EUROPEAN POLICY CENTRE

www.epc.eu

Commentary

Romania's democracy in reverse gear – *en garde*, EU!

Corina Stratulat and Paul Ivan

6 July 2012

Romania's imperfect democracy is old news: the EU had already established a special 'cooperation and verification mechanism' when the country joined in 2007 to monitor its progress in the areas of the judiciary and the fight against corruption. Five years later, and in the midst of ongoing, staggering domestic political developments, while Romania has improved its democratic credentials somewhat, the burning question is whether the recent rolling back of democratic achievements can be halted. What is at stake here in democratic terms goes far beyond the case of Romania and is crucial for the EU in general.

The past couple of months in Romania

In May 2012, the Social Liberal Union (USL) – the political alliance of the Social Democratic Party (PSD), the National Liberal Party (PNL) and the much smaller Conservative Party – took office after winning a no-confidence vote in parliament against the government, dominated by the Democratic Liberal Party (PDL) associated with President Traian Basescu. Victor Ponta, the new prime minister, and President Basescu, his main political foe, were thus forced into a mutually uncomfortable cohabitation. Since then, the USL has been launching repeated attacks against its political adversaries and several state institutions, and is trampling over the country's judiciary and constitution as a means of hoarding power and facilitating the impeachment of the president.

Attacking the judicial system

Only a few weeks into office, the prime minister started a constitutional conflict with the president over who should represent Romania at the European Council – a responsibility that had thus far been assumed by the president. Ponta obtained a political declaration from parliament calling on the president to attend only summit meetings dealing with matters of foreign policy and defence. In response, Basescu asked for a ruling of the Constitutional Court, which decided that the president should represent Romania at the European Council. The prime minister chose to ignore the Court's ruling, accusing it of being under the president's control, and went to the June EU Summit anyway. Moreover, to delay the publication of the Court's decision in the Official Journal and so its entry into force, the government placed the Journal under its authority via an emergency ordinance.

After the Constitutional Court's ruling, the co-president of the USL, Crin Antonescu, demanded the dismissal of some of the judges, despite them being irremovable according to the Constitution. The Court issued a statement accusing the government of conducting "virulent attacks" against it and, in a rare act, sought the support of the Venice Commission, an advisory body of the Council of Europe in the field of constitutional law. While the USL eventually backtracked on this issue, the government subsequently passed another emergency ordinance, removing the Court's power to review parliamentary acts. According to the Constitution, laws governing fundamental state institutions (like the Constitutional Court) cannot be changed through emergency ordinances.

Playing 'musical chairs' in parliament

During an extraordinary session convened on 3 July – in disregard of the Constitution and parliament's rules of procedure – the USL sacked the PDL speakers of the two chambers of the Romanian Parliament and replaced them with USL parliamentarians. The same day, the Ombudsman, accused of political bias, was also substituted for a USL loyalist; not co-incidentally, the Ombudsman is the only institution that can challenge the emergency ordinances of the government in front of the Constitutional Court.

On 4 July, parliament started a procedure to suspend President Basescu, arguing primarily that he had usurped the role of the prime minister. The initiative is likely to pass today, given the USL's parliamentary majority. A referendum will probably be organised by the end of the month to decide on the actual impeachment of the president, who defeated a previous impeachment attempt on similar grounds after a popular vote in 2007. The USL pledged to go on with the suspension process irrespective of the *avis* of the Constitutional Court, and since the governing alliance has already rushed to change the law on referenda, a simple majority against President Basescu will suffice to impeach him.

The politicisation of public television, the Romanian Cultural Institute and the National Archives are just some of the other worrying steps taken by the incumbent government – and that list of missteps is not exhaustive. Prime

Minister Ponta himself was accused of plagiarising his doctoral thesis – charges that were corroborated by the National Council for the Attestation of University Titles, which asked the Ministry of Education to withdraw Ponta's PhD title. However, the interim minister of education dissolved the entire committee while it was deciding, alleging that it was full of opposition allies.

This is not to say that the opposition has not fiddled with the rule of law and constitutional boundaries in the past, reinforcing a more fundamental problem concerning the quality of democracy at the highest political level. However, the speed and scope of the current democratic indiscretions suggest that it is high time for an adequate response to the seriousness of political abuse unfolding in Romania.

An increasingly familiar story throughout the EU

Recurrent challenges to the EU's freedoms, such as to the free movement of European citizens, or else the rise of nationalism, populism, Euroscepticism, and other unbecoming 'isms' in many EU member states, seem to have found fertile ground in the presently complex economic environment. Often prompted by national electoral agendas, these phenomena have been chipping away at the achievements and future of European integration, fuelling – rather than quelling – tensions and mistrust between EU capitals.

The same goes for tarnishing EU values. Here, the Romanian tale is reminiscent of Hungary under Prime Minister Viktor Orbán, whose behaviour has invoked similar concerns over respect for democratic rights and principles, and who has come under intense fire in the last couple of years. It looks as if history is repeating itself further east in Romania, though without the nationalistic overtones of the developments in Hungary.

These political dynamics within and across the Union should set alarm bells ringing for the EU. More must be done at European level to safeguard, monitor and enforce democratic standards and obligations in the countries that enjoy membership of the 'club' and its benefits.

Democracy is just as important as the economy

The developments in Romania show that democratic achievements are not irreversible and that the principles of liberty, democracy, respect for human rights, fundamental freedoms, and the rule of law on which the Union is founded (see Article 6 TEU) are not immune to assaults.

The EU must be more critical early on of challenges to its building blocks. As the guardian of the Treaties, the European Commission should react promptly to democratic violations in member states. And as the defender of people's rights and interests, the European Parliament should never let abuses of the kind taking place in Romania or other member states go unnoticed and unaddressed. Naming and shaming is the least the EU should do. So far, at EU level, Commissioner Viviane Reding and President Van Rompuy tweeted their concern about events in Romania and this was echoed in a statement by the Commission. MEP Joseph Daul called for the resignation of Prime Minister Ponta, and MEP Markus Ferber threatened to initiate proceedings to suspend Romania from the Council for failing to comply with minimum democratic standards.

Ferber alludes to Article 7 TEU, which allows the Council, acting by qualified majority, to decide to suspend certain rights of a member state found in serious and persistent breach of EU values enshrined in the Treaty. But there are also other mechanisms: in previous cases, such as against Hungary over new legislation affecting the independence of its central bank, data protection authorities and the judiciary, the Commission appealed to infringement proceedings under Article 258 TFEU. Essentially, these instruments make up the EU's toolkit for enforcing European laws and principles. The fact that problems persist may indicate that the EU is failing to make use of the full range of tools at its disposal, but also that the available instruments might not be the most effective ones.

To tackle existing undemocratic practices and tendencies, the EU must promote a serious and broad-based discussion about the development of a more systematic and pro-active approach to protecting its democratic construction. This strategy would include actually applying existing tools, but also creating new mechanisms to deal with structural problems that undermine democratic practices in the EU. Fixing creeping shortcomings in the functioning of democracy in Europe is just as important as resolving the euro/economic crisis.

Corina Stratulat is a Policy Analyst at the European Policy Centre and Paul Ivan is an EU affairs researcher affiliated with the Romanian Centre for European Policies.