

Romania holds legislative elections this week, and they are crucial for the quality of governance in the years to come, says SAR

AT STAKE, THE RULE OF LAW



On November 30th Romania holds its first legislative elections as an EU member country. The results are very difficult to predict, given the current balance of power among the main parties. However, SAR has reduced the complexity of Romanian post-electoral politics to four scenarios. Depending on the elections' results, one of them is likely to become reality.

The period since Romania became an EU member, on January 1st 2007, has been far from glorious. Soon after accession the Prime Minister Călin Popescu Tăriceanu (leader of the National Liberal Party, PNL) ousted Monica Macovei, the Justice minister who had carried most of the burden of accession. On the same occasion, he broke the government coalition formed in 2004 with President Traian Băsescu's party, the Democrat Liberals (PD-L). Since then, he has survived as head of a minority government relying on less than a quarter of seats in parliament, supported only due to parties' reluctance to have early elections and an informal alliance across parties (except PD-L) against President Băsescu. This alliance tried to impeach him in April 2007, but he was reinstated after a popular vote a month later.

This round of legislative elections are the first to be held separately from the presidential elections. The 2003 Constitutional reform has introduced an extra year for the presidency, lengthening one term at five years and decoupling legislative from presidential elections. The main contenders are president's Bănescu party Democrat Liberals (PD-L), the Social Democratic Party (PSD) and the current Liberal government party PNL. Polls, as well as the June 2008 local election results, show PD-L and PSD running neck to neck at about 30%. PNL trails behind as the third force (and kingmaker party) at about 20%. Radical populists, represented by New Generation Party, headed by G. Becali, the Steaua soccer club owner, and Greater Romania Party (PRM), led by C. Vadim Tudor, have fared badly in previous elections (European, in November 2007, and local, in June 2008) and polls show them behind the 5% electoral threshold. The Hungarian Alliance (UDMR) is likely to score its usual 6% despite the existence of more radical nationalists as contenders.

The public is split due to the ambiguous human and ideological quality of parties. Ideology does not matter if politicians switch sides repeatedly and voters discover the same characters running for a completely different party. This only discourages participation, which is forecast for less than fifty percent, seeing the novelty of the electoral system and the general disappointment with politics. The President's PD-L, which had been the least corrupt party in 2004, adopted in 2008 several politicians from PSD, including some notorious local 'barons', as corrupt local politicians are labeled. The party had unclear leadership in 2008, with people of Bănescu's household and family exercising undue informal influence outmatching top party leaders. PSD basically relies on rural constituencies, while PNL has the former anticommunist and business oriented voters who distrust Bănescu, whose past is seen as too close to the Communist Party.

Background

Government by a minority coalition brought continuous policy instability to Romania, with legal acts involving substantial spending being proposed and adopted by Parliament mostly against the government's recommendation. This erratic behavior fed the budget deficit and determined rating agencies to downgrade Romania, despite its solid economic growth and good direct foreign investment. Politically, however, as Romania lacked a majority alternative, the year 2008 was quite stable, and the Tariceanu government was never endangered by action of its political opposition. The November elections are held at the regular term.

In its second year as a EU member, Romania continued, alongside Bulgaria, to be closely monitored under the Cooperation and Verification Mechanism, the special monitoring framework set up by EU to make sure that these entrants are able to deliver on their previous promises and not endanger the EU common market or legal state. The focus of the mechanism is on the reform of the judiciary and the fight against corruption. The European Commission monitors and reports progress in relation to the benchmarks new member countries assumed under the Cooperation and Verification Mechanism. In 2008 the Commission delivered two moderately critical reports, but its spokesperson had to intervene more than once in defense of agreements between EU and Romania which came under threat in the Romanian Parliament.

The major hope of EU accession advocates in Romania has always been that the democratic deficiencies of the country will be easier to address from within EU rather than from outside. This hope was dealt a serious blow after 2007, with the sacking of justice minister Monica Macovei, who had taken on her to fulfill most of the promises to Brussels (where she was highly trusted), and continued with the harassment to

National Anticorruption Department prosecutors (DNA), EU's pet project. While the monitoring mechanism is meant to function for three years only, the increasing consensus that Romania and Bulgaria had in fact not been ready to become member led the Commission to a more creative exploration of existing mechanisms. Bulgaria came under serious pressure to dismiss certain officials involved in distribution of EU funds and the Commission cut EU funds deeply in 2008 for this country. Similar mechanisms can in fact be used after the expiration of the three years monitoring for both countries.

