

POLITICS & LEGAL

Last year electoral promises return to haunt the Romanian Government. Media quiet, political opposition still feeble, but people take to the streets

TREND ANALYSIS: POLITICAL DISCONTENT ON THE RISE, ALTHOUGH PM FARES WELL

The recent progress report of the European Commission brought little surprise. As predicted⁵ the Commission did find some progress in areas such as minorities, only limited progress in the fields of administrative and judiciary reform, and no progress in environment. The report acknowledges however that Romania has finally a Government able to push its bills through Parliament and compares favorably the Nastase Government with the previous, coalition-based Governments. The date for the admission of Romania can at the earliest be 2007, and the first wave of admissions might well include more than the previously forecasted five countries⁶, but the former news is not really news, and on the latter it is not clear yet how it will affect Romania. More entrants means a larger effort of adjustment of the EU spending budget and internal decision mechanisms, which may benefit Romania by the time it is ready, but it may also scare off EU constituents

⁵ See EWR 6.

⁶ It may actually include ten, including the Baltics and Slovakia, and leaving out only Romania, Bulgaria and Turkey.

from further enlargement. So, should the Romanian Government celebrate or rather fret over the last political developments?

Fig. 1. Satisfaction regarding democracy

	%
Very satisfied	32.9
Not at all satisfied	67.0
No answer	0.1

Neither. Instead, the Government should simply be concerned with the almost perfect mechanism it managed to put in place. Only seldom can one hear nowadays, on TV channels, open criticism towards the Nastase Government; also, since Government policies were sensible, from the budget to the treaty with Russia, criticism by the political opposition in

Parliament can only be rhetorical if not plainly demagogical. The public, however, does not feel represented in the media's agenda, nor in the Parliament's. The main concern of the public continues to be not the treaty with Russia, not the European integration, but the social disparities, the inequity and the corruption, which sent many thousands to participate in various street protests in November.

Figures show that, while Romanians very realistically acknowledge that the

Fig. 2. The range of anti-democratic options

	Agree %	Disagree %
If Parliament was closed down and parties abolished, would you...	19.4	71.8
Best to get rid of Parliament and elections and have a strong leader who can quickly decide everything	30.2	65.1
The army should govern the country	13.2	80.7
Some people take advantage of every regime while honest people like me continue to strive hard to survive	82.3	3.9
We should return to Communist rule.	17.7	77.8
A unity government with only the best people should replace government by elected politicians	59.2	31.9

current Government is not at all a bad Government when compared to previous ones, discontent against the political system as a whole and the political class is growing and the figure of those believing corruption is widespread is on the rise. 67% of the Romanian adults are dissatisfied with the way democracy works, while 86% consider that others are doing better than they are in a dishonest way. The fact that this social frustration is not based on residual authoritarian attitudes is confirmed by the lack of appeal of anti-democratic alternatives. Romanians loathe their political system and their political class, but a majority would defend the Parliament or the political parties if they came under attack, and would disapprove a military regime or a

return to Communism. However, most people would indeed prefer a non-political Government⁷.

Fig. 3. Subjective corruption

	CURS-SAR March 2000	CURS-World Bank May 2000	CURS- Eurobarometer October 2001
	%	%	%
Almost no public officials are engaged in it	1.4		0.4
A few officials are engaged in it	26.8		10.7
Most or all public officials are engaged in it	65.5	63.0	86.2

Within the Government's party constituency, a long due process is finally happening: someone younger than Ion Iliescu starts being acknowledged as a

Fig. 4. Political option

	%
Adrian Nastase	26.9
Ion Iliescu	23.1
Corneliu Vadim Tudor	14.9
Theodor Stolojan	9.6
Traian Basescu	8.8
Mugur Isarescu	2.8
Teodor Melescanu	2.6
Marko Bela	2.4
Petre Roman	2.2
Emil Constantinescu	1.4
Mircea Geoana	1.4

successor to Presidency. Prime Minister Adrian Nastase is the first to achieve this performance, his ratings being boosted by the fair performance of his Government, the peaceful cohabitation with President Iliescu, whose role is shrinking daily in both foreign affairs (where he never really mattered) and domestic ones (where he used to have an important role); and last, but not least by the preferential treatment he receives from the media (see Media section below). The media attention or rather lack of attention is very damaging for

opposition leaders; even those who continue to be real newsmakers, such as the Mayor of Bucharest, Traian Basescu, are confined to the third plan, below Government leaders and Vadim Tudor.

