

A Case Study in Political Clientelism. Romania's Policy-Making Mayhem

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Abstract

The goal of creating a process based on rational, evidence based policymaking has not succeeded in Romania despite the existence of all formal institutions which could facilitate such a process. *There is one essential feature which did not change after Romania's EU accession: the state did not manage to gain more – in fact, sufficient- autonomy towards political parties to be able to organize itself at least at a medium level of authority as a modern policymaking agent.* EU accession did not manage to improve Romania's governance, bringing instead new resources for badly planned and clientelistic public spending.

Key words: EU accession, World Bank, good governance, Romania, policy formulation, evidence-based policymaking.

The dilemma of which half of the glass, the empty or the full is the meaningful one has never been more acute than in Romania's case¹. Only three years ago the country joined the European Union after enjoying between 2001 and 2009 one of Europe's highest growth rates. The images of the early nineties, with coal miners invading the Parliament seemed to fade forever. From World Bank reports to the international financial press,

¹ This paper was originally written to stand as a foreword for a full publication of the World Bank functional review report on Romania (2010). The current version has not been published elsewhere and engages the views of its author alone.

Romania has come to be increasingly perceived as Europe's next economic tiger, despite some chronic problems such as underemployment (even at its economic peak, less than five million Romanians had work contracts in a country of 21 millions), systemic corruption and poor infrastructure. But the economic crisis that began in 2008 changed the perspective abruptly. The GDP went from eight percent growth in 2008 to eight percent fall in 2009, unemployment rate doubled to reach by the end of 2010 nearly 10 percent and the value of remittances sent by emigrants dropped sharply. The collapse of government revenue led to the incapacity to finance an already unaffordable pensions' increase passed in 2007, and from 2009 on Romania had to borrow to meet its monthly social expenses, which pushed its fiscal deficit over the limits accepted by the European Union. Like the other new EU member countries, Romania is due to join EMU as part of the mandatory *acquis*. As per usual, the crisis highlighted the empty half of the glass, which had always been there. Even when on top of economic growth, for instance, Romania's capacity to attract and retain talent (braindrain) was rated equal to Zimbabwe's, according to the experts consulted by the World Economic Forum for the Global Competitiveness Report (position 116 out of 139 in 2009).

Due to its need to finance its deficit from an IMF-EU loan, the Romanian government accepted a new round of monitoring by the World Bank of its policymaking process. The results, disclosed in October 2010, found the same problems signaled before Romania's accession: high politicization prevents any meaningful human resource policy, political clientelism is the chief driver of policy formulation and accounts for far too much of the government spending. During the last decade, Romania received a lot of advice, technical assistance and funding to improve its policy formulation and implementation capacity, which were considered key issues during its EU accession. Romania's quality of governance might not have induced the 2009-2010 crisis: but it does seem increasingly that it contributes to its severity and duration. To address the issue, the 2009 *Memorandum of Understanding* between the European Community and Romania not only sets fiscal targets, but requires far-reaching structural reforms.

Romania received the invitation to start negotiating its EU accession in 1999, when her transition still hang into balance, with the deliberate hope that EU accession will

provide a strong enough incentive to drive its transition on the right track with greater speed and purpose. It was a late success compared to its Central European neighbors, which reflects in the overall performance: Romania managed to increase with nearly a third its total economic output compared to 1989, which represents half the Polish performance, for instance. After EU accession was accomplished in 2007, doubts were raised on the depth of its Europeanization. Romania has the worst Freedom House NIT democracy scores of all new EU member countries. According to Freedom House, she is still the only EU member country on the border of democracy consolidation. The Global Competitiveness Report 2009-2010 ranks government favoritism for companies in Romania on position 123 of 139 countries included in the survey and transparency of policymaking on position 124.

Romania has of course come a long way from Nicolae Ceausescu's dictatorship to belonging to the EU club. Its evolution is all the more remarkable as it was the only East European country with a bloody revolution (one thousand dead in circumstances still rather unclear) and a transition dominated by former Communists. Romania's EU entrance is due to high popular support of EU accession, which brought all the political parties to a common denominator and made accession a common political project, as well as to the EU need to stabilize Eastern Balkans after the second Yugoslav war. But Romania's current problems are similarly rooted in this opportunistic behavior of its elites. The country had barely entered Europe on January 1st, 2007, when its political class started to undo the previous engagements undertaken to make it accepted. Her highly contentious politics since EU accession do not offer the needed stability and coherence for a consistent process of policy formulation. Romania's problematic politics involves a conflict over rule of law turned political; a clash between the directly elected President and the representative institution of Parliament, and a solid political opposition to European commitments of Romania which only surfaced after accession and the plunge in European conditionality. But as Romania has enjoyed robust economic growth since 2001, with a maximum in 2008, when other countries were already hit by the crisis, the political troubles have not been correlated with political ones for a long while. Only the fall of the government of Emil Boc in 2009, with the subsequent conflict between the

President and the parliamentary majority over who has the right to appoint a successor had a direct economic impact, unfortunately a lasting one, as Romania's public debt spiraled out of control since that moment.