While Romania has continued to grow by 5-6% in the last years, strong demands for increasing wages in the public sector, as well as the 2007 increase of pensions, widened the structural deficit of public budgets. As this adds up to a serious commercial deficit, the country was warned by IMF and various experts that it might travel the way of Hungary, which saw street rebellions and needed a IMF stabilization grant to cope with the financial crisis. The reason was very similar: giving in to popular demands for wage increases after entering the EU and accumulating expenses in the public debt. Before this round of elections the Romanian government had to face such demands from nearly all sectors: an increase by 50% of teachers' salaries passed Parliament unanimously despite of not being officially endorsed by any major party, and serious evidence it was completely unaffordable by the 2009 budget.

The key problem of Romania, allowing such excesses, was the weak minority Liberal government (PNL), which governed in 2008 as captive of a powerful opposition formed mainly by Social-Democrats (PSD). Typically, major bills such as doubling of pensions or salaries, which account for huge increases in spending, were introduced in the Parliament on an ad-hoc basis, by an individual opposition politician, but were voted by all the parties, afraid to be seen opposing them and despite negative avis from budget committees. The same

situation occurred with the property bill of the so-called Conservative Party (formerly Humanistic Party), who entered Parliament on the lists of PSD, then governed with the PDL-PNL Alliance, then joined the PSD again recently for these elections. In October 2008 Romanian lawmakers endorsed this bill against returning property confiscated by the communist regime to its former owners, despite the presence in government of liberals, who had always had restitution as their flagship. The vote effectively overturned Romania's laws allowing for property restitution. The bill's supporters — mainly left-wing and nationalist parties — claimed that 1 million people living in property nationalized by the communists could be made homeless if restitution were to be allowed. Instead, the lawmakers voted to provide cash compensation at market prices, despite the absence of a serious budgetary source for this huge expense. Romania's former restitution law had resulted from a 2000 deal between social-democrats and right-wing parties, pushed by the fact that many former owners sued and won at European Court of Human Rights in Strasbourg.

The process

Romanians have long hoped that all the ills of their politics can be solved by a major change in the electoral system. The electoral system reform in Romania, like the Italian one in the eighties, was credited with the power to increase electoral accountability, bring a new, fresh political class in the Parliament and better quality to policymaking. Promoted for years by the civil society, headed by Pro Democracy Association, the bill also found a champion in Romania's President Băsescu in 2007. By that time, however, several proposals existed which varied considerably. A majority in Romania's Parliament adopted last year a first draft, which was later corrected by Parliament after the intervention of the Constitutional Court. By March 2008 a

final bill was promulgated. This introduced an original mixed system.

Generally, mixed systems select one Chamber by proportional vote and the other by winner-takes-all type of vote. In the Romanian version, seats are not allocated ante priori: all seats are first open to election in single unit constituencies, allowing voters to vote for candidates, not party lists. However, only candidates who receive more than 50% are elected, the rest of seats being divided so as to ensure party proportionality. In this way the main advantage of a winner-takes all system, the crafting of manufactured majorities, is completely eliminated. The main idea of the reformers was that voters would be able to orient themselves better by a person than by a party list and keep the MPs accountable afterwards.

How can this have worked, as long as the Romanian Parliament has never kept a serious track record of votes, not even of open votes (all important ones are secret anyway) remained, in the general enthusiasm, a matter of detail left unaddressed. A parliamentary committee dominated by the informal alliance PSD-PNL then set to gerrymandering, using the results of local elections as a hint, in order to create 'safe' constituencies. However, a final agreement was difficult, so the government stepped in and passed a new emergency ordinance designing voting districts.

To nobody's surprise, the announcement of the candidates' in the fall broadcast mostly 'safe' constituencies for most key political characters, who run practically unopposed, and a string of unknown candidates in most constituencies. There was head-hunting for celebrities to run, from singers and athletes to civil society pundits, but overall no more than the usual few accepted to go into politics, leaving many voters with a choice not between parties' icons, but between obscure candidates. The bill was attacked for government gerrymandering by PRM. The appeal Court of Bucharest decided that elections can go on while referring this law suit to the Constitutional Court.

PRM claims that the government had no right to substitute itself to the electoral committee in the Parliament charged with designing districts.