How to address popular discontent. Anti-corruption

The Government has recently published the anti-corruption national strategy. Long prompted by international organizations such as the World Bank and the EU, the strategy was badly received by an increasingly cynical public, despite its essential sketch lines addressing for the first time the core of the issue. The media also treated the strategy lightly and skeptically, emphasizing the stress on the petty corruption, which was interpreted as lack of political

⁷ CURS October poll for SAR, Euro-Barometer.

will to attack on the grand corruption. The stress on petty administrative corrupt behavior makes a lot of sense, however. Evidence shows that personal negative experience in dealing with corrupt civil servants is feeding the public's perception of widespread administrative corruption⁸. Sending positive signals by tackling grand cases of corruption is no more important, therefore, than handling widespread petty corruption. The strategy addresses for the first time important areas, such as limitations of the MP immunity status (which would require a constitutional change), but also fails to be really practical on key areas. Here are the most important of those:

Overall regulation of conflict of interest

The action plan outlines the need to regulate conflict of interest. However, it does not say exactly what needs to be done. A good start would be to acknowledge that regulation of conflict of interest and enforcement of already existing such regulation was constantly sabotaged by lack of political will. There have been previous attempts to separate business and politics in the last decade, and we should examine carefully what made them fail before embarking in promises on future moves in the same direction. The simple conclusion is plain: previous moves were shipwrecked by the very same parties that initiated them. Even President Iliescu endorsed an unsuccessful bill stipulating MPs could not seat on the Board of privatizing companies during the Vacaroiu Government, a bill sunk by the then Government coalition in the Parliament. In 2000, it was also the current Government party that sponsored many union leaders on their electoral lists. The real question is: what makes the situation different in 2001? Are Mr. Iliescu and Mr. Nastase either more powerful or more committed to confront the issue within the ranks of their own power base? If the answer to this question is no, then nothing can be done. Conflict of interest is not only widespread practice in Romania, but it is embedded in some of the new legislation as well⁹. The 1996-2000 Government sponsored this development, just like the current Government. Is there the political will to tackle this? At least formally, nothing is simpler than drafting a conflict of interest framework bill and pass it through Parliament¹⁰. Enforcement, of course, is a different matter altogether, but at least such a move would give a signal and would represent a place to start. The bill should be a simple and brief framework-type regulatory act, formulating clear principles and penalties that would supersede the previous legislation in every field.

⁸ See Politics section, EWR 2/2001.

⁹ An example is the 1998 revision of the Public Television Law concerning the composition of the Board, the only such legislation in Europe that makes conflict of interest legal.

¹⁰ There are ready-made packages available, such as the US Agency for Government Ethics' one. No Romanian political party was interested to endorse them so far.

Regulations against employment of close relatives in public agencies should also be enacted. If this is not done, the whole anti-corruption strategy becomes superfluous.

Tackling corruption of law and order agencies

Special treatment is needed for special cases, and these mean especially the corruption within law enforcement agencies and the judiciary. Heavy repressive campaigns like the one led by Minister Rodica Stanoiu are unlikely to solve the problems and can even be interpreted as political tampering with the freedom of the judiciary as in the European Commission's last progress report¹¹. It is the basic organization of these institutions that is defaulting here, and if this is not addressed as a main policy target the whole process becomes hopeless.

The lack of effectiveness of these agencies in delivering law and order – which are badly needed in the society – is shown in the unpredictability of every of their acts, and is a consequence of their general lack of transparency. The latter, in turn, derives from their very organizational status. The strategy admits that over-regulating the administrative procedures is at the core of the administrative corruption, and plans for simplification in this respect. However, the same step in proposing de-regulation is not made in what home and justice affairs are concerned.

