

Romanian politics: Struggling with the grass roots and digging for democracy

Agnes Nicolescu

Romania was on a good trajectory to meet the European standards in democracy. This process began before the country's accession to the EU in 2007 and has continued since thanks to the Cooperation and Verification Mechanism (CVM). The recent political turmoil has put in danger this trajectory. 2012 will continue to remain a very difficult year for Romania, economically and politically, especially in light of the referendum's result invalidating the suspension of the President and the upcoming parliamentary elections due to take place at the end of this year. Now is time to restore the process of strengthening Romania's democratic institutions and rule of law. There are important roles to be played in this process both by the Romanian political class and the European institutions.

The Romanian Political System and Economic Outlook

As the problem in question originated essentially from a difficult cohabitation situation, culminating in a constitutional crisis, it is worth looking at the powers and role of Romania's main institutions, vis-à-vis the rule of law. The President, by law, is responsible for ensuring respect for the Constitution and the proper functioning of public authorities. To this end, the President mediates between state powers, as well as between the state and society. The legislature serves the people, the office of deputy or senator being incompatible with the exercise of any other public function, except for that of member of the government. National MPs may be prosecuted for activities that are not related to their votes or political opinions expressed during their mandates. Nor may they be searched or detained without the approval of the Chamber to which they belong, until after they have had a formal hearing. As for the prime minister and his/her cabinet, they are accountable [politically] only to the Parliament, which can withdraw the vote of confidence given to the executive. As for the Constitutional Court, it pronounces on the constitutionality of laws and resolves any constitutional conflicts arising between public authorities.

The Romanian political landscape is dominated by several large parties: PSD (Social Democratic Party), PNL (National Liberal Party) and PDL (Democratic Liberal Party), followed by smaller parties, such as PC (Conservative Party) and UDMR (Democratic Union of Hungarians in Romania). PSD, PNL and PC make up the Social Liberal Union (USL), the coalition currently in power. The opposition is now represented by PDL – (a fusion between the former National Salvation Front (FSN), the Democratic Party and the Liberal Democratic Party) – after the adoption of a censorship motion in the parliament, which led to the fall of Ungureanu government.

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As the economic indicators for the period 2009-11 show, real GDP growth evolved from -6.6% in 2009 to -1.6% in 2010, and is estimated to register at +1.5% in 2012.¹ Inflation fluctuated from 5.6% in 2009, 6.1% in 2010 and 5.8% in 2011 to an estimated 2.9% this year. The public deficit dropped to -6.4% in 2010 and an estimated -4.1% in 2011. However, public debt has been on a rising trend ever since 2009 (from 23.8%), reaching 33% in 2011 and an estimated 34.2% in 2012.² The most recent discussion³ within the IMF's Executive Board revealed that, notwithstanding Romania's strong economic performance under the programme, further efforts to resolve the problem of major arrears and reforms in energy and transportation sectors remain critical to the achievement of the fiscal objectives.

Although external financial assistance from the IMF and the EU, reaching €20 billion, was largely seen as critical for the proper functioning of the state institutions and private sector, Romanian economists consider that the long-term solution is to increase the overall competitiveness of the Romanian economy and consolidate the public administration system rather than rely on external assistance mechanisms. These measures include improved taxation and fiscal governance, as well as increased accountability in the spending of public funds, including in the absorption of structural funds. On 29 June 2012, a second additional memorandum of understanding was signed between the EU and Romania, which is important for the balance-of-payments assistance programme.

The Chain of Events

The start of 2012 was marked by the fall of the Boc government (in power, with a brief pause, between 2008-12), in the context of large-scale street movements, triggered by the austerity measures introduced by the same government in 2010 and an attempt to bring down Raed Arafat, founder of the Mobile Emergency Medical unit and a popular figure, on the grounds that he opposed the new Health law. The succeeding government, led by Mihai Răzvan Ungureanu, was the shortest-lived (February-April 2012), after it failed to win the confidence vote of the parliament, and a censor motion was presented by USL-led opposition. This resulted in the designation by President Băsescu of the USL nominee Victor Ponta as Prime Minister.

