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Debate in the European Parliament on the rule of law in Romania

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On 3 October, a plenary debate was held at the European Parliament in Strasbourg devoted to the state of rule of law in Romania, in which the Prime Minister of Romania Viorica Dăncilă took part, among others. In the opening speech of the debate Frans Timmermans, first vice-president of the European Commission (EC), sharply criticised the government camp in Bucharest for forcing through a controversial reform of the judiciary, and questioned the way in which the head of the National Anti-Corruption Directorate (DNA) was removed from her position. Timmermans stressed that the Romanian Parliament has so far failed to followed the recommendation by the European Commission, the Venice Commission and GRECO, which deem the planned changes to be a threat to the independence and efficiency of the Romanian courts. Timmermans warned that if the laws criticised were to come into force, this would prevent the abolition of the Cooperation and Verification Mechanism (CVM) for Romania (which the country has been covered by since joining the EU in 2007). He also emphasised that the European Commission would use all the measures at its disposal to ensure the compliance of Romanian law with that of the EU.

In response to Timmermans's statement, Prime Minister Dăncilă criticised the report prepared for the European Commission within the framework of the CVM, stating that it did not refer in any way to the problem of the existence of protocols governing the cooperation between the secret services and the judiciary. In the opinion of the Romanian Prime Minister, these agreements – under the guise of the fight against corruption – allowed surveillance and wiretaps "of millions of Romanians" to be carried out. In this way Dăncilă drew upon the thesis, proclaimed by the Romanian government for several years, about the existence of a 'parallel state' – an informal, opaque agreement between the secret services, part of the judiciary and the president, in violation of democratic standards, which is aimed at fighting the government and taking control of the national political scene. Commenting on her government's reform of the judiciary, the Prime Minister said that the changes which have been criticised will eventually restore the independence of judges, because their appointment and dismissal will no longer be susceptible to influence by politicians. The criticism of the Romanian authorities connected with the aggressive behaviour of the security forces during the riots in Bucharest in the course of anti-government demonstrations on 10 August was deemed unfair by Dăncilă, who highlighted similar cases of police action in other EU countries. At the end, she appealed for Romania to be treated in the EU as an equal partner. The next plenary session of the European Parliament is scheduled for early November, during which the resolution on Romania will be voted on.

The debate in the EP and the meeting of the Committee on Civil Liberties, Justice and Home Affairs (LIBRE) dedicated to Romania preceding it (which took place on 1 October) provoked critical reactions from the Romanian government and politicians associated with it. The leader of the camp of the government, the President of the co-ruling Social Democratic Party (PSD), Liviu Dragnea, stated that Timmermans's remarks were 'a list of declarations prepared ahead of time', which ignored the information that the government had provided to Brussels. The leader of the jointly-ruling ALDE coalition party, Călin Popescu Tăriceanu, said that the European Commission does not have the appropriate expertise to properly assess the situation in Romania. Despite these declarations, the justice minister Tudorel Toader said that in the near future it would be possible to implement part of the recommendations of the Venice Commission, whereas Prime Minister Dăncilă declared that the dialogue with both the EC and the European Parliament must be improved.

Commentary

- The condition of the Romanian justice system has been of special interest to the EU institutions for years. Since it joined the EU in 2007, the country has been covered (along with Bulgaria) by the Cooperation and Verification Mechanism (CVM), whose aim is to monitor the functioning of the Romanian judiciary and contribute to a more effective fight against corruption. Romanian reforms in this area were positively assessed by the European Commission for many years. However since the beginning of 2017, the centre-left government in Bucharest has been pushing through a number of changes in the justice system which have been consistently criticised by some of the country's Western partners and the European Commission. In December 2017, a parliamentary majority rushed through amendments to three laws that organise the functioning of the judiciary, and this July they hurriedly voted on controversial amendments to the Penal Code and the Code of Criminal Procedure. At the same time, at the government's initiative the head of the DNA Laura Codruţa Kövesi was fired; she was one of the key figures in the Romanian anti-corruption system, and was largely responsible for its spectacular successes. The government's actions have also contributed to increased tensions between Bucharest and Brussels. Another factor increasing interest in the situation in Romania is the preparations for the country's EU presidency in the first half of 2019.
- The most powerful critic in the European Parliament of the ruling centre-left in Romania is the European People's Party (EPP). At the end of September its leader, Manfred Weber, gave a negative assessment of the reforms carried out by the Romanian government, and called on Prime Minister *Dăncila* to offer an explanation. Meanwhile, the Party of E uropean Socialists (of which the PSD is a member) shows moderate support for the Romanian government. The European Parliament is scheduled to adopt a resolution on the rule of law in Romania in November, but it is unlikely that the members will decide to launch the procedure of Article 7 of the Treaty on the European Union (TEU) at that time. However, Timmermans has stressed that the Commission is considering the referral of a complaint against Romania to the European Union Court of Justice (CJEU). At the same time, he has hinted that Bucharest still has the time to take the appropriate action which would protect it from the consequences.

- Despite the generally critical tone of the debate on Romania, the government camp managed to gain some understanding for its narrative of the 'parallel state', the alleged existence of which the coalition uses to justify the need for reforms. This has been demonstrated by the call Timmermans made during the debate for the protocols regulating cooperation between the secret services and the prosecution to be investigated, as well as the statement by Guy Verhofstadt, who admitted that Romania has two problems: widespread corruption, and its secret services. The protocols to which the EC's deputy chairman referred were disclosed in April by the Romanian Information Service (SRI) at the request of the ruling coalition. They allowed the prosecution and the special services to undertake far-reaching cooperation; for example, they allowed the services to pass materials to the justice ministry which had been acquired by bugging, and also led to the creation of joint investigative groups. On the basis of these protocols, the SRI was also able (at the request of the prosecutor's office and with the consent of a court) to conduct surveillance activities and thus gather evidence in criminal cases. From the coalition's point of view, the disclosure of these agreements constituted a key argument confirming the thesis about the existence of a 'parallel state'. Representatives of the government's camp have said that the non-transparent cooperation between the investigators and the special services has undermined the democratic foundations of the Romanian state, and poses a threat to the liberty and freedom of Romania's citizens.
- The Romanian government is determined to implement its planned reforms to the justice system, since they are primarily intended to protect the interests of members of the government camp. Among others, they will apply to the chairman of the co-ruling PSD, Liviu Dragnea, who in connection with two convictions concerning abuse of office (in the case of a second validation of judgments) is under threat of imprisonment. Meanwhile, the coalition is willing to make such concessions as do not threaten the interests of its members and can limit the growing tensions in its relations with its Western partners and the Commission. At the same time, the government is trying to put pressure on the EU institutions, suggesting that excessively strong and unfair criticism from the EU will be received in Romania as a lack of respect towards the country, and lead to a rise in anti-EU sentiment.
- Prime Minister Dăncila's speech to the EP was directed primarily towards the Romanian public. The speech was characterised by extremely firm and assertive rhetoric against the EU, of the type which has hitherto rarely been found in Bucharest's European policy. The government has spent several months trying to convince the Romanian people that it has been fighting for their interests in Brussels, while maintaining a clearly pro-European course. In this way, Dăncila's cabinet has set itself up in opposition to President Klaus Iohannis, whom it has been presenting increasingly often as a representative of outside interests. In light of the opposition's weakness, from the perspective of the ruling Social Democrats, Iohannis is their only significant opponent. Creating a negative image of the head of state is part of the game they are playing before next year's presidential election.