

# POLITICS

## HOW BIG A CHANGE?

**Romania has a new President and government. But apart that, what exactly will change?**

### **Why elections went the way they did**

Romania's 2004 general and presidential elections produced in the end a new government. Since the transfer of power was smooth one could be tempted to put elections behind and look forward to the EU integration of the country. The signing of accession treaty is scheduled for April 2005. However, these elections were not business as usual. For the first time in the last ten years there were allegations of fraud affecting 3-5% of the vote<sup>2</sup>. For instance, research institute IMAS published analysis on electoral data from the ballot day showing significant correlations between invalid votes or supplementary electoral lists, on one side, and the vote for SDP, on the other. In other words, districts where outsiders showed up in large numbers to vote despite being registered elsewhere on permanent electoral lists (and they were therefore registered on supplementary lists) voted significantly above the national average with former government party SDP<sup>3</sup>. There might have been all along the intent to fraud elections, as transcripts of electoral commission of Chamber of Deputies show the decision not to use voting cards was deliberate. "The OSCE/ODIHR Assessment Mission did not receive any convincing information that explained the suspension of the use of voter cards for these elections. This, combined with the possibility to vote in any polling station, has the potential to open the door for multiple voting", stated the OSCE/ODIHR Assessment Mission. According to the law, no institution is compelled to investigate the fraud, which is supposed to be proven fully by claimants, and no institution had the power to declare elections invalid except county by county. The OSCE recommendation that 'Any such alleged problems should be fully dealt with through the appropriate administrative and judicial processes' was clearly not followed, as the Bureau claimed they do not have the legal entitlement to do any investigation and did not

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<sup>2</sup> By reputed Pro Democratia watchdog, for instance.

<sup>3</sup> Analysis is posted on the site of IMAS, [www.imas.ro](http://www.imas.ro)

call on prosecutors to do anything. After two days of public contestation, the bureau granted the right to opposition parties to compare supplementary lists with permanent lists and therefore check for multiple voting. But it was too late, as the electoral law requires that final results are made official 48 hours after receiving the voting results from districts. By the limit of the 48 hours the opposition had not even received, let alone checked, 10 % of the electoral lists and the election was declared valid.

Newspapers documented many instances of multiple voting afterwards, but a final count is not yet computed. The new Romanian Parliament vowed to create a commission to investigate the matter, but even if they proved fraud the vote could not be repeated according to the current electoral law. The General Prosecutor (GP), traditionally appointed by the President at the proposal of government, failed entirely to take any meaningful action in due time. Although tapes made by journalists, including BBC journalists, of buses with multiple voters showed clear evidence it could have been acted upon, GP Ilie Botos declared on December 1<sup>st</sup> that all investigations would be made only *after* elections. Official figures show that more than 10% of those who voted on 28 November did so on the supplementary lists, either by claiming they were resident but not included in the permanent list (supplementary list 1) or by claiming to be in transit (supplementary list 2). Official figures show 11 000. 000 voters in total, out of which 1 200.000 were on supplementary lists (500000 on list 1 and 700000 on list 2). There was room for considerable confusion, as electoral lists were not updated to exclude about one million and a half people who had died or immigrated in the last ten years. Errors were also reported in the reporting of invalid votes, but the National Commission for Statistics claimed they had asked corrections from districts in due time. Correction often meant that original records of results needed to be retrieved and actually tampered with by presidents of local electoral bureaus in order to set them straight. SDP and Humanists came ahead of DA with a little over half million votes.

The scandal that broke out showed that Romania has nevertheless a vigorous print press and civil society. Despite the electronic media's restraint in covering allegations of fraud, print press, the international media and the domestic civil society managed to spread the news that elections had not been fair. The government was compelled to forbid supplementary lists for the second tour. Despite enjoying an eight percent advantage in the first round, Prime Minister Adrian Nastase lost the second round to challenger Traian Basescu, mayor of Bucharest. Basescu was then instrumental in manipulating SDP's allies, Humanistic Party and Hungarians Union, to form an alliance with DA, based on just one seat ahead that DA had won compared to SPD with Humanists extracted. By end 2004 Romania had a new government after a smooth power transfer.

