

## Elections prove the rule of law still a distant goal in Romania

- *Leaked transcripts of government party meetings and electoral frauds of the November 28 elections show that direct political intervention, not institutional underdevelopment, is to blame for the sorry state of rule of law in Romania*
- *Elections were free but unfair*
- *It seems the country can act democratically only and when the postcommunist Social Democrats do not feel their power challenged*

### FINAL RESULTS\*

#### President

Adrian Năstase: 40.9%  
Traian Băsescu: 33.9%

#### Senate

PSD-PUR: 37.1%  
PNL-PD: 31.8%  
PRM: 13.6%  
UDMR: 6.2%

#### Chamber

PSD-PUR: 36.6%  
PNL-PD: 31.3%  
PRM: 12.9%  
UDMR: 6.2%

*\*as of Dec 1<sup>st</sup>, after the final counting but before validation*

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While Romania has been considered to fulfill since 2000 the so-called Copenhagen political criteria of the European Union, fresh concerns about freedom of the media and the independence of the judiciary have arisen in 2004. Such fears, although shared by European Members of Parliament and international media watchdogs, have been dismissed as unfounded by many who depict Romania as the perfect success story and the largest economic growth country in the region. These achievements are real, as are other signs of development and normal behavior from the part of the judiciary and the civil society more generally. However, there is evidence for the first time that direct intervention from political leaders, not just institutional underdevelopment, is to blame for the poor state of rule of law in Romania. The publishing just 48 hours before the first round of elections of a series of verbatim transcripts of PSD (Social Democrats, the current ruling party) leaders' meetings has for the first time shown beyond doubt that Romania's postcommunists did not lose their authoritarian manners while becoming pro-Europe. Other fresh evidence, such as the faking of hundreds of thousands of leaflets of the Coalition for a Clean Parliament by people close to the campaign staff of government party, or the organized cheating of elections by electoral tourism, again to the profit of government party, completes a gloomy picture. It is not by chance that Romania is the only accession country where the post-communist party has managed successive

victories in elections. Clearly it was prepared to do far more than anybody else to win – even breaking the law on a large scale.

As things stand, Romania has become a test for the European Union and a challenge for further enlargements. The country is peaceful and social conflict low whenever postcommunists have full control and polls show they are far stronger than any political opponents. Once elections approach and any sort of challenge arises, democracy is no longer safe. The choice Romania faces then is awkward: either to advance on the path of European integration and give up any pretense to democracy, impartial justice and media freedom for the sake of keeping appearances; or risk its (and others not-so-ready countries') accession perspectives by exposing the situation. This report takes the second path, with the assurance that Romania will become a member of European Union only if it manages to establish the rule of law and become a substantial democracy.

## ELECTIONS FREE BUT UNFAIR

General elections were disputed, free but unfair. Since they produced an unprecedented phenomenon for Romania, a concentration of votes on the two alliances, postcommunist and anticommunist, separated by just a few votes, frauds denounced by observers may have played a decisive role in influencing the final results. For the first time in the last ten years there was reasonable suspicion of fraud affecting 3-5% of the vote. Domestic watchdog Pro-Democratia (ApD) filled several complaints with the Central Electoral Bureau (BEC). Most of them concerned voters ferried by bus from one voting section to another, especially in Ilfov, Teleorman and Vrancea counties (PSD strongholds). It was the first time when the two opposing parties were very close in polls, and also the first time when instead of a stamp on their old paper IDs voters received a sticker on their new plastic ID. The sticker can be removed easily, as journalists proved even in TV talk-shows. Special voter cards, the distribution of which has begun more than four years ago, were not used in these elections without plausible reason.

Despite ApD's requests, the government had previously refused to amend legislation so that to allow opposition parties and civil society to check electoral lists to see if one person voted more than once. "While the democratic election process appears to be further consolidated in Romania, some procedural concerns have been raised regarding suspension of the use of voter cards. In the context of a closely contested election, this has the potential to affect public confidence," said Ambassador Stephen Nash, Head of the OSCE/ODIHR Assessment Mission. Gerald Mitchell, Head of the OSCE/ODIHR Election Section, who also participated in the mission said: "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. Any such alleged problems should be fully dealt with through the appropriate administrative and judicial processes." Exit polls differed among them; distrust in polls has become general. Both ApD and Romania Think-Thank (RTT), another watchdog, had been warning for weeks that conditions for electoral fraud exist.

