

Tuesday 13 November 2018

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The rule of law in Romania

European Parliament resolution of 13 November 2018 on the rule of law in Romania (2018/2844(RSP))

(2020/C 363/02)

The European Parliament,

- having regard to the EU Treaties, and in particular to Articles 2, 3, 4, 6 and 7 of the Treaty on European Union (TEU),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention on Human Rights (ECHR),
- having regard to the Constitution of Romania,
- having regard to the Commission communication of 11 March 2014 on a new EU framework to strengthen the rule of law (COM(2014)0158),
- having regard to its debate on democracy and justice in Romania held on 2 February 2017,
- having regard to its debate on threats to the rule of law arising from the reform of the Romanian justice system of 7 February 2018,
- having regard to its debate on the rule of law in Romania of 3 October 2018,
- having regard to the exchange of views held on 1 October 2018 with the Commission First Vice-President, Frans Timmermans, in the Committee on Civil Liberties, Justice and Home Affairs,
- having regard to the hearing held on 22 March 2017 in the Committee on Civil Liberties, Justice and Home Affairs on democracy and justice in Romania,
- having regard to the joint statement of 24 January 2018 by Commission President Juncker and First Vice-President Timmermans on the latest developments in Romania,
- having regard to the joint opinion of the Venice Commission of 16 March 2018 on Romania's draft law No 140/2017 on amending Governmental Ordinance No 26/2000 on Associations and Foundations,
- having regard to the opinion of the Venice Commission of 20 October 2018 on amendments to Romania's law No 303/2004 on the statute of judges and prosecutors, law No 304/2004 on judicial organisation, and law No 317/2004 on the Superior Council of Magistracy,
- having regard to the opinion of the Venice Commission of 20 October 2018 on amendments to Romania's Criminal Code and Criminal Procedure Code, laws also affecting law No 78/2000 on preventing, detecting and sanctioning acts of corruption and law No 304/2004 on judicial organisation,
- having regard to the ad hoc report on Romania of 11 April 2018 by the Council of Europe's Group of States against Corruption (GRECO),
- having regard to the Commission's report of 15 November 2017 under the Cooperation and Verification Mechanism on progress in Romania,
- having regard to the adoption of three laws reforming the judiciary by the Romanian Parliament in December 2017, amending law No 303/2004 on the status of judges and prosecutors, law No 304/2004 on judicial organisation and law No 317/2004 on the Superior Council of Magistracy; having regard to the adoption of amendments to the Criminal Code in June 2018 and to the Criminal Procedure Code in July 2018,

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- having regard to Resolution 2226/2018 and Recommendation 2134/2018 of the Parliamentary Assembly of the Council of Europe (PACE),
 - having regard to the decision of the Romanian Constitutional Court of 20 October 2018 ruling that 64 of the 96 changes to the Criminal Procedure Code are unconstitutional; having regard to the Constitutional Court's declaration of 25 October 2018 that 30 of the amendments to the Criminal Code are incompatible with the Constitution,
 - having regard to the repeated mass protests since January 2017 against corruption and in favour of the rule of law, including the 'Diaspora at Home' mass protest on 10 August 2018 in Bucharest, which left hundreds of people needing medical treatment following violent intervention by the police,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, and whereas these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (Article 2 of the TEU);
- B. whereas Article 6(3) of the TEU confirms that fundamental rights, as guaranteed by the ECHR and as arising from the constitutional traditions common to the Member States, constitute general principles of Union law;
- C. whereas the EU operates on the basis of the presumption of mutual trust that Member States act in conformity with democracy, the rule of law and fundamental rights, as enshrined in the ECHR and in the Charter of Fundamental Rights;
- D. whereas the independence of the judiciary is enshrined in Article 47 of the Charter of Fundamental Rights and Article 6 of the ECHR, and is an essential requirement of the democratic principle of the separation of powers;
- E. whereas in its report on Romania of April 2018, the Council of Europe's Group of States against Corruption (GRECO) expressed serious concern about certain aspects of the laws on the status of judges and prosecutors, on the judicial organisation and on the Superior Council of Magistracy as adopted by the Romanian Parliament, as well as on draft amendments to the criminal legislation; whereas GRECO questions the legislative process, fears the impact on judicial independence and suggests implicit violation of anti-corruption standards;
- F. whereas the Venice Commission, in its opinion No 924/2018 of 20 October 2018, which was limited to 'certain, particularly controversial aspects of the drafts', concluded that 'although welcome improvements have been brought to the drafts following criticism and a number of decisions of the Constitutional Court, there are important aspects introduced by the three drafts, which could result in pressure on judges and prosecutors, and ultimately, undermine the independence of the judiciary and of its members and, coupled with the early retirement arrangements, its efficiency and its quality, with negative consequences for the fight against corruption', seeing those aspects as likely to 'undermine public confidence in the judiciary' ⁽¹⁾;
- G. whereas the Venice Commission concluded in its opinion No 930/2018 of 20 October 2018 that it was 'necessary and appropriate for the Romanian Parliament to undertake a reform of the criminal codes in order to implement Constitutional Court decisions and relevant EU directives', and that many of the amendments 'will seriously impair the effectiveness of the Romanian criminal justice system in the fight against various forms of crime, including corruption-related offences, violent crimes and organised criminality' ⁽²⁾;