The policy formulation process has always been underdeveloped in Romania; but, strange enough, it has undergone further degradation after 2007. Bills and counter-bills are pushed on pure political grounds, sometimes from tactical reasons only (for instance to give a break to a defendant in a corruption case, like the proposed revision of the money laundering law in 2007), or to satisfy demands from an economic interest group (for instance, the exemption from bankruptcy of a few selected companies in 2006). The lack of a straightforward majority in Parliament (since 2006 all governments have relied only on fragile majorities, formed with either opposition parties' help or with defectors from others parties) means that every bill has to be negotiated very pragmatically with every MP until forming a majority. The adoption of a single unit constituency voting system in 2007 only increased pork and political negotiations based on pork alone. Most of the 'pork' is done legally, by adopting 'exemptions' from the law of local finance specified in the annual budget law or other creative legal ways.

Two instances of law adoption show eloquently how Romania's success came to a halt. In an extraordinary blunder, the Parliament in 2007 adopted a pensions' law practically doubling the pensions despite Romania's current pay-as-you-go system being already overstretched. Romania has less than four million employees contributing to the pensions' system, and about five million pensioners. The raise could not have been sustained by current employees, so it had a negative avis both from the government and the parliamentary committee in charge of Finance led by an opposition politician. However, it reached the plenum and was adopted despite having been a proposal by only one opposition MP, not even approved by his own Social-Democrat party. Despite criticism from the President, the law was eventually promulgated and more than one political party competed for credit. The 2008 budget was for the first time based on the optimistic expectation that tax collection will improve and the financing of pensions could be made directly out of this new income. This was at the origin of Romania's current problems and remains exemplary for the process of policy formulation.

A similar situation occurred with the property bill introduced by Romania's Conservative Party, a small party which entered Parliament in 2004 on the lists of the center-left Social Democrat Party, then governed with the center-right coalition, then joined the SDP again for the next elections. In October 2008 a majority of Romanian lawmakers endorsed this bill, voting to provide cash compensation at market prices (with no impact evaluation on the budget) instead of restituting in kind as preferred option as the previous law demanded. But Romania's previous restitution law had been prompted by the sanction of the European Court of Human Rights (ECHR) in Strasbourg, as she is the undisputed regional leader at both law suits and violations in the area of property at EHCR, with nearly ten thousand cases admitted (and much more found inadmissible) and 372 out of 582 judgments finding a violation by 2010. The cost of not implementing the Court's recommendation exactly opposite to the new law (redress of the systemic problems²) is high. For 2008 alone, for instance, Romania had to pay direct damages following out of EHCR's sentences of about 10 millions euros in total³ and to allocate 1.4 billion (partly in state assets) for the national compensation fund Proprietatea⁴.

The erratic character of policymaking is to a large extent due to Romania's politics and the behavior of political parties. Simply put, the goal of parties either in government or in opposition seems not to be guided by some Kaldor-Hicks policy criterion seeking to benefit the most, but by a narrow conception of self-interest looking to satisfy the demands of personal clients and constituencies. Despite the formal adoption of a collection of laws and regulations meant to rationalize policy adoption, management and implementation, policy continues to consist mostly in client driven allocation with no consideration of overall costs. Parties engage in 'runaway state-building', achieving party capacity and mobilization primarily through clientelism and state exploitation (O'Dwyer 2004; Gryzmala Busse 2008). Political actors do no longer dispose of the unlimited

² See also the cases *Faimblat v. Romania* and *Viașu v. Romania* cited above and *Katz v. Romania*, judgment of 20 January 2009 (application no. 29739/03).