The Parliament soon approved, by a strong majority, the suspension of President Băsescu, opening up the door for a national referendum on this question. President Băsescu was accused of overstepping his constitutional powers and attempting to influence the judicial system. A nuanced overview of his mandate is given by researcher Mario Kreuter of the Institute for East and Southeast European Studies in Regensburg and political scientist Anneli Ute Gabanyi, who point to the tough budget cuts and active political engagement of Băsescu's mandate as causes for the decrease of his popularity.⁴

The Ponta government started off by taking a series of measures, among which were: 1) opposing a decision of the Constitutional Court concerning the representation to the European Council of June, which Prime Minister Ponta attended, instead of President Băsescu; 2) replacement of the heads of Parliament chambers, ruled as legal by the Romanian Constitutional Court; and 3) adoption of emergency ordinances that challenged the established competences of the Constitutional Court, especially the court's power to pronounce itself on parliamentary decisions, and rules for the appointment of the ombudsman, the general prosecutor and chief prosecutor of the National Anti-Corruption Department (DNA). Other such measures included placing the Official Journal under government oversight, and dismissing some of the heads at the National Statistics Institute.

¹ <http://unstats.un.org/unsd/pocketbook/PDF/Romania.pdf>; <https://finances.worldbank.org/facet/countries/Romania>.

² <http://www.gfmag.com/gdp-data-country-reports/194-romania-gdp-country-report.html#axzz22yRDU7Is>.

³ IMF Completes Fifth Review under Stand-By arrangement for Romania, Press Release No. 12/234, IMF (<http://www.imf.org/external/np/sec/pr/2012/pr12234.htm>).

⁴ Băsescu, too active as president? Deutsche Welle, <http://www.bucharestherald.ro/politics/34-politics/34912-deutsche-welle-bsescu-too-active-as-president>, 08.07.2012.

The referendum of July 29th failed to remove President Băsescu from office, as the 50+1 quorum needed for the validation was not met. The official results published by the Central Electoral Office⁵ reported 87.5% in favour of removing President Băsescu from office and 11.15% against, with a turnout of 46%. Amidst fraud allegations on both sides, the President of the European Commission, José Manuel Barroso, sent a letter⁶ to PM Ponta urging him to ensure the independence of judges and that all parties refrain from statements or interference aimed at influencing the judicial process. President Băsescu had already faced a first attempt by the Parliament to remove him from office, but he managed to narrowly win a second mandate in 2009. His popularity faded after a series of incidents in which he failed to communicate his policy platform to the electorate – or did so in a counterproductive, divisive manner – and failed to promote a sense of accountability, including in relation to members of his former PDL party, while they were in office.

The timing of the Ponta government's actions was unfortunate, as Romania had been waiting for the publication of the European Commission's progress report⁷ on the Cooperation and Verification Mechanism (CVM) in July. In spite of noting overall progress achieved by Romania, the report points out that the country does not fully meet the required benchmarks in the judicial area and in the fight against corruption. It is important to remark that the CVM has been essential in tackling shortcomings of the judicial system, which is also emphasised in the report, with 65% of Romanian respondents considering that "EU action through the CVM has had a positive impact" in this area. One statement of the report in particular should pose real concern for the whole Romanian political spectrum, namely the fact that "external pressure is still necessary raises questions about the sustainability and irreversibility of reform, questions accentuated by current events".⁸

The Analysis of the Situation

The Commission's severe criticism should be taken seriously by the entire Romanian political class in general and by the USL-led alliance in particular. Although the 11-point list⁹ specifically targets the unprecedented attacks on the rule of law by the coalition in power, the Commission's report points to structurally-embedded institutional weaknesses that have grown up over time irrespective of the political orientation of the leadership. The report calls upon Bucharest to repeal emergency ordinances on the powers of the Constitutional Court, to lift the quorum rules for the organisation of the referendum on July 29th and to review the appointment procedures for the ombudsman, the general prosecutor and chief prosecutor of the National Anti-Corruption Department. Although quorum rules were changed ahead of the referendum, so far the government has not rushed to fully comply with the rest of the requirements in the report.

Decisive political will is needed to eliminate the undemocratic practices criticized in the report and remove all the obstacles impeding the efforts of core institutions fighting high-level corruption. No steps have been taken in this direction by the executive, quite the contrary. The activity and role played by ANI (National Integrity Agency) and DNA (National Anti-Corruption Department) in

⁵ Press release on the results of the national referendum of 29 July 2012 for the removal from office of the President of Romania (<http://www.becreferendum2012.ro/DOCUMENTE%20BEC/Rezultate/comunicat%20rezultate%20finale.pdf>).

⁶ Letter from President Barroso to Romanian PM Victor Ponta on the institutional and political developments in Romania, Brussels, 10 August 2012 (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/621&format=HTML&aged=0&language=EN&guiLanguage=en>).