There were relatively few incidents on the elections day, but the electoral campaign and the overall political competition in Romania were far from fair in 2004. The structural imbalance of the political system, with a great concentration of resources in the hands of successor communist parties<sup>1</sup> as opposed to the anticommunist parties showed more

<sup>1</sup> By postcommunists we understand in this piece the Communist successor parties, which after many splits and realignments now reunite the conservative branch of the original National Salvation Front NSF (called initially Democratic NSF, then Romanian Party of Social Democracy), the

strongly in the electoral year than in previous ones. This means not just material resources, but also the power to adjust legislation and influence state agencies to rule to the advantage of one group. For instance, since President Ion Iliescu after three mandates is still the most popular postcommunist politician, the electoral legislation was amended in 2004 so that he could run on the electoral list of PSD "as an independent" (law 373/2004 art 5 para 6). The article 84 of the Romanian Constitution states nonetheless that "During his term of office, the president of Romania may not be a member of any political party, nor may he perform any public or private office", but once again as ever in the past (when allowing Ion Iliescu to run for a third term, for instance, although the Constitution sets a limit to two) the Romanian Constitutional Court did not sanction this. Unlike in neighboring Hungary or Bulgaria, the Romanian Constitutional Court has never issued a strong ruling against the postcommunist political establishment. Also, since the Bucharest mayor Traian Băsescu, the main presidential challenger of the PSD candidate Adrian Năstase, has a reputation of strong campaigner, the National Council of Audiovisual (CNA), the broadcast regulator, which is politically appointed<sup>2</sup>, interpreted electoral legislation to the effect that the two main presidential candidates could not meet once in a face to face debate in the first round of legislative elections. Instead of watching a debate between the two main presidential contenders, each placed by the polls at around 35-40%, voters had to watch over ten minor candidates making statements in turns. CNA fined heavily the TV and radio stations which broke even marginally the abundant and often redundant regulations surrounding elections, so no TV producer dared to defy them and offer to the public the real debates needed. The reason invoked by CNA's head, Ralu Filip, to support this unprecedented decision, was the European legislation, specifically the directive *Television without borders*, although this directive deals with liberalization of broadcasting over the borders of EU member states and has no connection with elections whatsoever.

The advantage of the postcommunist block, PSD, allied with a minor party, which has never passed the electoral threshold in legislative elections on its own (Humanistic Party) against the opposition alliance DA had **three major sources**:

- **Control over local and regional elites**, especially in the least developed regions. This allowed for the manipulation of local resources, especially in rural areas. The reason why local elites back PSD is because PSD policies have always allowed them to control local resources. Welfare support and various subsidies, authorizations to access public resources (such as wood, indispensable heating resource at the countryside) and vouchers for agro works are strictly controlled by local 'gatekeeper' elites in Romania's rural areas. About 38% of Romanians live on agriculture, of which over 80% are engaged in subsistence farming, the highest level among accession countries. In these areas opposition parties do not have any headquarters, while PSD ones are typically hosted in local government premises. Nearly all mayors are PSD in subsistence farming

Romanian Socialist Labor Party (initially chaired by Ilie Verdet, former Prime Minister of Nicolae Ceausescu) and the tiny non-communist prewar Romanian Social Democratic Party, formerly allied with anticommunists. Currently it goes under this latter name, in short PSD. The main cleavage line identified in defining Romania's two groups of parties is the tackling of Communist heritage. Postcommunists have fought against property restitution and opposed the legal prosecution of Communist major characters, including the generals who executed Ceausescu's orders to shoot on December 17 on the civilian protest rally of Timisoara. Anticommunists, who oddly enough include another branch of NSF, the 'revolutionary' branch regrouped in the Democratic Party, together with the historical National Liberal Party, stand, on the contrary for restituting property nationalized by Communists and prosecuting the authors of the violent repression of the Romanian revolution. They ran as an electoral alliance, the Justice and Truth Alliance or DA.

<sup>2</sup> Parliamentary parties according to their percentage of representation in Parliament appoint members, so PSD has the largest share of the vote.

areas, often the same people who enjoyed power during the Communist regime. Whole villages vote without one dissident vote against PSD from fear their true preference can be found out and they will be excepted from distribution of these essential resources.