The draft status of the police is a poor one, leaving the police very much centralized and hierarchically organized, with no clear provisions for horizontal accountability, the only one that could actually work. Law and order is a service for communities, so communities should be provided with some possibility to make accountable those who fail in providing them. The position of local Government in the accountability mechanism for local police in the current bill is unclear or inappropriate on all accounts.

The same goes for the Prosecutor's Office. The simple evoking of 'management' related to prosecutorial work is not effective. The whole status of prosecutors needs revising, and this opaque and ineffective institution, plagued by Communist-time institutional culture, must be essentially reformed.

This is merely saying that the best way to attack corruption in these institutions is through their long due structural reforms. They had long had power over citizens, it is time they are re-drawn as deliverers of an essential public good – that is law and order – and held accountable for the quality of the services they provide.

¹¹ See '2001. Regular Report on Romania's Progress Towards Accession' pp.20 ('The judicial system')

Using instruments already at hand

Another weak spot of the strategy is that it does not make proper use of instruments already at hand. Romania suffers from the endless multiplication of ineffective legislation. It has also passed since 1999 a number of laws with a potential impact on accountability, the last most important one being the 2001 Freedom of Information Act (FOIA). This bill is actually an accountability bill, asking every public agency to make transparent records and reports on the spending of public money, one such report having to be published in *the Official Gazette* (Monitorul Oficial) every year. It also requires that every non-classified piece of information must be made public *ex-officio*.

If the Government is serious about its anti-corruption fight, then it doesn't really need an anti-corruption law (besides conflict of interest regulation) other than FOIA. If public agencies disclose to the public the reasons behind selecting certain companies or agencies in a bid, most of the corruption behind such selection processes would be prevented.

The political will is best shown by using already available tools, not by proposing further strategies or legislation. Here is the test case for the Government. This transparency act, successfully passed due to the good collaboration between a responsive Ministry of Information and civil society organizations, must be implemented as a full-fledged anti-corruption strategy. If it is reduced by reluctant implementation to the mere status of a 'rights' type of act, its impact on the reform of the public sector would be limited and so will the credibility of the whole anti-corruption process.

FOCUS: IS ROMANIAN MEDIA UNDER ATTACK FROM THE GOVERNMENT?

In recent weeks much public debate focused on the alleged control of the Romanian media by the Government. The debate was centered on two focal issues: the issue of the television coverage of alternative points of view from that of the Government and the status of the National Press Agency Rompres. Rather than examining these controversial issues, this Report will concentrate on three points, namely:

- (1) whether the claim that the media grants a more extensive coverage to the Government than to any current or would-be political opponent, can be objectively substantiated;

- (2) whether the causes of the uneven coverage lie within the realm of Government intervention, as alleged;
- (3) policy options to address the problem.

1. On the editorial independence of the Romanian press

Foreign analysts tend to be extremely critical towards both the independence and the ethic and professional standards of the Romanian media¹². In a singular approach Richard Hall argued that the main problem of the Romanian media is its domination by characters with important ties or overt political sympathy towards Ceausescu's Securitate¹³. The latest European Commission report also pointed out strongly that the current libel legislation is endangering press freedom without solving the problems of media ethics¹⁴. However, only few reports of Government intervention came out in the last years.

A report of the Media Monitoring Agency from the week of October 2-8 2001 shows that there is some truth to the allegations mentioned above. Although that particular week was just an ordinary week, with no exceptional events, the Prime Minister and the President featured in 37, and respectively 27 news and current affairs shows, while the main opposition leader, the Mayor of Bucharest, a constant newsmaker, featured in only two (the same being the case of the other two main opposition leaders). The Government party itself featured 12 times, six times more than the Bucharest Mayor's party (the Democratic Party). The Agency produced evidence for only that particular week, and regarding only four TV channels¹⁵, but there are serious grounds to believe that the situation is not very much different in any other given week.