**Fig. 1. Results of elections 2004 in Romania**

Parties	House of Senate		Chamber of Deputies		Presidential Elections	
	No of seats	%	No of seats	%	1 <sup>st</sup> round	2 <sup>nd</sup> round
SDP + Humanists (RHU)	57 (SDP 46) (RHU 11)	37.13	132 (SDP 113) (RHU 19)	36.61	40.94	48.77
D.A.	49	31.77	113	31.33	33.92	51.23
GRP	21	13.63	48	12.92	12.57	
HDU	10	6.23	21	6.17	5.10	
Total	137	*	332	*		

**Fig. 2. Electoral basis of political change**

Social structure	Vote SDP	How much it explains	Vote Alliance	How much it explains
Good income	↓	*	↑	*
Young				
Superior education	↓	*	↑	*
Urban	↓	**	↑	**
Inactive	↑	*	↓	*
Reads newspapers			↑	*
Regional development	↓	*	↑	*
<i>Ideology (left-right)</i>	↑	**	↑	***
<i>Ideology (democracy best system of govt)</i>			↑	**
<i>Personality (Trust in presidential candidate)</i>	↑	*****	↑	***
<i>Conjecture factors</i>				
Family member works abroad	↓	*	↑	*
Approves direction country is headed for	↑	**	↓	**
Thinks corruption went up from last year	↓	**	↑	**

*Legend: Factors on the left explain the vote for SDP and Alliance. The arrow up means people with a good income are more likely to vote for the Alliance; the arrow down means they are less likely to vote for the specific party. A complete model including all determinants for the vote in the same time is coded with six \*. One star means a sixth of the total variance explain by the model, in other words, of the explanatory power of the model. Two stars mean the determinant explains a third, and so forth.*

*Data: two Gallup International polls predicting results for November 28 elections. The table summarizes three regression models of electoral behavior.*

Beyond allegations of fraud, the former opposition did not do so well in legislative elections. The electronic media has shown bias in favor of the

government party before and during the campaign. But nevertheless the campaign produced more opportunities which were not followed. Demobilization of urban areas, the main playfield of Romanian elections was very high end September (reaching 60% in some Transylvanian counties) and instead of addressing this main source of votes the alliance D.A. was following an erratic campaign trail, especially through subsistence voting areas, where its chances of being voted were nil. Subsistence voting areas have only SDP mayors and rural elites are as a ground rule instrumental, by controlling resources, in securing the vote of the whole village for their party. The change of presidential candidates did not bring the needed mobilization. The alleged fraud and the media bias favored SDP, but the low score of the opposition is due to its amateurish electoral research and the overall mediocre standing on TV. The fraud scandal supplied the needed factor of mobilization, but if it would not have been for the scandal and the mobilization of civil society against SDP it was unlikely D.A. would have succeeded by itself to make its candidate a winner.

To be fair towards Romania's centre-right, one should examine the voting models. They show some older features of Romanian electoral behavior, but some new ones as well. For instance, age is a weaker predictor than it used to be in models predicting the vote for center right. Regional development and residence in urban areas remain strong predictors. Ideology is less important for SDP voters than for Alliance's voters. A comparison between the determinants of the vote and the campaign strategies is telling indeed. The strengths of DA's campaign were as follows:

- Investment in cleaning the list of controversial candidates, leaving SDP in a difficult position.
- Good investment in drafting a program, giving the impression the alliance is well prepared to govern.
- Use of young people, which succeeded in promoting the idea that the Alliance relies on a new generation.
- Timely initiative on pensions, which managed to establish in the public opinion that the Alliance preceded the SDP in getting the pensions straight.

The weaknesses of DA's electoral offer in relation with the voting models were as follows:

- Too much investment in captive rural areas and insufficient investment in developed areas, such as Timis county, where turnout was very low. The electoral offer for many of these areas, not just in terms of program, but in terms of people on the lists, was inadequate and demobilized voters.
- Too much weight on the 'maverick' flat tax which could not have possibly interested directly more than a fifth of the constituency, but could seriously alienate larger numbers due to the leftist propaganda that 'it only brings advantage to the rich'.
- Alienation of a category of voters to attract another, like claiming raise of pensions will be fed from taxes of Romanians working

abroad, a category which, as Figure 2 shows, was in fact significantly supporting the Alliance. Alienating a group of voters which is likely to vote for you in exchange for the doubtful support of another for an unrealistic promise is erroneous.

- Considerable disorder in the electoral themes hierarchy, creating difficulties in understanding what the main message was.
- Insufficient use of credibility transfer. The transfer of credibility was used only as a last resort, and reduced to few public characters.

