



Plenary sitting

B8-...../2018

14.11.2018

DRAFT MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission and Council

pursuant to Rule 123 (2) of the Rules of Procedure

on the Rule of Law in Romania

Roberta Metsola

on behalf of the PPE Group

Josef Weidenholzer

on behalf of S&D Group

Monica Macovei

on behalf of the ECR Group

Sophia in't Veld, Cecilia Wikström

on behalf of the ALDE Group

Judith Sargentini

on behalf of the Greens/EFA Group

Barbara Spinelli

on behalf of the GUE/NGL Group

Laura Ferrara

on behalf of the EFDD Group

The European Parliament,

- having regard to the European Union’s Treaties and in particular to Articles 2, 3, 4 and 6 and 7 of the Treaty on the European Union;
- having regard to the Charter of Fundamental Rights;
- 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 the European Parliament’s debate on Democracy and Justice in Romania of 2 February 2017;
- having regard to the European Parliament’s debate on threats to the rule of law by the Romanian justice system reform of 7 February 2018;
- having regard to the European Parliament’s debate on Rule of law in Romania of 3 October 2018;
- having regard to the Exchange of Views of 1 October 2018 with European Commission First Vice-President Frans Timmermans in LIBE;
- having regard to the hearing of 22 March 2017 in LIBE on Democracy and Justice in Romania;
- having regard to the joint statement of 24 January 2018 of European Commission President Juncker and First Vice-President Timmermans on the latest developments in Romania;
- having regard to the Venice Commission opinion of 16 March 2018 on draft law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations;
- having regard to the Venice Commission opinion of 20 October 2018 on amendments to law no. 303/2004 on the statute of Judges and prosecutors, law no. 304/2004 on judicial organization and law no. 317/2004 on the superior council for magistracy;
- having regard to the Venice Commission opinion of 20 October 2018 on amendments to the Criminal Code and the Criminal Procedure Code laws also affecting law no. 78/2000 on preventing, detecting and sanctioning acts of corruption, and the Law no. 304/2004 on judicial organization;
- having regard to the GRECO ad hoc report on Romania of 11 April 2018;
- having regard to the European Commission Report on progress in Romania under the Cooperation and Verification Mechanism of 15 November 2017;

- having regard to the forthcoming European Commission Report on progress in Romania under the Cooperation and Verification Mechanism of November 2018;
 - having regard to the adoption of three laws reforming the judiciary by the Romanian Parliament in December 2017, namely law 303/2004 on the status of judges and prosecutors, law 304/2004 on judicial organization, law 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;
 - having regard to the Resolution 2226/2018 and the 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 Courts declaration of 25 October 2018 that 30 amendments to the Criminal Code are incompatible with the Constitution;
 - having regard to the repeated mass protests against corruption and for the rule of law since January 2017, 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 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 conform 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 Group of States against Corruption of the Council of Europe (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 Parliament as well as on draft amendments to the criminal legislation; whereas GRECO questions the legislative

process, fears impact on judicial independence and imply violation of anti-corruption standards;

- F. Whereas the Venice Commission in its opinion 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”*, while likely *“to undermine public confidence in the judiciary”*;¹
- G. Whereas the Venice Commission in its opinion of 20 October 2018 concluded 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”*, while also concluding that many 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
- H. Whereas the Venice Commission, noting in its opinion of 16 March 2018 *„with satisfaction 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”*, called upon the Romanian authorities to consider the following main recommendations: *“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”*; whereas 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, is considered to have *“a chilling effect on civil society and conflict with the freedom of association and the right to respect for private life”*;³
- I. Whereas the PACE calls on Romania to reject the recently proposed draft laws imposing additional financial reporting obligations on NGOs, amend them according to the recommendations of the Venice Commission and the OSCE/ODIHR and submit them to broad public consultation, before adoption;⁴
- J. Whereas the European Commission referred Romania to the Court of Justice of the EU for failing to implement the 4th Anti-Money Laundering Directive into their national law on 19 July 2018; whereas the Romanian Parliament adopted however the "draft law on combating money laundering and terrorist financing" on 24 October 2018 after a doubtful vote repetition;
- K. Whereas there is an ongoing debate with regard to the role of the Romanian Intelligence Service (SRI) and its alleged interference within the activities of the Romanian

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).