One can argue that opposition leaders have been unproductive in terms of news-making, but this cannot possibly account for such a difference. Equally, whilst the media coverage of institutions such as the Presidency or the Government is justified by their news-making potential, one could hardly argue the same in what the Government party is concerned. If we look at the most sensitive spot of reporting in general, that is investigating journalism, the picture is complete: nothing that can claim belonging to this genre, no corruption or fraud investigation, was aired during the reference period.

¹² Gross, P. 1996. *Mass Media in Revolution and National Development: the Romanian Laboratory*, Ames, Yowa: University Press

¹³ Hall, in O'Neill, P. 1998. *Post-Communism and the Media in Eastern Europe*. London: Frank Cass

¹⁴ See '2001. Regular Report on Romania's Progress Towards Accession' pp.79 ('Culture and Audio-visual')

¹⁵ TVR, ROTV, Antena 1 and Prima.

Regarding the Rompres agency, this, by definition, was more of a distributor of official information than a real news agency producing its own news stories, so it can hardly be blamed for being biased. Besides, no accusation of the kind was bestowed. The Rompres reports are rarely quoted, except when journalists need precise wording of official statements. Even if Rompres would violently swing in favor of the Government party, the media community would hardly notice such a development. Chronic lack of funds and sheer neglect by authorities has kept the Agency in this pitiful state for most of the last decade.

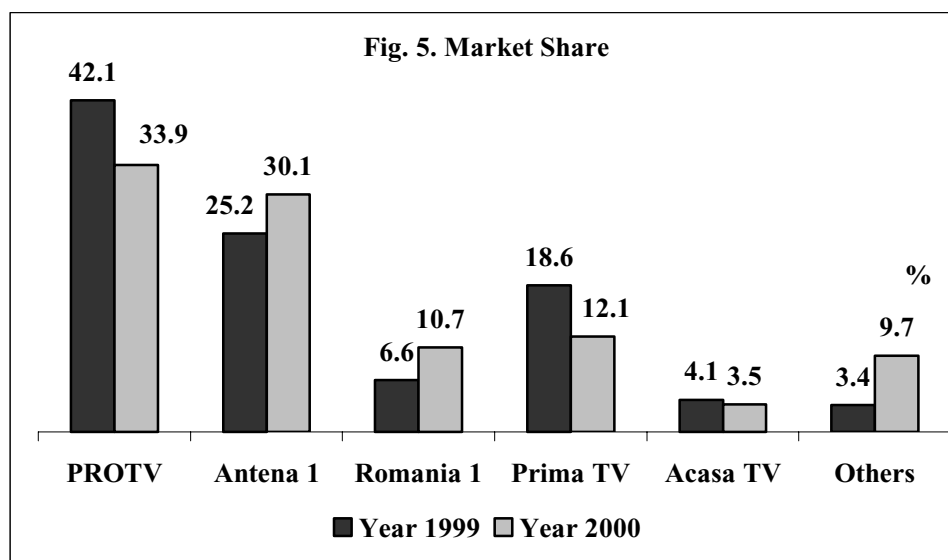
2. The case is proved only for electronic media. But yet it is not clear if the situation was caused by the political intervention of the Government or by other factors.

The notorious case of political interference has always been Romania 1 (the main public TV channel). The clear incidents, such as the irregular dismissal of the News Director of Romania 1, Dan Lutan, received little attention in the Romanian private media, which as a general rule and with few exceptions welcomes anything that might weaken the public television. And indeed the replacement by an interim character with no authority or real influence led to the famous instance of Romania 1 missing the start of the war in Afghanistan (while the main private channels were broadcasting live). The media committees of the two chambers of the Parliament, who had repeatedly tried to fire the whole Board of Romania 1, did not intervene when the News Director was fired under dubious circumstances, but was quick to try once more to fire the General Director of Romania 1 when the channel missed the news from Afghanistan. The whole situation is actually due to the inferior status of the News Director within Romania 1, as compared to any European public television. As a general rule, the News Director is entitled to intervene in the program at any time when a breaking news situation arises. At Romania 1, however, this was only exceptionally done. The reason is that the content of such real time interventions cannot be politically controlled, and the channel's managers are reluctant to take any risk of upsetting the politicians who have an important say over their fate. Therefore, the failure of Romania 1 to produce good breaking-news can be seen as a direct result of a tradition of political interference and lack of self-assertiveness in gaining editorial independence. To set the record straight, all successive Governments, with no exception, have contributed to this situation.