- **Control over electronic media**, through agenda setting and control of independent opinion. The three main TV channels, TVR 1, Antena 1, and ProTV, making together about 60% audience share at the national level, are all close to PSD. TVR1, the public station, has a politically appointed board, controlled by PSD. However, since during the June 2004 local elections some journalists dissented and, after a few days of portraying of the results as a strong PSD victory, to amend this official interpretation and present a more balanced picture, the annual report of the board received a negative vote in the Media Parliament Committee dominated by PSD. According to the law, this implies the whole board could be sacked. However, the situation was stalled and the vote in the plenum postponed, so that TVR entered the national electoral campaign with this threat hanging over its management. The two private channels also have structural biases. Antena 1 belongs to Dan Voiculescu, head of Humanistic party, junior electoral partner of PSD. ProTV, the third network, has massive debts to the state budget. Adrian Sârbu, its all-powerful general manager, is godfather of Mircea Geoană, the PSD candidate for prime minister; one of his advertising companies actually worked for Mr. Geoană in these elections. The three channels favored PSD by avoiding any discussion on corruption, the main electoral topic, refraining from any criticism to the government party and screening severely the independent opinion makers so that only those favorable to PSD would feature in their programs. Eventually, and somehow surprisingly, it was the public TVR 1 which tried to achieve some balance in its programs. Smaller channels were more even-handed, but their reach is limited to a few large cities.
- **Pressure over authorities responsible for regulating elections.** PSD used CNA to turn the electoral debate into a boring presentation show, trying to keep its advantage from pre-electoral times, when it freely dominated the TV screens and managed to build itself a very good image (see also the Media section of this report). They also tried to force the hand of the Central Electoral Bureau, made up of judges, more than one time during both local and general elections, filling in phony complaints (claiming, for instance, that the opposition is stealing the elections in each circumstance when the opposition members filled in complaints) or requests that the Bureau intervene in censoring the anticorruption campaign of the civil society on grounds that it hurts PSD more than other parties. As the judges in the Bureau are selected by a random procedure this body managed to resist political pressure better than others.

Results were unpredictable until the last moment. At local elections the pollsters were accused forecasting poorly. They defended themselves by blaming the political parties, the main clients for political surveys, for publishing results seldom and only to prime figures favorable to them. Unfortunately the polling industry in Romania is not strong enough to afford independent political surveys. There was an additional source of confusion on electoral trends, however. Voters have repeatedly overstated in polls their voting intention for the PSD. TV networks and PSD friendly pollsters who claimed over and over again that PSD scored over 50% managed to create an environment of PSD dominance where recruiting elites (such as mayors who switched sides) became much easier and ordinary people became extremely cautious when answering survey questions. They often told poll operators they would vote for the government party or Adrian Năstase even when this was not probably true.

## CHALLENGES TO MEDIA FREEDOM

The year 2004 was typical for what has become the main feature of the Romanian political society strained by its fast European accession process: the distance between formal regulations and the actual 'story' going on, between the legal country and the real country, seemed at times to grow instead of decrease. Under the pressure of Europe, especially after one unfavorable report of a European Member of Parliament<sup>3</sup> some formal advances were made in the field of press freedom. The print press, even the local media, often very weak financially, played heroic parts to ensure that citizens receive relevant and balanced information to facilitate their participation to the November 2004 elections. The performance of the hundreds of radio and TV stations was uneven, however, as many of them are controlled by vested interests. The structural problems that affect the practical realization of the freedom of expression in Romania became in fact more obvious in 2004. The year was plagued by scandals around various media outlets and not one was solved so as to advance the freedom of expression.

The incidents related to media freedom can be divided roughly into three categories:

### 1. Acts of censorship.

Censorship and self-censorship by editors due to economic pressures remains a serious concern. Various regulations added to the problem instead of easing it. During a press conference held by *Reporters sans Frontiers (RSF)* at the end of their fact finding mission in Romania, one journalist from the public radio Romania, Cerasela Rădulescu, confirmed publicly the accusations made by RSF about the censorship and the editorial pressure that exists at the Romanian public radio. A few TV journalists made similar complaints about the public TV. Reports by Media Monitoring Agency, a watchdog, have repeatedly showed that the TV news is notably less critical of the government than the written press. The state has tolerated the accumulation of significant debts by a number of the largest media companies, including most major private TV stations<sup>4</sup>. There are also credible reports of locally elected officials using public office to influence the editorial policy of local newspapers, radio and TV stations, as the European Commission Regular Report stated. The situation of the two main private TV networks is no better. Beyond their obvious ties with the government party, ProTV and Antena 1 have continued their trend to infotainment, so different from their beginnings in 1996, when they won credibility by reporting serious in-depth news. Political talk-shows disappeared entirely or were aired late in the night hours, despite their high ratings with the public. Political news was squeezed as time allocation and hid at the end of news programs, being literally swamped into tabloid news. The two newscasts of these private channels now often start with a crime or a road accident whose value is clearly limited to the particular community where the incident happened. Consequently, the audience for news and current affairs, which were authoritatively leading the tops in the late nineties, has now plunged. So did the general audience compared to those times, in spite of the inflation of *telenovelas* and sports talk shows. This is not merely poor strategizing, but a deliberate attempt by TVs to cut their political costs, even by losing audience. The stations need to be in good terms with the government as nearly all have arrears of payment to the state budget. Despite an attempt by the government to solve this problem by offering payment facilities to some of the companies, Media PRO (parent corporation of ProTV), INTACT (one parent corporation of Antena 1) and a score of smaller stations were all engulfed in debt at the end of 2004<sup>5</sup>.