The negative impact of the new electoral system on governance was immediately felt. While steady economic growth and the increase in the price of local real estate led to an unprecedented increase in local budgets, accountability of public spending decreased dramatically in 2008. Even if local budgets went up in absolute sums, so did the fraction controlled discretionarily by upper echelons: the Ministry of Finance vis-à-vis County Councils; and by the latter in their relationship with the Local Councils and mayors. This informal (and unconstitutional) budgetary subordination reinforced the existing patterns of political favoritism and clientelism in the administration. Also, the total pool of funds for financial equalization across territorial units was in 2008 exempted from the legal allocation requirements (a mathematical formula sending more money to poorer localities). Instead, lump sums were given to localities according to the wish of County Council Presidents, as it was the custom before the 1998-99 reforms.

Just one month before general elections, for instance, the Government distributed out of its reserve budgetary fund 2 billion RON (about 800 million dollars) to counties and municipalities. From the 700 millions for counties, PSD received 420 for 17 counties they control, PNL 125 for 5 counties and PD-L 105 for 14. In other words, a PSD or PNL county got roughly 25 million on the average, while a LDP one just 7.5 million. The situation is even more disproportionate when mayors are concerned. The mayors of the government party, who make 22% of the total, received 42 % of the total funds. The electoral constituencies of Prime Minister and of the PSD leader Mircea Geoana got the biggest bonuses, more than full counties in PDL areas.

This literal explosion of pork is, of course, elections-related. The government did its best to help its local

politicians, together with those of their informal allies, PSD, to get reelected, or tried to sabotage their opponents by cutting their funds. Strategies to cheat good procedures adopted during accession years were created and deployed in 2008. For instance, the funds given to county councils for repairing district roads are regularly underestimated in the budget proposals, because the sum must be in principle distributed according to technical criteria, only to be supplemented by 200% through ad hoc amendments negotiated during the fiscal year with the county council presidents and their lobbyist MPs, on a case by case basis. This is not a genuine planning mistake, but a deliberate strategy to shortcut procedures.

The stakes of the game

Even after the departure of Minister Macovei Romania continued to have an active anticorruption agency (National Anticorruption Agency, DNA), which charged eight current and former ministers on top of many MPs, mayors and county presidents. Bringing to Court these cases has proved to be a real odyssey. A Constitutional Court ruled at a complaint of Adrian Năstase, Romania's allegedly most corrupt politician, that ministers who are also members of Parliament can be charged only with the approval of the Chamber they belong to. The ruling was made despite the termination of immunity for MPs in the 2003 constitutional reform. The Parliament postponed many times to discuss the request by DNA to allow MPs to stand trial, despite pressure from media and the European Commission. The judicial committees in Parliament asked for complete files in order to judge if investigations are not 'politically motivated', de facto substituting themselves to courts.

In August, the mandate of Daniel Morar, the anticorruption prosecutor endorsed by Brussels, expired. Despite warnings from EU that DNA should not be touched, Justice Minister Predoiu (PNL) replaced

Morar, proposing instead a magistrate with no prosecuting record. The nomination received a negative avis in the Judicial Council (CSM), and was vetoed by President Băsescu, who has final appointment power over general prosecutors. In retaliation, the Chambers voted in extraordinary summer session to save Mr. Năstase and another colleague from the ordeal of defending themselves in Court, de facto ending their prosecution. They also passed an amendment to the nomination procedure of prosecutors, stripping the President of this right and granting it to CSM instead. The bill ended up in Constitutional Court. Meanwhile, the General Prosecutor Kovesi gave interim powers to Morar until a final appointment would be made, and as a result he remained in office. The Parliament has meanwhile leisurely continued to rule on the demands to send its members before court. Labor minister Păcurariu, who featured on TV in an audio recording asking for a public contract to be granted to his son, lost his immunity and was immediately sacked by Băsescu. He goes on record as the first minister who is officially sacked for being corrupt.

Even more detrimentally than hindering the cases of MPs from reaching in court, the two Chambers modified amendments to the Procedural Code so as to give criminals an edge over prosecutors. The EU had warned repeatedly that such amendments risk compromising also the EU ability to fight organized crime in an increasingly coordinated EU home and justice space, but the Romanian Parliament persisted after the law was returned from promulgation by Băsescu. The most notorious amendment calls for prosecutors to announce suspects in advance of a home search warrant; but several other problematic articles exist.

A National Integrity Agency (ANI) was set up in 2007 with the goal of checking the statements of assets and interests of elected representatives and top civil servants. This Macovei bill was also

crippled in the Parliament, where the agency had its powers seriously curtailed: intervention by government ordinances promoted by Mr Predoiu to come closer to the profile EU wants need also to be approved by parliament, so the future is uncertain. The agency struggled to get an operational budget in 2008, being twice denied by that by prime-minister Tăriceanu. The existence of an effective ANI is part of Romania's promises to EU; its absence might lead to the activation of the famous 'safeguard clause'.