The case in what private television is concerned, is more difficult to make. There are no credible reports of direct political interference¹⁶. Furthermore, private channels are not compelled by law to be non-partisan. However, in

¹⁶ An important journalist, Stelian Tanase, accused Antena 1 of working with 'black lists' – that is of forbidding the invitation of certain opinion-leaders. However, Tanase made this argument public only after it became clear that his contract as a talk-show host would not be renewed.

the specific cases of the two main private channels, the case can still be made, since one of them belongs to a politician who runs a party, which is a minor government coalition partner, whilst the other is allegedly having serious tax problems, so it is financially vulnerable. The Government, therefore, hardly needs to display any overt political action to bring these channels in line.



The situation of Rompres is again paradoxical. Despite being so little influential, Rompres is institutionally subordinated to the Government. The director of the agency was always appointed by the Government, but the Nastase Government proposed an innovation which has proven to be detrimental, to the Government's image more than to the agency's, which anyway has a limited credibility and a very small market share to lose. Following the Government ruling HG 13/2001, which subordinated the agency to the newly created Department of Information, HG 886/2001 turned the director into a secretary of state working within the ministry, and Rompres staff into civil servants. The move is wrong from every point of view. Although the wish to boost the weak revenues of Rompres staff was certainly the driving factor more than the desire to keep firm control over the national news agency, the ruling increased the number of civil servants at a moment when the European Commission is requesting for its reduction, and it furthermore includes the agency within a ministry, which is definitely not good practice in a democracy. While a number of news agencies are still pending as state agencies in Western Europe, more as relics of the time of big states, none is part of the Government. To be funded by Government and

¹⁷ An important journalist, Stelian Tanase accused Antena 1 of working with 'black lists' in other words of forbidding the invitation of certain opinion-leaders. However, Tanase made this argument public only after it became clear his contract as a talk-show host was not going to be renewed.

have the chief executive appointed by the Government under a clear status of editorial independence is one thing, but becoming 'Government' is a totally different story. The move attracted international warnings¹⁸ and had made the object of a political campaign by the opposition Liberal Party and a score of NGOs. The Liberal Party MP Mona Musca has managed to obtain the endorsement of the media committee of the Chamber of Deputies for her draft, which proposes turning Rompres into an agency subordinated to the Parliament.

The Government has a weak case. All Governments do, when it comes to owning media. As a recent study by the World Bank in 97 countries, including Romania, showed, 'More often than not, market failures pale by comparison with Government failures... Government ownership of the media is detrimental to economic, political, and – most strikingly – social outcomes. (...) Government ownership of the media is generally associated with less press freedom, fewer political and economic rights, and, most conspicuously, inferior social outcomes in the areas of education and health. It does not appear that adverse consequences of Government ownership of the media are restricted solely to the instances of Government monopoly.'¹⁹

It is not clear how Rompres will become a professional and self-sustaining agency if it is part of the Government. However, this is also not clear in the event it becomes subordinated to the Parliament. The example evoked by the Liberals, namely Romania 1, is far from being a success. The market share and consequently the revenues from advertising of the public television have shrunk dramatically since its subordination to the Parliament, despite a financial bailout by the Government on the occasion of the 1998 revision of the law. Public television is now ranked third nationally despite its *de facto* monopoly on broadcasting in rural areas. Furthermore, Rompres cannot compare with Romania 1 or the public radio. It has no revenue from a license fee or from advertising, so it is strongly dependent upon two sources of funding: direct Government contribution and selling of its products. The latter has never managed to become large enough for Rompres to even dream of self-sustainability. The agency lives therefore in the vicious circle of many Government-managed agencies: chronic under-funding leads to poor products, poor products do not sell and therefore do not produce revenues, thus reinforcing the financial dependency on government funding. In neither of the political solutions proposed is this matter properly addressed, even though the Liberal proposal of having the agency cut from the Government is, of course, an improvement. It is only an illusion, however, to believe that quality journalism can emerge out of poor funding and political subordination in any form.