<sup>3</sup> Baroness Emma Nicholson presented this report which was adopted by the European Parliament in March 2004.

<sup>4</sup> The European Commission Regular Report on Romania, November 2004

<sup>5</sup> Information of the Romanian government to European commission, unpublished document.

Another frequent phenomenon preventing information from reaching the readers is the hijacking of newspaper copies. Whole issues of the dailies *Jurnalul National* when they criticized the local prefect, of *Evenimentul Zilei* with the famous PSD meetings transcripts, and of the investigation weekly *Academia Cațavencu* when they published as a supplement the black lists of candidates to Parliament deemed morally unfit by the *Coalition for a Clean Parliament*, either vanished from the market, Zimbabwe-style, or reached subscribers without the essential pages.

## 2. Violence directed against journalists.

According to both domestic and foreign media watchdogs violent threats and violence against journalists have not decreased in 2004 compared to the previous years. The pledge by the government that police will prosecute these cases more diligently than before proved ineffective. Many incidents involve authorities, who are themselves the main aggressors<sup>6</sup>. The police fined heavily the journalists observing elections, but was shy to go against government party campaign staff, even when information existed they were breaking the law.

## 3. Attempts to control the media through ownership.

Here we have the cases of *Evenimentul Zilei* and *România libera*, where foreign owners were pressured to turn these political broadsheets into tabloids and ease their critical stances towards government. The last events exposed again the structural problems of the environment the Romanian media operates in. First, Romania has a political elite, especially among post-communists, who does not believe in media freedom. A note by the press office of the Minister of Defense in this newly integrated NATO member country reminded journalists to mind their own business, as life is short and health precious. This language is common from the government and the solution found when open threats do not work is insidious influence. In the words of President of Chamber of Deputies, Valer Dorneanu, as recorded in the transcript of a PSD meeting: "I keep wondering why do we continue to support all these press institutions... with the old tax breaks, with sponsoring, with advertising, while what we get in return is just some vague, individual reprieve – at best .. " And former General Secretary of government, S. Mihăilescu, adds: "We should use the method that worked so well with Antena 1. Before the program we should call and talk to them, because Adrian [Sîrbu, the owner of ProTV station] calls me, he wants something from me every single day".<sup>7</sup>

Secondly, readership is low and quality of reporting mixed, like in many Mediterranean countries<sup>8</sup>. Unlike in Anglo-Saxon countries it is deemed acceptable that owners use media outlets to participate in influence trading rather than making a profit out of accurate information. Editors claim with some reason that accurate information and objectivity sell poorly, so besides a few NGOs there is not a large mass of sophisticated readers that endangered newspapers can appeal to. Thirdly, many positions of influence are still held by old regime people and their younger cronies. For instance, evidence published by an investigation journalist on the basis of files from the official screening board (CNSAS) show that the public television correspondent to Washington, the editor in charge of electoral campaigns and another producer of campaign programs on a private TV are former Securitate informants<sup>9</sup>.

<sup>6</sup> According to Media Monitoring Agency, [www.mma.ro](http://www.mma.ro).

<sup>7</sup> *The Standing Committee of PSD, Oct 20<sup>th</sup> 2003*, as published by several Romanian dailies.

<sup>8</sup> This classification belongs with Daniel C. Hallin and Paolo Mancini 2004. *Comparing Media Systems. Three Models of Media and Politics*. Cambridge: Cambridge University Press

<sup>9</sup> Investigations published by Andreea Pora in *Evenimentul zilei*, May-July 2004.

## THE INFAMOUS PSD TRANSCRIPTS

In an unexpected Romanian replay of the Watergate scandal, transcripts of some ruling party meetings in 2003 and 2004 leaked to the press show that the government sees the civil society as a menace. Apparently a plan was drawn by PSD to create an alternative civil society with indications given to party leaders and activists to set up NGOs to copy and combat already existing think-tanks. Although Prime Minister Adrian Năstase initially claimed that transcripts are fakes, deputy Adrian Severin admitted in a talk-show on *Realitatea TV* that the part on NGOs where himself is among speakers is real<sup>10</sup>. Also according to the newspaper *Ziua* Mircea Geoana also confirmed the discussions on transcripts did take place. Other government party members also confirmed the parts they were involved in. And more importantly the President of the Audit Court confirmed political pressures on the Court.