³ 'Guvernul a platit in acest an despagubiri CEDO in valoare de 10 milioane de euro', Mediafax News Agency, 1.10.2010

⁴ According to Varujan Vosganian, a former Romanian finance minister. See interview on Hotnews, 4 august 2010, <http://www.hotnews.ro/stiri-politic-7661480-vicepresedintele-pnl-varujan-vosganian-discutat-online-cititorii-hotnews-traian-basescu-ajuns-niciodata-traian-basescu-fara-ajutorul-meu.htm>

resources of transition times, so exploitation is reduced mostly to politicizing state jobs and distributing some government contracts, concessions and market advantages preferentially. Ethical universalism and particularism as distribution norms coexist in the public sector, with the latter concentrated at the top. At lower levels of government, transparency reforms have succeeded in increasing administrative resources and the situation is better than a few years ago. Political clientelism, however, is pervasive and resilient, and encounters less opposition than the plain graft, being frequently seen as part of culture. Most of it would hardly fall under criminal behavior, despite being in certain areas the dominant distribution mode of public spending. Parties practically divide the public sector among themselves, with public spending (including EU funds) and employment organized by party lines (Gryzmala Busse 2008; Smilov and Toplak 2007). The top winners of public contracts are also top donors to government parties' electoral campaigns funds. The practice of funding preferentially mayors or counties where the government has a majority has returned after a couple of years of absence only⁵. Anticorruption strategies are mostly concentrated on bribing prosecution and manage poorly this systemic character of clientelism. Media and civil society criticism do exist, but as all political parties seem to share such practices they remain ineffective. Romania has the highest obstacles for the entrance of new political parties: 200 000 signatures are needed to register a new party and 100 000 an independent candidate, so despite public exasperation with such behavior the current parties had managed a quite successful cartel. The association between the amount of legal equipment and the effective control of corruption is still not significant. Romania and Bulgaria turned during their EU accession into world leaders of anticorruption preparedness according to Global Integrity Index, but their systemic particularism was barely touched.

Politics is the root cause of all policy formulation problems. As there is no general constituency to care for, but only individual ones, planning is done by individual parties in what is often political, not policy departments (which hardly can be said to exist). Stakeholder consultation, in the rare cases when it exists is merely a formal exercise, as the parties' stakeholders are the only ones which matter for them. The opposition is then

⁵ Manciu, A. and A. Simina "Guvernul le dă primarilor PSD și PNL de trei ori salariile profesorilor", Evenimentul Zilei, 20 Octombrie 2008

tremendous to most projects, particularly the ambitious ones planning overhauls of the system, like the education laws. Government policy is then made either in coalition meetings and executed by ministers or in the power centre, wherever that is (dominant party or the presidency). It has remained quite a challenge to plan or execute any policy across ministries belonging to different parties.

A 2010 World Bank assessment functional review applied two assessment frameworks (World Bank; OECD/SIGMA) to the Romanian context to conclude that, although the legal framework and institutions are largely in place to support effective policy management, execution in Romania remains poor (the report is available by demand through public information request from either Romanian Government or the World Bank). The existence of formal institutions of rational, evidence based policymaking has therefore not translated into a practice of such policymaking more than a few years ago, when Romania had other parties in government, or a different economic environment, or was not a EU member. *There is one essential feature which did not change: the state did not manage to gain more – in fact, sufficient- autonomy towards political parties to be able to organize itself at least at a medium level of authority as a modern policymaking agent.* Despite EU's conditionality in this respect, civil service did not become a counterbalance able to professionalize administration and the whole Weberian ambition of producing a modern bureaucracy did not achieve its goals (Goetz 2001; Verheijen 2006). The exceptions are the administrative islands related to EU funds, which operate by different rules, with greater salaries (until recently) and incentives. The chapter on agriculture, for instance, highlights clearly the split between a ministry left behind and the agencies driven by the need to achieve performance on EU spending, but there is no evidence that a positive spillover may occur from the latter to the former. Rather we can fear that the elimination of the 75% bonus of experts working on EU funds management might lead to their migration to the private sector. A Eurocrat employed as a minister for just a few months in 2010 and eliminated at the first reshuffle complained publicly that he was constantly harassed by request of EU funds from allied parties,

which considered his duty as an agriculture minister to provide them with such⁶. The new, EU-driven modern policy analysis units within the government have already failed to play a significant role, not due to their insufficient capacity, or funding but due to their irrelevance to the actual rules of the game, where ad-hoc decision by the political team leading a ministry is the source of policy. In the best case scenario, the same script is reproduced as during EU accession, with a more rational and professional part of government dealing with EU policy and the rest merely dragging along. Politicization, manifested by the expensive replacements of everybody in a management position in a public sector at each change in government (and indeed of government coalition composition), has continued unchanged after EU accession, despite Romania's commitments to the contrary. If anything, transaction costs only increased as the governments had to amend the anti-politicization legislation earlier adopted at EU's bidding, a process disputed by the political opposition, the Constitutional Court and the envisaged civil servants themselves. Thousands of law suits by fired executives from the public sector have been filled after 2007 alone, despite the solution of offering them to preserve all their privileges (therefore expenses) even when removed from office to another position. In an exemplary case in 2009, the managers of the Proprietatea Fund were granted half a million euro stipulated in their contracts as a firing clause just to leave the positions vacant for the new government⁷. The fund was not even under-performing at the time. Politicization, a major source of both incompetence and instability has come to include even hospital managers, despite many of them winning in Court against the government and is planned by the new education draft law to go as far as schools principals.