Models also show two serious *social structure limitations* of D.A.'s electoral accession: the rural residence (for the reasons explained above) and the inactivity. Despite having a good electoral offer for pensioners, and managing to attract some pensioners' votes, DA was significantly less voted by inactive people (adults without a permanent working contract with self-employed, students and business owners extracted). People working with a contract are disproportionately few seeing Romania's demographic situation, just around four million. This means that there are important limitations to persuasion for DA: it also means that only a change of social structure, more development, a different ration between the inactive and active population and a decrease in subsistence farmers are the keys to create a larger pool of votes for the center right. *These developments cannot be brought about by persuasion campaigns, but only by social and economic policies.*

## **WHAT WILL THE MAIN CONTENDERS DO IN 2005?**

### ***The DA Alliance: One step at a time***

The alliance was a success so far, and it has no serious problems. It is a good idea to turn it into an ever closer union. DA should create unique coordination bodies at all levels, so organize itself as one party, while keeping, however, separate judicial identities and separate international affiliations. Succeeding in governing should be the number one priority this year, not building a unique centrist party. DP should boost its profile within the Socialist International, and not leave all the room there for SDP. A Liberal statute entrusting most power to PM Tariceanu is the best solution. Nobody needs internal censorship from one's party while in government. A possible fusion should again be discussed after one year in government. The fusion should be driven by internal need only, not by the illusory target of joining EPP in the European Parliament. Firstly, Romanians overestimate the influence of the EP and miss to see that most of the influence at the European level is not at the Parliament's level, but the Council and the Commission, where traditional diplomacy works still very well. In more advanced European countries, politicians go to EP after giving up domestic politics, where the real stakes are. Secondly, in no other country on earth did two parties do something in order to fit to European Parliament. Thirdly, no Orthodox country has ever seen something like Christian Democracy, which is an organic Catholic movement, embedded in the grassroots of Catholic community organization. There is no way that Romania can

have a powerful Christian Democracy, a concept imported with little understanding. Not only the two parties within the Alliance do not need anything 'popular' or 'Christian-Democrat' to preserve their constituency, but also Romanian National Peasants cannot possibly hope to be revived as *Christian Democrats*. They should instead reinvent themselves as National Peasants.

### **SDP: Finding the Third Man**

Ion Iliescu is intent in hand picking his successor, who is unlikely to be Adrian Nastase. Several SDP leaders who claim they try to reconcile the two camps are in fact candidates for the 'Third Man' position and queue to being designated by Mr. Iliescu. No veritable 'Third Man' exists, unfortunately, to lead SDP on a veritable third way, blaming the infamous transcripts on their main characters and starting afresh with those who have not compromised themselves. Possible names would have been Mircea Geoana, Mihai Tanasescu, Ioan Rus, Sorin Oprescu, but for now the party is so squeezed between Iliescu and Nastase that no room exists for anyone else. As Mr. Iliescu has always been an indecisive man, it might turn out that no Third Man is appointed in the end and SDP from fear of a split ends up with an unworkable collective leadership. For a Third Man to emerge a Third Wing would be needed. And this does not exist so far, as more reform minded SDP recruits of last years (like the above mentioned Mr Geoana or Tanasescu) were first asked to serve alongside the rest in filthy domestic politics, so to become part of the network. This SDP strategy that nobody should be allowed to be better and cleaner than the rest led to the unprecedented credibility crisis that its leaders face now. The public enemy of December, Ion Iliescu, who freed Miron Cozma, is again the undisputed power broker of the party. No reform can succeed where there are no reformers.

## **AFTER ELECTIONS**

### **What elections solved: the dismantling of SDP's power monopoly ends the major cause of corruption in Romania**

Beginning December 2004 Romania had no longer a credible government. The leaking of SDP leaders' transcripts and the allegations of electoral fraud had by then succeeded in creating the impression even for some SDP supporters that their party should no longer be in government, but pause in order to reform itself. The bailing out of client company RAFO and the pardon of miners' leader Miron Cozma by Ion Iliescu all contributed to the crumbling of SDP legitimacy. Under these circumstances the arrangements for an alternative government could only succeed. The power equilibrium of elections is nevertheless reflected not in the government, but in the Parliament, where the new governing coalition has a frail majority and lost key positions to SDP.

Under these circumstances, what the elections solved so far is only the supremacy of one party and the administrative state capture derived from it. SDP lost the power over pardoning arrears and putting on hold corruption investigations. And this is important. It represents in itself the

greatest step against corruption in the past years. Unfortunately, great as it is, it is not enough.