⁷ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, 18 July 2012 (http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf).

⁸ Ibid, p. 4.

⁹ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, July 2012 (http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf).

pursuing and prosecuting high-level corrupt politicians were properly acknowledged in the Commission's report, with due attention to the serious set-backs in their activity. Such an example is the fact that ANI's legal framework was declared unconstitutional in 2010, which raised serious doubts about its basic competences in seeking to confiscate unjustified assets.¹⁰ The amendment of ANI's functioning law showed that the political will needed to implement integrity standards was weak across the political spectrum, as the legal committee of the Chamber of Deputies has so far failed to take action against two MPs with definitive findings of incompatibility and conflict of interest, in spite of ANI's repeated calls for sanctions.¹¹

It is essential that the Parliament makes a final determination of the suitability of the individual for office and whether s/he should be removed from office in these cases, in order for Romania to regain its democratic credentials. Furthermore, the wealth investigation commissions created following the amendment of ANI's legal basis seem to have made things more difficult rather than facilitating the pursuit of questionable assets. This is yet another way of interfering with the core state institutions in an attempt to subordinate them to political interests.

The Romanian press was polarized in its interpretation of the actions undertaken over the last month by the Romanian executive, while the foreign press and representatives were generally critical of PM Ponta's political initiatives, with few notable exceptions. Most press reports quoted sources in Brussels or other foreign news agencies, without any coverage in Bucharest. The bitter institutional dispute at the national level opened up the way for corresponding reactions from the European political groups.

In a press conference given jointly by Prime Minister Ponta with Sergei Stanishev, President of European Socialists Party, the latter announced his intention to tackle some of the "inaccuracies" reported with regard to the political developments in Romania. Stanishev stated his political party's support for Ponta's government,¹² putting forward a series of arguments, of which the most important ones were: the popular referendum of July 29th as a consultation form which has not been used in similar cases by other countries, mentioning Bulgaria's example of two years ago; and the existence of a decision by the Constitutional Court concerning suspension procedures.

A far more critical view was expressed by the German MEP Markus Ferber, who emphasized this report as the most critical one so far for Romania and demanded PM Ponta's resignation.¹³ German Chancellor Merkel voiced similar concerns over the breach of rule of law, considering it "unacceptable".

Susanne Kastner, Chair of the Germany-Romania Parliamentary Group of Friendship in the Bundestag and the German-Romanian Forum, considered that the suspension of President Băsescu by the Romanian government did not breach the law and demanded a fair treatment for Romania. She recalled that the Constitutional Court has ruled that the suspension procedure and the referendum were constitutional. Mrs. Kastner noted that there was something wrong in Romania indeed, but not just since Ponta had taken the helm. At the same time, she expressed doubts over the government's recent emergency ordinances as the appropriate instrument to tackle problems.¹⁴ Other Social Democrat leaders in the European Parliament also demanded that the government in Bucharest address the concerns expressed in the Commission Report.

¹⁰ Assets that cannot be justified or accounted for based on the declared income.

¹¹ Comunicat: aplicarea sancțiunilor disciplinare – Andon Sergiu și Pâslaru Florin Costin, ANI website, 2 May 2012 (<http://www.integritate.eu/1830/section.aspx/2581>).

¹² http://www.gov.ro/premierul-victor-ponta-am-venit-la-bruxelles-pentru-a-prezenta-punctul-nostru-de-vedere-i-a-elimina-ingrijorarile-partenerilor-nostri-europeni__11a117713.html.

¹³ http://www.tvrinfo.ro/markus-ferber-premierul-ponta-ar-trebui-sa-demisioneze-dupa-raportul-pe-justitie_19157.html.

¹⁴ http://www.tvrinfo.ro/vicepresedintele-bundestagului-cere-un-comportament-corect-fata-de-romania_19138.html.

Several Romanian intellectuals and representatives of civil society issued a “Letter to the EU” on July 23th,¹⁵ in which they basically argue that the recent suspension of President Băsescu does not equal an overthrow or a *coup*. The signatories, among which are Cristian Pârvulescu, Director of Pro Democrația Association, and Zoe Petre, academic and former presidential counsellor, expressed their disappointment at the fact that senior EU officials ignored a fundamental law principle, *audiatur et altera pars*. The objective of the document is to help clarify perceptions of the latest events. The authors pointed to major deficiencies during President Băsescu’s mandate, which included numerous actions and decisions going beyond his constitutional prerogatives as a mediator between political parties, and turning into an actor with executive powers himself. They mentioned President Băsescu’s refusal to conform to the censure motion adopted by the Parliament in 2009, in accordance with the legislation, which led to the failure to appoint Klaus Johannis, Mayor of the Sibiu municipality, who enjoyed at the time a large support in the national parliament, as head of the executive.