⁽¹⁾ Venice Commission Opinion No 924/2018 of 20 October 2018 (CDL-AD(2018)017).

⁽²⁾ Venice Commission Opinion No 930/2018 of 20 October 2018 (CDL-AD(2018)021).

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- H. whereas in its joint opinion No 914/2018 of 16 March 2018 the Venice Commission welcomed the fact that ‘during the meetings in Bucharest, the initiators of the draft law have indicated their readiness to amend the draft law in several aspects’, and called on the Romanian authorities to give consideration to its main recommendations, namely that the ‘new reporting and disclosure requirements foreseen by the draft law, including the sanctions of suspension of activities and dissolution in case of non-compliance, are clearly unnecessary and disproportionate and should be repealed’, and that the detailed publication of financial reports every six months and the indication of the source of income, irrespective of the amount, coupled with the sanction of disbandment, will have ‘a chilling effect on civil society’ and will enter into conflict with ‘the freedom of association and the right to respect for private life’⁽¹⁾;
- I. whereas the Parliamentary Assembly of the Council of Europe has called on Romania to reject the recently proposed draft laws imposing additional financial reporting obligations on NGOs, to amend them in line with the recommendations of the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR), and to submit them to broad public consultation before adoption⁽²⁾;
- J. whereas on 19 July 2018 the Commission referred Romania to the Court of Justice of the European Union for failing to incorporate the Fourth Anti-Money Laundering Directive into national law; whereas on 24 October 2018 the Romanian Parliament adopted the ‘draft law on combating money laundering and terrorist financing’;
- K. whereas there is an ongoing debate with regard to the role of the Romanian Intelligence Service (SRI) and its alleged interference with the activities of the Romanian judiciary, raising questions as to the possible extent and modalities of such interference; whereas the Venice Commission concludes in its opinion of 20 October 2018 that a ‘thorough review of the legal rules on the control of the intelligence services seems necessary’;
- L. whereas a petition to revise the Romanian Constitution in order to restrict the definition of family to a marriage between a man and a woman was initiated in May 2016; whereas numerous human rights groups voiced their concern that the proposal might lead to a breach of international human rights standards and increase homophobic discrimination in Romania; whereas the revision was endorsed in parliament with a two-thirds majority; whereas the referendum on the matter failed to reach the required 30 % turnout target;
- M. whereas Romania ranks 25th out of the 28 EU Member States regarding legislation, hate speech and discrimination against LGBTI people, according to the Annual Review of the Human Rights Situation of LGBTI People in Europe 2018 published by the European Region of the International Lesbian and Gay Association (ILGA-Europe);
- N. whereas the European Union is committed to respect freedom and pluralism of the media, as well as the right to information and freedom of expression; whereas whistleblowing is an essential part of investigative journalism and press freedom and, according to the Commission communication of 23 April 2018 on strengthening whistleblower protection at EU level (COM(2018)0214), in the majority of Member States, whistleblowers are only protected in very limited situations; whereas the public watchdog functions of the media are crucial for upholding these rights and for the protection of all other fundamental rights;
- O. whereas Reporters without Borders have drawn attention to the attempts to turn Romanian media into political propaganda tools, and have raised concern about political censorship in the media⁽³⁾;
- P. whereas Article 12 of the Charter of Fundamental Rights stipulates that everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civil matters;
- Q. whereas the reports of violent intervention by the Romanian police during the protests on 10 August 2018 have raised serious concerns as regards proportionality of the use of force and breaches of the fundamental rights of protesters, resulting in ongoing investigations of Romanian law enforcement authorities;

⁽¹⁾ Venice Commission Joint Opinion No 914/2018 of 16 March 2018 (CDL-AD(2018)004).