This review exercise is based on the presumption that *improving the Government's policy performance by strengthening Romania's policy process and policy institutions, in concert with efforts to improve public financial management and the*

⁶ See interview in *Gandul*, <http://www.gandul.info/news/mihail-dumitru-fost-ministru-al-agriculturii-ma-presau-au-batut-si-la-usa-mamei-imi-cereau-fonduri-europene-si-mi-spuneau-te-descurci-tu-stii-sa-i-aburesti-exclusiv-7099497>

⁷ <http://economie.hotnews.ro/stiri-companii-6756434-pesto-450-000-euro-salarii-compensatorii-acordate-directorilor-revocati-fondul-proprietatea.htm>

quality of the public spending requires the full support and engagement of Romania's political level. Although the review's recommendations may appear technical, their political implications are ubiquitous. Better policies depend not only on process improvement and capacity building, but on demand for such policies from decision makers.

The systemic character of the policy formulation mayhem shows in the persistence as main mode of legislation of the so-called government emergency ordinances (130 in 2007; 228 in 2008; 111 in 2009). Emergency ordinances are a particularly poor way to legislate; still all governments made them their favorite way of passing legislation, issuing them by hundreds. Ordinances start being applied immediately after their promulgation by the government, but they come for parliamentary approval sometime later (though they follow emergency procedures), after fighting their way through the busy agenda of the Chambers. It frequently happens that Parliament modifies them in important points, so after first being applied for months or even years a change of practice occurs again when Parliament amends them (or actually votes them down). As most of the important legislation continued to be passed in this way even after Romania's EU accession, when Brussels deadlines could no longer be invoked as an excuse, the result was a continuous legal confusion. Sometimes the government had no choice but to pass them. Bills promised in the process of EU accession were crippled by the Parliament intervention after accession, and the government, still the most exposed to EU pressure, has to promulgate new emergency ordinances to correct them. But most times they could have been avoided.

Why has EU not managed to be a more efficient state-builder in Romania, despite the existence of the monitoring mechanism and a safeguard clause allowing sanctions in case of non-compliance? Conditionality was, after all, the key mechanism that EU relied upon to trigger change in postcommunist candidate countries: a mixture of conditional positive incentives (ultimately EU membership) as well as negative (delaying the negotiations closure or the accession date, activating the safeguard mechanism, withholding of EU funds). Conditionality is supposed to be 'smart' power. It offers an incentive to shape behavior. But it may well be that a general incentive (EU integration) is insufficient to motivate all the social groups which need to change their behavior. The fundamental

alteration of rules of the game for politicians, bureaucrats and magistrates in the Romania, for instance, presumes that they would stand to win more than lose from the change – which is doubtful. In other words, for such a process to be successful it has to incentivize key reform stakeholders and not just rely on the presumption that what is good for the country in general is also good for them.

Not only was the main incentive too general, but perverse incentives were also created during accession. The detailed formal requirements of Commission during negotiations, the related conditionality and the race among countries to be the first to close negotiation chapters and join created a relationship where EC became the sole principal (instead of domestic publics or their representatives) and the national government its agent. Reforms were not driven by impact evaluations, but by the need to satisfy the pressing bureaucratic *reporting needs* for the EC regular monitoring reports. As EC went quite far in suggesting concrete means to achieve targets (like creations of new government bodies) and governments needed positive ratings for their efforts so to keep up the pace of the accession process a ‘prescription-based’ perverse incentive mechanism resulted (Mungiu-Pippidi 2007). Countries came to be evaluated not by the effectiveness of reforms or even their real change potential, but by the number of ‘prescription pills’ taken, mere collections of promises of creating this or that agency. A ‘patient’ assisted country was rated higher the more advice it accepted, with little or no checking of ‘symptoms’. Monitoring reports of the European Commission on Romania reflect this in full.