In the aftermath of the invalidation of the referendum, Monica Macovei, former Minister of Justice and current MEP, fears that what has been achieved so far, in terms of justice, may be endangered by resistance to prosecution of politicians from all parties.¹⁶

Learning from past mistakes: What happens next?

The ongoing political crisis once more raises the question of what Romania must still do to consolidate its European trajectory. The recent Commission report on Romania¹⁷ has in fact sanctioned the lack of respect for the judicial system. Since the next report of the Commission on CVM, expected to be released by the end of the year, will specifically analyse the extent to which democratic checks and balances have been restored, the most sensible thing for whichever party remains in power to do is to refrain from taking politically questionable decisions and measures while striving to strengthen Romania’s credibility as a predictable partner.

Perhaps the most worrying behaviour prompting European criticism of Bucharest – aside from the natural alignments of the political parties on one side or the other – is the superficial treatment of or disregard for procedures, as an indicator of predictable governance. Had the recent controversial developments not taken place, it is likely that the Commission’s report might have conveyed a different message on the progress in Romania. The consequence of these moves was an unprecedented decision to request an additional monitoring report at the end of this year. The good governance deficit is real in Romania and requires strong political will across the entire political spectrum. This will prove very difficult to achieve, given that the invalidation of the referendum translates into a continuation of the painful co-habitation between the USL government and President Băsescu. There are also a good chance that the popularity capital, indirectly gained by USL in the context of the austerity measures adopted by previous PDL governments, is gradually lost, unless the USL leadership succeeds in restoring good governance principles and trust in the functioning of basic institutions. Speaking shortly after the decision of the Constitutional Court, which declared the referendum invalid, PM Ponta stated the decision would be respected and implemented, although it was considered to be unjust¹⁸.

In recent weeks, Romanian society has become more circumspect, and to a certain extent, more demanding in relation to the messages promoted by political parties. USL’s discourse was heavily populist in an attempt to win the support of professional groups hit by the austerity plan initiated by

¹⁵ <http://www.hotnews.ro/stiri-politic-12866745-ilhl.htm>, 24 July 2012.

¹⁶ <http://www.ziare.com/monica-macovei/pdl/nu-s-a-terminat-usl-vrea-sa-schimbe-procurorii-inainte-sa-revina-basescu-1185470>.

¹⁷ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, July 2012.

¹⁸ http://www.gov.ro/victor-ponta-ne-am-facut-datoria-ca-guvern-nu-doar-in-organizarea-referendumului-ci-si-in-perioada-urmatoare-asigurand-stabilitatea-romaniei-i__11a118065.html.

the government of former PM Boc. This kind of message does not do any good, as long as public accountability is only used as a pretext to get even with a political adversary rather than serve as a universally applying governance instrument. Restoring confidence in public offices and representatives should become the key objective for both USL and PDL. President Bănescu himself needs to draw the lesson that it is vital to obtain broad social support and especially to promote a fair burden-sharing of the social costs associated with the crisis. This should include steps to ensure a meritocratic basis for appointments to public offices and facilitate the prosecution of the corrupt figures in PDL as well.

Significant work remains to be done as regards a major concern of civil society, that is efforts to prevent and sanction all forms of corruption and conflict of interest in the public administration, above all in the area of public procurement. Another aspect relates to the necessity to improve the reward system for public offices, based on meritocracy principles. This is a constant critique raised by civil society and academia and one that has not yet been properly addressed. Well-qualified professionals or public servants will not feel motivated to stay in or return to a public system that does not value merit and does not sanction cronyism and inefficiency. All these factors have contributed to a growing feeling of helplessness and alienation within Romanian society, especially among its youth.

In light of the latest intensified political feud, which gained dramatic accents due to exaggerated interpretations of events from both sides, it is important that both the coalition in power and the opposition refrain from a further escalation of the political discourse. In such a tense climate, it is vital that the government takes action to ensure concretely the independence and safety of judges. Failure to accomplish these key objectives would have seriously negative consequences for the credibility of the Ponta government and the USL coalition at large, ahead of the parliamentary elections, as well as for Romania's image in the Commission's report at the end of the year. For the moment, the biggest risk for Romania is to let the political struggle take its toll on the democratic functioning of its institutions. If Romania is to evolve and break this vicious circle for good, which has damaged its institutional democratic framework, strong mechanisms should be put in place to prevent the use of state institutions as political tools by the various political parties. It is vital that all the deficiencies raised by the Commission in its latest report are addressed.