⁽²⁾ Resolution 2226/2018 and Recommendation 2134/2018 of the Parliamentary Assembly of the Council of Europe.

⁽³⁾ <https://rsf.org/en/romania>

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- R. whereas corruption remains a challenge in the EU; whereas the nature and scope of corruption may differ from one Member State to another, but it harms the EU as a whole and its economy and society, hampers economic development, undermines democracy, and damages the rule of law;
- S. whereas the Chief Prosecutor of the National Anticorruption Directorate (DNA) was removed from office on 9 July 2018, against the opinion of the Judicial Council following a Constitutional Court ruling limiting the powers of the President; whereas, by contrast, the Venice Commission stated in its opinion of 20 October 2018 that it would be important to 'strengthen the independence of prosecutors and maintain and increase the role of institutions such as the President and the CSM [Superior Council of Magistracy], able to balance the influence of the Minister [of Justice]'; whereas on 24 October 2018 the Minister of Justice demanded the dismissal of the Prosecutor-General, accusing him of exceeding his authority;
1. Stresses that it is fundamentally important to guarantee that the common European values listed in Article 2 of the TEU are upheld in full, and that fundamental rights as laid down in the Charter of Fundamental Rights of the European Union are guaranteed;
 2. Is deeply concerned at the redrafted legislation relating to the Romanian judicial and criminal legislation, regarding specifically its potential to structurally undermine the independence of the judicial system and the capacity to fight corruption effectively in Romania, as well as to weaken the rule of law;
 3. Condemns the violent and disproportionate intervention by the police during the protests in Bucharest in August 2018; calls on the Romanian authorities to ensure a transparent, impartial and effective investigation into the actions of the riot police;
 4. Calls on the Romanian authorities to put in place safeguards in order to assure a transparent and legal basis for any institutional cooperation and avoid any interference that circumvents the checks and balances system; calls for parliamentary control over the intelligence services to be reinforced;
 5. Urges the Romanian authorities to counter any measures which would decriminalise corruption in office, and to apply the national anti-corruption strategy;
 6. Strongly recommends reconsideration of the legislation on the financing, organisation and functioning of NGOs with regard to its potential intimidating effect on civil society and its entry into conflict with the principle of freedom of association and the right to privacy; believes it should be brought fully into line with the EU framework;
 7. Urges the Romanian Parliament and Government to fully implement all recommendations of the European Commission, GRECO and the Venice Commission, and to refrain from conducting any reform which would put at risk respect for the rule of law, including the independence of the judiciary; urges continued engagement with civil society, and stresses the need to address the issues referred to above on the basis of a transparent and inclusive process; encourages proactively seeking evaluation by the Venice Commission of the legislative measures at stake before their final approval;
 8. Calls on the Romanian Government to cooperate with the European Commission, pursuant to the principle of sincere cooperation as set out in the Treaty;
 9. Reiterates its regret that the Commission decided not to publish the EU Anti-Corruption Report in 2017, and strongly urges it to resume its annual anti-corruption monitoring in all Member States without delay; invites the Commission to develop a system of strict indicators and easily applicable, uniform criteria to measure the level of corruption in the Member States and evaluate their anti-corruption policies, in line with Parliament's resolution of 8 March 2016 on the Annual Report 2014 on the Protection of the EU's Financial Interests ⁽¹⁾;

⁽¹⁾ OJ C 50, 9.2.2018, p. 2.

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10. Advocates strongly a regular, systematic and objective process of monitoring and dialogue involving all Member States, in order to safeguard the EU's basic values of democracy, fundamental rights and the rule of law and involving the Council, the Commission and Parliament, as proposed in its resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (the DRF Pact) ⁽¹⁾; reiterates that this mechanism should consist of an annual report with country-specific recommendations ⁽²⁾;
 11. Calls on the Commission, as guardian of the Treaties, to monitor the follow-up given to the recommendations by the Romanian authorities, while continuing to offer full support to Romania in finding adequate solutions;
 12. Instructs its President to forward this resolution to the Commission, the Council, the governments and parliaments of the Member States and the President of Romania.
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⁽¹⁾ OJ C 215, 19.6.2018, p. 162.

⁽²⁾ See: European Parliament resolution of 13 December 2016 on the situation of fundamental rights in the European Union in 2015 (OJ C 238, 6.7.2018, p. 2).