A coalition of NGOs and unions asked MPs to commit in writing to the promises made to EU in the sensitive fields of justice and anticorruption. The coalition proposed a 'Contract for rule of law', asking MPs that after elections they do not touch the leaderships of DNA (appointed by former minister Macovei), ANI (appointed by PNL) and they restore the Criminal Code procedures at the form agreed with the EU experts. PSD and PNL refused to sign this contract: PD-L and smaller parties agreed. It is clear that if PSD managed to form to government, with or without PNL, they will immediately dismantle all anticorruption mechanisms. PSD leader Mircea Geoană came up in the electoral campaign with the idea of a general fiscal amnesty, de facto denying any role to ANI or DNA, who were set up purposely to investigate illegal enrichment.

Scenarios

According to the Romanian Constitution (Art. 103), the President has the initiative of forming a government. The Constitution asks him to appoint a PM after consulting a representative of the winning party, but only if a party has absolute majority. As absolute majorities are scarce in proportional systems, this basically gives a lot of maneuver room to presidents, who can appoint practically anyone if a party fails to get 51%. The President has already announced that Geoană has no chance even if his party came first. The public is loath of coalition governments. An alliance between PSD

and PNL, the current informal allies, is seen favorably by less than 20% of the public. A second go of the former right-wing alliance PDL-PNL enjoys about 20% support. Overall voters prefer a single party in government.

The threats of Mr. Băsescu that he would not appoint politicians he disproves of was reciprocated by the alliance which suspended him in 2007. Mr. Voiculescu, the leader of a smallish party running with PSD called for a new impeachment if the President fails to approve a PSD-PNL coalition. Băsescu, in his turn, might provoke early elections if his PM candidate is denied twice the investiture. Some unconvincing grand coalition talks are under way, but as the odds are so evenly distributed no party wants to commit itself too early. Negotiations will include not only jobs, but also immunity from prosecution. Overall, the most likely scenarios are the following:

1. *Constitutional mayhem*

The PM designated by Băsescu fails to produce a majority from PD-L, UDMR and smaller parties (or splinters from PSD and PNL). The President pushes for a minority government with the threat of automatically generating early elections if Parliament does not approve twice his choice. The parliament majority (PSD-PNL) move to impeach him before a second vote. The Constitutional Court gives a negative avis (as last time), but being just a consultative body the impeachment proceeds. A referendum is organized after new battles to change the referendum law, reinstating Băsescu sometime in the spring. Meanwhile the new President of the Senate, who automatically becomes the head of state, appoints a new anticorruption prosecutor and Tăriceanu's government continues as a caretaker. In this constitutional nightmare it is not clear if an interim President can appoint a PM candidate, but the PNL-PSD majority might force it if they have a clear-cut majority in the Parliament.

2. *Minority government*

Băsescu's designated PM (Teodor Stolojan, PD-L) manages to buy support from PNL and PSD factions and gets a 50% majority, enjoying also some redistribution of votes. This scenario is highly implausible if PD-L does not manage to get over 30% – as it happened in local elections, where the predictions were for 34% but the result was only 29%. At 35% PD-L can benefit from a few percentages more of redistribution. If the maverick Becali manages also to pass the threshold, he can become part of a majority with UDMR. His party has already allied itself with PD-L in the General Council of Bucharest. However this scenario is likely to work only if a number of defectors are also found in PSD and PNL. So far, these parties held tight as advantages from the budget controlled by PNL outmatched those the President could offer. This scenario becomes plausible only if PD-L scores 35% or more, and smaller parties manage to pass the threshold.

3. *Grand Coalition*

The designated PM is not a PD-L leader like Stolojan, but a technocrat like the governor of Romania's central bank (Isărescu) or a businessman such as Ion Țiriac. They form a 'crisis' government relying on all the parties, with the mission of tackling the consequences of

the global crisis (which has barely reached Romania so far; the real problem is rather the self-inflicted budgetary crisis). This scenario is to be expected if PD-L makes a bad score and the President does not choose to push for a minority government in order to provoke early elections. If he does it, the first scenario 1 becomes more plausible.

4. *Confrontational cohabitation*

Seeing that a budget crisis is in store due to irresponsible spending in the past year and a half, and that PD-L does not get convincing score, Băsescu might decide to confront next year's presidential elections as an opposition president. In such a case he may install a PSD-PNL majority in government just to blame it for the country's problems later on. This course of action is extremely risky for him, however, because such a coalition, once in office, will try to undermine his powers by all possible means.

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