### **What elections did not solve: Various forms of capture still persist**

Unfortunately, Romania did not suffer from administrative state capture only, meaning the use of administrative public resources for the needs of the former government party, but also from other forms of capture, less formal, but equally important. Two should be a priority of the current government: judiciary and media capture.

What does this mean? The current report means by 'capture' the undue influence by 'captors' (oligarchic networks of influence) over what should normally be autonomous areas, such as media or the judiciary. As Romania is a young democracy, nobody expects that either journalists or magistrates are perfectly objective and non-partisan. What is expected, more generally, of the journalists' class and the magistrates' class in transition is that they reflect a plurality of views. Out of pluralism some imperfect objectivity should result. But pluralism was seriously affected in the last two years of SDP dominance, and, as SDP transcripts show, with intent also. As a consequence, an important part of the media and the judiciary became captured by oligarchic networks of influence featuring a relatively small number of people. These networks delivered to SDP governments the goods required: propaganda instead of fair media and biased judgments instead of fair justice. They were not affected by political change, and recent legal developments actually worked to their advantage: the magistrates can no longer be subjected to any open political intervention due to their self-government by Superior Council of Magistrates, while the media, being largely private and unregulated, is largely unaccountable to any official bodies.

#### ***1. Judiciary***

There are indicators showing capture of the judiciary. Freedom House's score continues to be worst of all accession countries. Romania's score equals Albania's and is far worse than Bulgaria's. In a 2004 survey conducted on judges and ordered by the Ministry of Justice itself, half of the respondents considered that political pressures did exist<sup>4</sup>. However, only 19% reported direct political influence, with an additional 16% reporting direct influence, and 6 % pressure exerted by the administrative leadership of the courts. The situation is even worse in the case of prosecutors. No major corruption case was completed prior to elections except for the privatization of the fleet, a dubious political case. The media alleged that the file is poorly instrumented, that even the number of the commercial vessels under discussion is mistaken. Since beginning of January, a row of investigations started, ending with charging of quite a few famous businesspeople known for the protection they enjoyed in the former regime. The national Anticorruption Prosecutor also started to investigate SDP transcripts, and the General Prosecutor started to investigate the electoral files. All these investigations, however, feature too much on TV and resort excessively

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<sup>4</sup> Institute of Criminology, 'Evaluation of the integrity and resistance to corruption of the judiciary', 2003.

to the old arsenal of intimidation, such as preventive arrest. In the past years these spectacular investigations led to poor files, lost cases and disappointed public expectations.

**Fig. 3. Rule of law indicators compared**

<b>Judicial Framework and Independence</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Albania	4.75	5.25	5.00	4.50	4.50	4.25	4.25
Bosnia	-	6.00	6.00	5.50	5.25	5.00	4.50
Bulgaria	4.25	3.75	3.50	3.50	3.50	3.50	3.25
Croatia	4.75	4.75	4.75	3.75	3.75	4.25	4.50
Kosovo	-	-	-	-	-	-	6
Macedonia	4.25	4.50	4.25	4.25	4.75	4.50	4.00
Romania	4.25	4.25	4.25	4.25	4.25	4.25	4.25
Serbia and Montenegro	-	5.00	5.75	5.50	4.25	4.25	4.25
Slovenia	1.75	1.50	1.50	1.50	1.75	1.75	1.75

Source: Freedom House Nations in Transit 2004, [www.freedomhouse.org/nit](http://www.freedomhouse.org/nit)

Legend: Scale from 1 to 7, with seven the worst performance.<sup>5</sup>

The legislation passed in 2004 was supposed to bring fresh life to the judiciary. Instead, as it was conceived with minimal preoccupation that the judiciary should also perform, not just be independent, it risks transferring the conservatism of the Justice Ministry to the Superior Council of Magistracy. Furthermore, it leaves a vacuum of leadership in a crucial period, that of the anticorruption campaign. For instance, Romania will be assessed by the EU in March for the progress of its anticorruption efforts. Despite the need to push for timely and better quality investigations, the new legislation shields prosecutors from any assessment of their performance. Article 53 of Law 303/2004 claims, for instance, that the prosecutors with a managerial position can be revoked by President only at the suggestion of SCM and only as a disciplinary sanction. The current interpretation of this article is that only by granting to a Prosecutor an ordinary sanction (legal reasons for this