While economic integration may have occurred at a greater speed after formal accession to the EU, consolidation of accountable public institutions in some cases required more than 30 years, and further efforts are still needed to fight high-level corruption across Europe. As has been seen in the case of states recently hit by the crisis, blaming and shaming may be a first step towards ensuring discipline, but more concrete steps by the EU are needed to ensure public accountability in member states. The prerequisite for strong accountability in public offices as the key to a country's democratic and economic satisfactory performance appears even clearer. It is not a surprise that countries with poor economic and financial performance throughout the crisis have had problems in tackling corruption and administration deficiencies. Poor checks and balances in the public system open up the door for irregularities and corruption in the economic and financial activity, and the lack of control or abuse in the distribution of public resources is instrumental in feeding this vicious circle.

The EU should be more careful about the way it follows and assesses democratic standards in all member states, so as not to persist in applying double standards in the treatment of member states that fail to play by the rules. A report recently published by Transparency International does not bode well news for either old or new EU member states.¹⁹ Greece and Italy are at the top of the list of old members to display worrying deficits in public sector accountability and serious problems of inefficiency and corruption, comparable to those of Romania and Bulgaria. Areas where Bucharest and Sofia encounter significant deficiencies include public expenditure oversight, the fight against high-level corruption and electoral processes, all of them particularly troubling. On a general note,

¹⁹ „Money, Politics, Power: Corruption risks in Europe”, 6 June 2012, Transparency International (http://www.transparency.org/whatwedo/pub/money_politics_and_power_corruption_risks_in_europe).

political parties, public administrations and the private sector are assessed as the actors most likely to engage in corrupt acts.

Part of the solution in dealing with the financial crisis lies in properly tackling corruption and poor management of public resources across the EU. Although it has become commonplace to talk about the poor democratic performance of the EU's newcomers, it is troubling to see that these arguments have been rarely if ever mentioned in relation to countries that joined the EU more than 30 or even 40 years ago and which nonetheless still fail to meet integrity standards. Perhaps the successive enlargement waves starting with 2004 have proven too much for the EU's stomach or heart. If the EU's stomach is the problem, more concrete steps in terms of sanctions and rewards towards members should include allocation instruments of funds, without however affecting countries' fundamental voting powers. Such a measure, applied in a biased and conjectural manner, would only create more differentiation and resentment among member states and keep them divided into antagonistic camps.

About EPIN

EPIN is a network of European think tanks and policy institutes with members in almost every member state and candidate country of the European Union. It was established in 2002 during the constitutional Convention on the Future of Europe. Then, its principal role was to follow the works of the Convention. More than 30 conferences in member states and candidate countries were organised in the following year.

With the conclusion of the Convention, CEPS and other participating institutes decided to keep the network in operation. EPIN has continued to follow the constitutional process in all its phases: (1) the intergovernmental conference of 2003-2004; (2) the ratification process of the Constitutional Treaty; (3) the period of reflection; and (4) the intergovernmental conference of 2007. Currently, EPIN follows (5) the ratification process of the Lisbon Treaty and – should the treaty enter into force – (6) the implementation of the Treaty.

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Structure

Currently there are 34 EPIN members from 25 countries, also from countries outside of the EU. The 'hard core' work of the network is based on the cooperation of about 10 most active institutes. The member institutes are quite diverse in size and structure, but are all characterised by political independence and the absence of any predetermined point of view or political affiliation.

EPIN organises at least three events across Europe per year. The network publishes Working Paper Series and other papers, which primarily focus on institutional reform of the Union. The network follows preparations for the European elections, the EU's communication policy, and the political dynamics after enlargement, as well as EU foreign policy and justice and home affairs.

Achievements

EPIN is a network that offers its member institutes the opportunity to contribute to the 'European added-value' for researchers, decision-makers and citizens. The network provides a unique platform for researchers and policy analysts to establish personal links, exchange knowledge and collaborate on EU-related issues. Members bring their national perspectives to bear on the issues tackled and through collaboration they contribute to establish a 'European added-value' (e.g. on EU communication, flexible integration). By doing so, they strengthen a common European dimension in the national debates on Europe.



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