated that a referendum is necessary, under Romanian law, for territorial reorganization or the changing of local boundaries. The current domestic discussions touch upon this very point, since the

Romania Parliament intends to pass a law drawing fewer and bigger regions. However, it is not yet clear whether this initiative will make use of the tools of a referendum.

The consultation of local authorities on their financial allocations implies joint advisory bodies in which representatives of national governments and associations of local authorities participate. There is also a trend for central bodies to consult local authorities in Romania, which stresses the consolidation of democratic change.

In terms of trans-frontier and cross-border cooperation, Romania ratified the Madrid convention, but the impact seems to be small. There are actually few projects undergone under either the CoE, or the EU system and those that are pursued, have a suspicion of fraud cast upon them. The seriousness of the situation is showed by the freezing - for six months - of EU funds flowing to Romania.

On the basis of the points mentioned above, it will be interesting to follow how Romania will manage its corruption issues and the need to develop a more efficient local and regional cooperation. Additionally, the prospective regional restructuring might not change the facts of the case too much, but just add to the general confusion and mismanagement.

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