5 This Freedom House indicator is established by experts considering the following criteria:

1. Does the constitutional or other national legislation provide protections for fundamental political, civil, and human rights? (Includes freedom of expression, freedom of conscience and religion, freedom of association, and business and property rights.)
2. Do the state and nongovernmental actors respect fundamental political, civil, and human rights in practice?
3. Is there independence and impartiality in the interpretation and enforcement of the constitution?
4. Is there equality before the law?
5. Has there been effective reform of the criminal code/criminal law? (Consider presumption of innocence until proven guilty, access to a fair and public hearing, introduction of jury trials, access to independent counsel/public defender, independence of prosecutors, and so forth.)
6. Are suspects and prisoners protected in practice against arbitrary arrest, detention without trial, searches without warrants, torture and abuse, and excessive delays in the criminal justice system?
7. Are judges appointed in a fair and unbiased manner, and do they have adequate legal training before assuming the bench?
8. Do judges rule fairly and impartially, and are courts free of political control and influence?
9. Do legislative, executive, and other governmental authorities comply with judicial decisions, and are judicial decisions effectively enforced?



are unrelated to the management capacity which is under question) one can dismiss him or her from a managerial position, which is absurd. The judiciary cannot be expected to perform, especially in the field of anticorruption, if neither prosecutors nor their bosses cannot be evaluated for their performance.

***Recommendations:***

The Ministry of Justice, together with the new under consolidation SCM should therefore together identify and enact a strategy which should:

- Raise the quality of investigation and prosecution in anticorruption cases.
- Create clear performance indicators, which attract dismissal if unfulfilled
- Start immediately a professional audit procedure into the last year performance of anticorruption prosecutor office and General prosecutor. GP has fought against transparency legislation in Court, and initiated extraordinary appeals against final decisions of Supreme Court of Justice. .

The General Prosecutor should immediately pull out from all extraordinary appeals (old SAR recommendation) now after the extraordinary appeal was dropped both in civil and criminal courts. It is rather hypocritical to claim to the EU that Romania gave up the infamous extraordinary appeal while tenths of cases go on. It will save money for the taxpayer if these cases are stopped before reaching Strasbourg.

The President of Romania, who took over the anticorruption strategy and made it his flagship, should definitely be proactive in reforming the anticorruption establishment. The audit demanded by the European Commission might produce a series of useful recommendations. In any event, without improving the performance of these institutions the risks for the campaign remain important. It is not enough that politically obedient prosecutors now rush to investigate those they shielded six months ago. They must also produce reliable evidence and get some convictions.

***2. Media***

The media capture is reflected in Romania's Freedom House press freedoms score, *the worse of all candidate countries*. Some indirect indicators of informal capture of the media are the tax arrears of the media outlets, the decreasing audience of news and current affairs programs at main TV stations, the small number of pundits on air, the same on every TV network. Media capture seems to be in some relation with the perceived influence of the media. In a recent survey of ECE ministers, Romanian ministers appear to be losing most time to discuss the media in the cabinet, but least time to wrap up their decisions in suitable media format. This is a recipe for disaster. In any event, media seems to influence greatly the government's agenda. One more reason why the governments feel a need to control it.

**Fig. 4. Freedom of the press scores in EU accession countries**

Country	Legal	Political	Environment	Total	Status
Bulgaria	10	13	12	35	Partly Free
Czech Republic	6	10	7	23	Free
Estonia	6	5	6	17	Free
Hungary	4	8	8	20	Free
Latvia	7	4	6	17	Free
Lithuania	5	7	6	18	Free
Poland	6	6	7	19	Free
Romania	13	19	15	47	Partly Free
Slovakia	8	7	6	21	Free
Slovenia	3	9	7	19	Free
United States	3	6	4	13	Free
Britain	4	8	7	19	Free
Germany	5	6	5	16	Free

Source: Freedom House 2004, [www.freedomhouse.org](http://www.freedomhouse.org)

Legend: Greater scores mean less freedom.

**Fig. 5. How influential media is?**

Country	Topics <sup>6</sup>	Time	Presentation	Substance	Specific newspaper/TV channel
Bulgaria	44	24	44	44	16/16
Czech Republic	10	10	43	5	10/0
Estonia	56	53	66	33	33/33
Hungary	40	35	43	45	10/10
Latvia	53	48	48	43	25/23
Lithuania	70	59	65	56	41/27
Poland	56	53	56	27	22/7
Romania	49	73	27	24	46/33
Slovakia	23	64	9	14	0/0
Slovenia	33	57	24	19	38/24
ECE	47	49	45	33	25/18

Source: SAR Project database<sup>7</sup>

6 Were the media most influential...

...on the topics of cabinet discussions?