³ Venice Commission Opinion No. 914/2018 of 16 March 2018 (CDL-AD(2018)004).

⁴ Resolution 2226/2018 & Recommendation 2134/2018 of the Parliamentary Assembly of the Council of Europe

judiciary, raising questions on the possible extent and modalities of such interference; whereas the Venice Commission concludes that a “*thorough review of the legal rules on the control of the intelligence services seems necessary*”;⁵

- 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 failed to reach the required 30 percent turnout target;
- M. Whereas Romania ranks 25th out of 28 EU states based on legislation, hate speech and discrimination against LGBTI people, according to the Annual Review of the Human Rights Situation of LGBTI People in Europe 2018 by ILGA-Europe;
- N. Whereas the European Union is committed to respect freedom and pluralism of media, as well as the right to information and freedom of expression as enshrined in Article 11 of the Charter of Fundamental Rights and in Article 10 of the ECHR; 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 the Reporters without Borders draw attention to the attempts to turn Romanian media into political propaganda tools, and raise concern about political censorship in the media;⁶
- 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 reported violent interventions by the Romanian police during the protests on 10 August 2018 raise serious concerns as regards proportionality of the use of force and breaches of fundamental rights of protesters, including ongoing investigations of Romanian law enforcement authorities;
- R. Whereas corruption remains a challenge in the EU, whereas the nature and scope of corruption may differ from one EU State to another, but it harms the EU as a whole, its economy and society, it hampers economic development, undermines democracy, and damages the rule of law;
- S. Whereas the National Anticorruption Directorate’s (DNA) Chief-Prosecutor 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 contrary, the Venice Commission stated 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, able to balance the influence of the Minister (of Justice)*”; whereas the Romanian government passed an emergency ordinance on 15 October 2018; **whereas, so far, 48 prosecutors had to leave their office following the entry**

⁵ Venice Commission Opinion No. 924/2018 of 20 October 2018 (CDL-AD(2018)017).

⁶ <https://rsf.org/en/romania>

into force of the ordinance, potentially hampering a high number of ongoing investigations; whereas Romania's Minister of Justice demanded the dismissal of the Prosecutor General on 24 October 2018, accusing him of exceeding his authority;

1. Stresses that it is fundamentally important to guarantee that common European values listed in Art. 2 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 police forces during the protests in Bucharest in August 2018;
4. Calls upon the Romanian authorities to put in place safeguards in order to assure transparent and legal basis for any institutional cooperation and to avoid any interference that overcomes the check 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 apply the National anti-corruption strategy;
6. Strongly recommends to reconsider the legislation on NGO financing, organisation and functioning as to its potential to have an intimidating effect on civil society and conflict with the principle of freedom of association and the right to privacy, and bring it fully in line with the EU framework;
7. Expresses its deep concern regarding political restrictions of media freedom and the bill proposals penalizing denigration of Romania abroad and reintroducing defamation in the criminal code;
8. 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 the respect for the rule of law, including the independence of the judiciary; urges to continue to engage the civil society and to address the above issues in a transparent, inclusive process; encourages to seek pro-actively evaluation by the Venice Commission of the legislative measures at stake before their final approval;
9. Calls on the Romanian government to cooperate with the European Commission pursuant to the principle of sincere cooperation as set out in the Treaty;
10. Reiterates its regret that the Commission decided not to publish the EU Anti-Corruption Report in 2017, and strongly calls on the Commission 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;⁷

11. Strongly calls for 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, 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)⁸; reiterates that this mechanism should consist of an annual report with country-specific recommendations;⁹
12. Calls on the European 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;
13. Instructs its President to forward this resolution to the European Commission, the Council, the governments and Parliaments of the Member States and the President of Romania.

⁷ Texts adopted, [P8_TA\(2016\)0071](#).

⁸ Texts adopted, [P8_TA\(2016\)0409](#).

⁹ Texts adopted, [P8_TA\(2016\)0485](#).