¹⁸ Such as from the Stability Pact.

¹⁹ Simeon Djankov, Caralee McLiesh, Tatiana Nenova, and Andrei Shleifer, 'Who Owns the Media?', World Bank, June, 2001. The study examines the patterns of media ownership in 97 countries around the world.

What is then to be done? Regarding Romania 1 or the public radio, whose audience is also shrinking due to poor programs and competition from the private sector, there is little opportunity for change. The Government was wise to avoid dismissing the Boards of these institutions, which leaves no room for serious accusations of political intervention. *As for the rest of the electronic media (i.e. the private stations), one cannot realistically build a case against the Government for what journalists and managers decide by themselves.* Transforming electronic media from private to really plural is a delicate and complex task to be undertaken by the Broadcasting Board and the civil society.

Policy analysis can only point to defaults in the current regulation of media monopoly in Romania. Most countries would forbid one owner from controlling assets in electronic media, print press and wire agencies. *But again the problem is less at the formal than at the informal level.* Romanian media has received little foreign investment and, therefore, by the late '90s, a complex initial pattern of ownership started being replaced with the domination of a handful of domestic businessmen. The model that is beginning to take shape is similar to the 'Turkish' model, namely of strong ties between business, politics and media, with media being constantly used as assets in trading influence and occasionally abused for blackmail or propaganda purposes. Businessmen subsidize media outlets in order to have such opportunities open and not to turn a profit, and the Government operates more on the basis of occult deals than through open and repressive intervention when this can be avoided.

Each Government has walked in this trap willingly: so far, nobody decided that the best protection for a public executive from libel is to have higher ethical standards towards everybody, not just public executives. Presidents Iliescu and Constantinescu both allowed the General Attorney to defend them via an outdated article in the Criminal Code, which punishes 'offenses against an authority' instead of simple libel. Neither of them won, as such cases fall under the freedom of the press area and Courts fear to rule against the journalists. The latest European Commission progress report also criticizes this legal provision, considering that it can only serve to limit press freedom.

On the Rompres case, there are however certain things which can be done. The crux of the matter is to break the vicious circle between under-funding and poor performance. This is what must be addressed as the essential matter. A poor Rompres will always perform poorly and depend on subsidies from the Government, regardless whether it is subordinated to the Parliament or not. Board appointees by political parties are certain to be incompetent administrators as these are considered second-rank positions for parties' clientele.

Rompres should be privatized on the model of the French agency AFP. The public should remain a stakeholder and Board seats should go to the Department of Information and journalists associations. However, the managerial decision should rest with the owner. The owner company should

be selected after a public bid where it should prove that it has the experience and the financial backup of such an operation, and a clear contract should be drafted to require some guarantees in case things go wrong. Major shareholders in other media outlets and owners of other domestic wire agencies should be forbidden to run.

The only danger of this approach is that maybe nobody would crowd to buy Rompres. The product is not really attractive. Its main private competitor, Mediafax, has been experiencing strain and had to layoff journalists in the recent months. Even under such a circumstance a privately-managed Rompres would be much better than a state-managed one. The other risk is that the agency may prove unfit to live on its own even after passing into private hands. Then it would go bankrupt. If such a sad development becomes unavoidable, we should remember that Britain, which has the oldest free media, has no public news agency at all. Private Reuters is managing well to cover by itself both domestic and world news. In any event, even if the Liberal draft continues its trajectory through the Chamber of Deputies committees and then to the plenum, an article should be introduced specifying that the future Board should have, with the Government's agreement, the power to decide privatization. Ruling out even partial privatization of the public broadcasting companies proved to be a financial disaster for the second public channel, TVR2, which never managed to develop neither an attractive identity, nor audience.