...on the amount of time given to cabinet discussions

...on the presentation of cabinet decisions

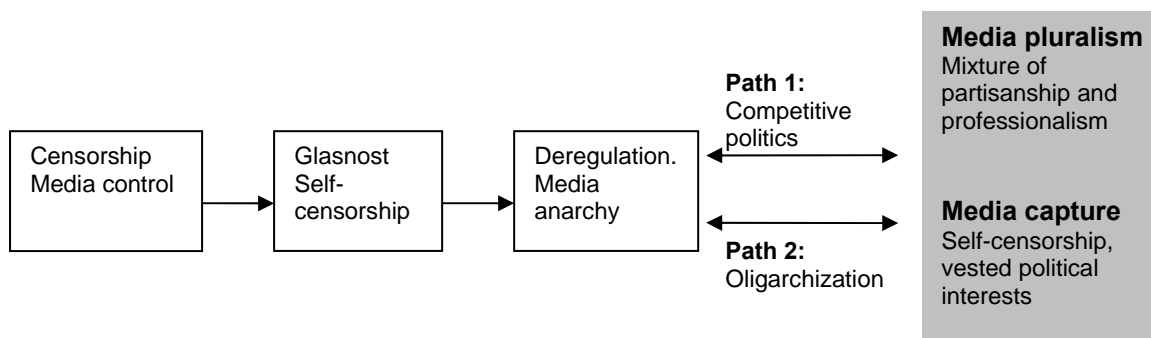
...on the substance of cabinet decisions

Is there any specific newspaper which has influenced your decision-making?

Is there any specific TV programme which has influenced your decision-making?

The main source of problems of the media in the last years is, like in Russia, oligarchization. In all east central European countries the transformation path of the media turned at some point to pluralism due to competitive politics or fell back to self censorship again due to concentration of power and resources. Self censorship is not new for Romania. One of the few reforms of Gorbachev that Ceausescu copied was the giving up of specialized, political censors, to replace them with normal editors with the task to demand compliance from journalists.

**Fig. 6. Path dependent models explaining media freedom**



The changes brought about by the 2004 elections do not mean automatically that the media problems are over in Romania. Naturally, the new power will be granted more access and coverage. But the electronic media which sinned towards accurate coverage due to tax arrears to the state budget should not be considered as fully on the side of pluralism and democracy. And it certainly cannot be relied on to promote civic journalism.

The solutions for mass media should be differentiated between the public and the private media. However, in this sensitive field one cannot rely on the government to act alone. To have a positive effect on the media system action should be taken jointly by the government with civil society and media organizations.

### ***Recommendations:***

#### ***To public broadcasters***

- Romanian TV has in key positions people whose contracts with Ceausescu's secret files were published by the media. These persons should at least be suspended from their executive positions. The recent report of the Ethics Committee points to severe infringements of editorial rules with severe consequences such as political bias, and no steps were taken to replace responsible executives.

<sup>7</sup> The database on decision making in ECE cabinets was created as part of a project directed by Ferdinand Muller Rommel and Jean Blondel. The data for Romania was collected by Romanian Academic Society. A first report on the comparative database was published by Muller Rommel et al in European Journal of Political Research, fall issue 2004.

***To mass media committees of the Parliament***

***On public broadcasting:*** Mass media committees of the Parliament which have the legal right to hold TVR accountable should start an investigation into the ways TVR sees fit to fulfill its public mandate and spend taxpayers' money. The credibility and audience of news on Romanian TV, despite its monopoly on broadcasting in rural areas, has fallen beyond even small commercial stations. It is not normal that everybody pays license tax, but just 2% watch public television news. In other ECE countries public television managed to keep audience of news programs, despite losing on entertainment, due to its effort to make in-depth coverage, different from the infotainment present on private TV. The Parliament should act on two different paths: on one hand, to suppress current abnormalities, on the other to change legislation to give more freedom to public TV. However, the first path is as important as the second, as no legislation can protect from corrupt practices. The only imperative legal modification is to regulate conflict of interest at the level of the TV board. As the law looks now it is legal to sit on this board and grant funds to yourself, your family and your department, if you are a TV producer.

For the long run, the second path should lead to a revision of all current legislation, so to bring some civil society in the boards, alongside political members, and to grant the right to appoint general directors of public broadcasting agencies to a broadcasting council, not the Parliament. There is no ideal solution to end political subordination of public broadcasting, but furthering it one step is certain to help.

***On private media:*** Romania should consider regulating the use of public advertising as well as ownership of private media, which is often non-transparent.