The accession thus missed changing the modus operandi of the whole Romanian government, but created an incentive to deal with EU apart from the rest of government business (Mungiu-Pippidi 2005). Even presently the strategic agenda at the sub-national level seems sometimes to be entirely dominated by the EU programs and the main policy target of authorities becomes the absorption rate of EU funds. They struggle constantly with their own limited capacities in order to be able to consume everything that is allocated, with more or less success. There is little capacity – or intention – to seriously plan something on areas which are not covered by EU funds. This happens (i) in whole sectors, such as Education, where the structure of the Ministry is obsolete and does not support its new, alleged functions after decentralization (strategize, monitor and enforce

standards); or (ii) in sectors which benefit from an SOP, such as Transport or Agriculture, where very little is done for the tasks of beneficiaries which are not eligible for EU funds.

In connection to the above, a split seems apparent in the public institutions as a result of these developments between: "routine" tasks which consume a lot of resources but are not eligible for EU funds (social assistance, salaries in education); and "innovative" tasks, which are eligible. To the extent that the two become isolated from each other, following different programming procedures and administered by different offices, the likelihood of policy integration decreases.

Many recommendations of the World Bank functional review of October 2010 presume a change in the rules of the game. Some actors in the administration might welcome such change, but few would have the courage to become its entrepreneurs. Due to austerity strategies and the planned reduction in personnel, civil sector employees will be more concerned to avoid mistakes than to show initiative in the near future. As to the government, which has pledged to 'modernize the state', its test will be the honest evaluation of its current performance. There is no culture of transparency and evaluation in the public programs using budget funds, in spite of dedicated bodies like ACIS which are mandated to expand the best practices from the mandatory area of EU instruments to the public interventions financed with purely national money. With no such transparency and feedback into the policy planning process, there is little wonder the decision at the top is always suboptimal – in each sector, and overall. There is no single example where the Romanian government, or a ministry, has outsourced an important assessment of some of its flagship policies, and discuss the results in public. Agencies meant to evaluate performance, for instance in higher education soon become part of the closed system they were meant to reform. Only when evaluations were mandated and paid for by the EU were serious exercises undertaken, but the results were strictly controlled and their circulation limited.

The second thing that the government – and the judiciary- should do after a public discussion of various areas performances is to enable at last some individual accountability for it. Romania has a ministerial responsibility law, but no minister was ever sentenced on its basis, despite quite a few being charged. In a notorious case, the Supreme Court of Justice acquitted the head of the State Forrestry agency (also a MP) who

was proved to have caused damage of millions by acquisitions with blown prices (he bought Versace tiepins for all foresters in Romania at a value of 20 000 more than their shop price). Administrative accountability also does not work. The government produced during summer an emergency ordinance imposing social taxes payments to copyright contracts: it was full of errors and contradicted openly its own implementation norms, yet nobody was sanctioned for passing and approving it, despite thousands of people being induced to queue at tax offices over it. The civil servants law has detailed mechanisms on their accountability, but in a system where dismissals are generally political and arbitrary such mechanisms are ineffective and controversial. As long as nobody pays for anything and only political allegiance – or lack of – is sanctioned, governance is bound to remain poor.

It seems in the best interest of this government to try to fill in the empty shapes of policy rationalization with some substance and so recover some of the popularity lost over austerity measures. For instance, the 2009 fiscal retrenchment has largely relied on input based across the board cuts such as civil services wages, although Romanian civil servants are not too well paid for their work, however, and such cuts were by no means the only way of curtailing the deficit. Unlike employees in public companies, which have high salaries, medical personnel, policemen and village clerks receive extremely low pay and were intensely frustrated by the 2010 25% wage cut. The alternative would have been targeted cuts in non-priority spending programs, but the capacity was missing to identify those in due time. The current budget process is predominantly concerned with costing of inputs with limited attention to prioritization and spending efficiency. It also deviates significantly every year from the original plan both in terms of the fiscal aggregates and composition of the budget due to unrealistic revenue estimates, substantial supplemental budgets and expenditure increases due to spending mandates created by laws adopted outside the budget process. Out of the 111 emergency ordinances and 1.600 ministerial decisions adopted in 2009, only around 30% have a basis in the Governing Program, itself too general to be a good roadmap for the government in such times of crisis. All these problems, however, have remedies and the government can do something about them, as this review shows.

The least promising area is the political one. Already the government allies, a party formed of defectors from others has proposed a 'wealth tax' which will create major implementation problems, but on whose passage their political survival might well depend. New promises of allocations in exchange for political support are daily made: even the 2010 law meant to rationalize pensions was allegedly pushed by such promises. It is highly unrealistic to expect that such sources of spending can be controlled presently. Perhaps only a constitutional reform on the model of Germany might limit further deficits, turning the Constitutional Court into a guardian of the budget. Romania has been planning a constitutional reform for a while: such a proposal might receive public support in the current context.

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