Romania In Hungary's Footsteps: Different Victor, Same Strategy

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On January 1, 2012 with an ammended Constitution in place, a once praised EU accession candidate, Hungary, proved that rule of law and consolidated judicial institutions are not at all irreversible. A new shift of power brought to Budapest the necessary political power that allowed Viktor Orbán and the FIDESZ government to silence the Hungarian Constitutional Court, one of the strongest and most active Courts in Central and Eastern Europe.

It does not come as surprise, when Romania, considered by EU officials a laggard in fulfilling EU's conditionality, goes along the same path as Hungary, when deciding to deprive the Romanian Constitutional Court of its powers. Unlike Hungary, Romania remained despite considerable progress in reforming its judiciary a concern for the EU as its political system is plagued by a chronic lack of consensus, with personalized institutional settings and a judiciary that was not allowed by the political powers to reach the same level of independency from the executive as Hungary did. Furthermore, skeptics of Romania's readiness to join the EU both from the political praxis and academia were proven right when Monica Macovei, a disputed Minister of Justice at home, but considered a reformist force by Brussels was dismissed from her office after the country joined EU in 2007.

Since Romania's application for EU membership on June 1995, the judiciary suffered a continuous institutional redesign and personnal change according to the interests of successive governments. An excessive legislative process shaped by a 'copy and paste' method of Western legislative and institutional models and complex reform packages adopted by the subsequent governments in a hasty manner through votes of confidence and emergency ordinances eliminated a critical discussion and political consensus on the quality of the reforms.

The instrumentalization and politization of the judiciary is not a novelty in Romania, which remains trapped in this legacy since Communism. In the current political crisis, rule of law institutions are kept hostage in order to prepare the political battle between the Prime Minister Victor Ponta and the now suspended President Traian Basescu. The tense relationship between the Prime-Minister and the President Basescu has been repeatedly put to the test due to an unclarified semi-presidential Romanian political system and Basescu's desire to be an 'active' president and escalated into an open conflict on 27 June 2012, when the RCC was called to decide if the President or the Prime Minister has the right to represent Romania at the European Council's meetings. The RCC decided in favor of President Basescu (1). Ponta's accusations that President Basescu had overstepped his powers and influenced the judiciary triggered the approval of the USL in the Parliament to suspend the President and organize a referendum on 29 July 2012. According to Article 96 (1), the Chamber of Deputies and the

Senate may decide the impeachment of the President of Romania for high treason, in a joint session, based on the votes of at least 2/3 of the number of deputies and senators (Romanian Constitution 2003). The measure of impeachment was overwelmingly decided with 256 of the votes for and 114 against (2).

According to Article 95, the president may be suspended only after consultation of the Constitutional Court (RCC). The RCC's consultation role changed from a simple advisory one in 2010 (due to an ammendment to Article 95 proposed by Dan Sova, a Social Democrat senator) into an obligatory consultation (3). Accordingly, the RCC's consultation on the constitutionality of the Parliament's law and ordinances transformed the RCC into a last institutional filter on the decision of the impeachment of the President. The ammendments envisaged by the leftist Social Liberal Union (USL) intended to remove this filter by depriving the RCC of its right to rule on the constitutionality of the Parliament's decisions and ammended through an emergency ordinance (EO 38/4 July 2012) on 5 July 2012 the Law on the organization and functioning of the Constitutional Court (Law 47/1992) (4).

While according to the Constitution, ammendments to complex and fundamental laws such as the Law on the organization and functioning of the Constitutional Court are prohibited to be passed through emergency of ordinance, USL limited the independence of the rule of law through several measures (5):

1. The replacement of the People's Advocate Gheorge Iancu with a former counselor of the president Iliescu, Valer Dorneanu. The Romanian Ombudsman acts as an institutional filter that could stop the emergency of ordinance to impeach the president, as he has the right to notify the Constitutional Court to adjudicate on the constitutionality of laws of the government before their promulgation by the Parliament (Art. 146a Romanian Constitution 2003) (6);
2. The replacement of the President of the Senate, Vasile Blaga (National Liberal Party) with Crin Antonescu. According to Art. 98 (1), the president of the Senate serves at the interim President (Constitution of Romania 2003). Hence through the successful suspension of President Basescu, and the replacement of Blaga, as of July 3rd 2012 Romania has a new interim president, the President of Senate, Crin Antonescu (7).
3. The replacement of Roberta Anastase, the President of the Chamber of Deputies.
4. The Romania's National Ethics Committee has been disolved, while still debating on the charges of plagiarism against Prime Minister Ponta.

Further, the instrumentalization of the law in order to ensure the removal of President Basescu occurred through an emergency ordinance, which aimed at changing Art. 10 of the Law 3/2000 on the referendum law, hence loosening the impeachment procedures of the president. The previous provision of *half plus one* of all voters *registered* on permanent electoral lists has been changed to h*alf plus one of those who are voting on the referendum day* set on July 29, 2012 to be sufficient for a valid referendum (8).

The RCC's reaction to the PDL's appeal on unconstitutionality of the legislative changes brought by USL to the referendum law on July 10, 2012 declared the decision to impeach the president constitutional, but maintained the provision that half plus one of all voters *registered* on electoral lists (around 9 million voters) as valid, opening a gate for Basescu on July 29 2012 (9). The RCC, while admitting the constitutionality of the suspension of the president, the removal of both presidents of the Parliament, Blaga and Anastase, defended its right to decide upon the constitutionality of the Parliament's laws and ordinances by stating that "the legislative solution that excludes the Parliament's decisions from the constitutional control and impacts on values and constitutional principles is unconstitutional" (10).

Is Romania stepping in Hungary's footsteps? According to Prof. Scheppele, as Ponta did not take over the presidency and the RCC yet, as opposed to Hungary, where the Constitution has been already

rewritten and the institutions silenced, there is still a chance that the RCC survives these attacks (11). There is no doubt, however, about the speed of the political crisis and the fact that the USL's legislative proposals are severe violations of the Constitution. On the other side, the increasingly unpopular President Basescu considered an active veto-player in political battles is not at all uninvolved in the political crisis and in the fight over the institutions. The call for normality intensifies, as Romanian experts argue that the political struggle between the government and the opposition causes massive damage to the quality of Romanian democracy and its international credibility as the constant institutional redesign and misuse of the judicial institutions for political purposes continues (12).

1. *22* (27 June 2012): In: http://www.revista22.ro/curtea-constitutionala-basescu-merge-la-bruxelles-ponta-eu-merg-la-bruxelles-am-un-mandat-basescu-are-5-judecatori-credinciosi-15950.html (accessed on 6 July 2012).

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12. Laura Stefan (10 July 2012): Demolarea constitutiei in trei pasi. 22. In: http://www.revista22.ro/demolarea-constitutiei-n-trei-pasi-16265.html (accessed on 9 July 2012).

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