The transcripts have infamous passages on politicization of the judiciary. The former Minister of Justice Rodica Stănoiu (she had to step down due to pressure from the civil society and from Brussels in March 2004, and was recuperated by president Iliescu as chief advisor) explains on these tapes how she screens investigations on corruption cases to spare PSD clients. Prime Minister Adrian Năstase is also on record for asking the Privatization minister to provide evidence to convict opposition members, despite the denial of the minister such records on the previous governments can be found at his ministry. Fresh evidence of corruption starting from the top arises from the same transcripts of government party. In the words of Nicolae Văcăroiu, a PSD top leader and President of the Senate: 'We must find a way to dissipate this image of PSD as the only corrupt party... I also talked to Blănculescu [*the minister of Control*] and I said, all right, I agree, you may expose one of ours in a press conference if you have five from PRM, four from PD and two from PNL alongside him.<sup>11</sup>' And more, from Florin Georgescu, former Minister of Finance and currently deputy governor of the Central Bank: "Mr. President, I beg you to talk to Mr. Șaguna [*the head of the Audit Court*] on behalf of the party, he doesn't listen to me anymore. He should stop all those files and investigations. Only God knows how many telephone calls I have to make to his subordinates... Especially, Mr. President, remember that tomorrow – tomorrow! – all these files leave from the Audit Court to the ordinary courts. And if a crazy auditor writes something on paper, that file is not going to stay at the Audit Court, where we have our people at the top, I can make some telephone calls and have the case closed properly. No, it is going to reach ... a territorial court among divorces or petty thefts, and it will leak to the media instantly<sup>12</sup>"

No investigation agency, including the famous Anticorruption Prosecutor Office, has looked into this issue so far. They kept a deafening silence, did not ask the government party to turn in the original tapes, nor did they collect any official statements from the people involved, including from the head of the Court of Audit, who in his annual report for 2003 was complaining about the political pressure on him. Many tapes might not exist anymore, as Dorina Mihăilescu, advisor to the prime minister, candidly explains that tapes are often reused. No investigation was started by any of the many anticorruption agencies which now exist. The Romanian Watergate might stumble on the lack of political independence of the judiciary to pursue an investigation in a sensitive matter. This is a good test case for the state of the rule of law in Romania.

<sup>10</sup> Published by *Cotidianul* on November 24, 2004. Also the talk-show '100%' which featured Adrian Severin was broadcast on the same date by *Realitatea TV*.

<sup>11</sup> The Standing Committee of PSD, Oct 20<sup>th</sup> 2003.

<sup>12</sup> Florin Georgescu (Minister of Finance 1992-1996, PSD top leader; currently deputy governor of the Central Bank) during the Standing Committee of PSD, Oct 20<sup>th</sup> 2003.

## WHAT TO WATCH AND MONITOR IN 2005

If PSD manages to make these elections acceptable, significant deteriorations of democracy may occur in 2005. Here are the focal points to watch in 2005:

- The situation of endangered newspapers *România Liberă* (led by former dissident Petre Mihai Băcanu) and *Evenimentul Zilei* (provisionally managed editorially by Dan Cristian Turturică). As these two newspapers were responsible for publishing the PSD transcripts, it is possible that the editors in chief, editors and even journalists, already in conflict with their owners, be sacked after elections.
- The situation of smaller TV stations which reported more freely (big networks did not even mention the transcripts). Realitatea TV, BTV, Alfa and others, not to mention the countless radio stations which reported freely, may have their editors replaced. If Adrian Năstase wins the second round of presidential elections, it is likely that dissenting opinion leaders, who anyway featured only on these small TV stations, disappear from these niche outlets too.
- Harassment of independent civil society, especially those who reported negatively on elections and were members of the *Coalition for a Clean Parliament*. This may include legal harassment, administrative controls and pressure on their international partners. Criminal law suits against the ten organizations and their leaders were already launched by some PSD leaders, following explicit instructions from the president of the party.
- The situation of all investigations into frauds and wrongdoings concerning the electoral campaign and the irregularities on the elections day. How many people close to the political establishment will be pursued to the end? How many people who participated in proven violations of the electoral law, and how many of those who organized such large-scale violations, will be exposed and prosecuted by the nominally independent law and order institutions?
- The situation of independent judges, as some members of the High Court of Justice are not yet tenured and cases are assigned by Court Presidents. It is possible that judges are screened so that those who can be controlled look into matters which are sensitive for PSD.