

Romania

by Alina Mungiu-Pippidi

Capital: Bucharest
Population: 21.5 million
GNI/capita: US\$12,350

The data above was provided by The World Bank, *World Bank Indicators 2009*.

Nations in Transit Ratings and Averaged Scores

	1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Electoral Process	2.75	3.00	3.00	2.75	2.75	2.75	2.75	2.75	2.75	2.50
Civil Society	3.00	3.00	3.00	2.75	2.50	2.25	2.25	2.25	2.25	2.50
Independent Media	3.50	3.50	3.50	3.75	3.75	4.00	4.00	3.75	3.75	3.75
Governance*	3.50	3.75	3.75	3.75	3.75	n/a	n/a	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	3.50	3.50	3.50	3.75	3.75
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	3.00	3.00	3.00	3.00	3.00
Judicial Framework and Independence	4.25	4.25	4.25	4.25	4.25	4.00	4.00	3.75	4.00	4.00
Corruption	4.25	4.50	4.75	4.50	4.50	4.25	4.25	4.00	4.00	4.00
Democracy Score	3.54	3.67	3.71	3.63	3.58	3.39	3.39	3.29	3.36	3.36

* Starting with the 2005 edition, Freedom House introduced separate analysis and ratings for national democratic governance and local democratic governance to provide readers with more detailed and nuanced analysis of these two important subjects.

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. The opinions expressed in this report are those of the author(s). The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

EXECUTIVE SUMMARY

After lagging behind other Central European countries for most of its transition due to a hesitant break with its Communist past, on January 1st, 2007 Romania succeeded in becoming a member of the European Union. Disappointment followed fast as the governing center-right coalition disintegrated in 2007, and ministers who had led the process of EU accession were pushed aside. Since mid-2005 Romania's political life was effectively deadlocked in a conflict between Prime Minister Călin Popescu Țăriceanu and President Traian Băsescu, and ended with Țăriceanu losing office in the 2008 parliamentary elections. For most of 2008, Țăriceanu's minority liberal government, with less than a quarter of seats in Parliament, has been opposed by the party of former President Ion Iliescu (1990–1996, 2000–2004).

In 2008, Romania held parliamentary and local elections with a new and original electoral system replacing proportional, list-based voting. Over the course of the past 18 years, the former electoral system had managed to consolidate the vibrant party system developed after the revolution to only five parties. High levels of foreign investment contributed to the growth of Romania's economy by more than 5 percent.

National Democratic Governance. 2008 did not bring spectacular changes to Romania's system of national democratic governance. The minority coalition brought continuous policy instability, with bills involving high spending being proposed and adopted by Parliament. As Romania lacked an alternative political majority, the year was quite stable, and the Țăriceanu government was never endangered by the acts of the political opposition. *Due to the lack of evolution in the process of policy formulation, which remains erratic and informal, the country's national democratic governance rating stagnates at 3.75*

Electoral Process. A new electoral system was tested in local and legislative elections in 2008. The introduction of single unit constituencies brought about some gerrymandering, but otherwise elections were held without major incidents. Although the results were close, there were no attempts to manipulate the election outcomes, and a new government coalition was formed with relative ease. *Due to improvements in Romania's electoral system and the free and fair conduct of elections in 2008, the electoral process rating improves from 2.75 to 2.50.*

Civil Society. Romania's civil society continued to follow the negative trends of the previous year as co-optation and intimidation of the most vocal NGOs continued. Parliament adopted a bill in 2008 to enable the closing down of a few established

NGOs. Some grassroots development can be reported in the fields of environmental and heritage protection, where civic participation had been traditionally low. *Due to the continuation of the negative trends noted in 2007, and legislation specifically working against the development of civil society, Romania's civil society rating worsens from 2.25 to 2.50.*

Independent Media. The interference of business interests hindered the functioning of free media in Romania for yet another year. Members of Parliament unsuccessfully tried to introduce legislation to censor media content. *As a result, Romania's rating for independent media stagnates at 3.75.*

Local Democratic Governance. There was little improvement in the local governance of Romania in 2008. Local elections, despite a new system of electing county presidents, did not bring a major step forward; the central government returned to discretionary funds allocation practices. *The return of discretionary central government transfers persisted, keeping Romania's local democratic governance rating at 3.00.*

Judicial Framework and Independence. Romania received criticism from the European Commission in 2008 for unsatisfactory fulfillment of accession commitments. Criticism was particularly directed at the Supreme Council of Magistracy for failing to effectively ensure accountability of the magistrates' body. Although a new Minister of Justice was appointed in 2008, commitment to reform remains doubtful, as the new minister recommended a candidate without any credentials to replace Romania's embattled chief prosecutor, Daniel Morar. *The judicial framework and independence rating for Romania remains at 4.00.*

Corruption. Romania's anticorruption efforts were seriously hindered in 2008 by Parliament's efforts to reinstate immunity for ministers who also enjoy MP status. Many candidates in local and legislative elections, including some members of the government personally profited from abusing their positions. Several politicians tried to curtail the powers of the anticorruption agency and sack Chief Prosecutor Morar, but the President and Constitutional Court have prevented such efforts thus far. *Romania's rating for corruption holds steady at 4.00.*

Outlook for 2009. Romania will hold elections for the European Parliament in June 2009, and presidential elections in November. It is likely that the presidential elections will dominate the agenda of the year. While President Traian Băsescu continues to be the most popular Romanian politician, as the economic situation worsens, the crisis may prove the chief challenger to President Băsescu's second term.

MAIN REPORT

National Democratic Governance

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
n/a	n/a	n/a	n/a	n/a	3.50	3.50	3.50	3.75	3.75

In 2008, the second year of Romania's European Union (EU) membership, the European Commission (EC) released two reports regarding the country's progress in meeting the benchmarks set out in the Cooperation and Verification Mechanism. The mechanism, set up by the EU to ensure new entrants meet their preaccession promises and do not endanger the EU common market or legal state, lasts three years and focuses on judiciary reform and the fight against corruption. The EC's findings were critical, stating that "greater evidence of implementation on the ground is needed in order to demonstrate that change is irreversible."¹

The influence of the EU, especially EU law, was evident in 2008. The EC spokesperson intervened more than once in defense of agreements between the EU and Romania that came under threat in the Parliament. For instance, EC intervention stalled and eventually killed a bill on the registration of imported cars. Sold as an antipollution bill, this law was passed in 2006 in complete disregard of the European *acquis*, de facto placing European cars at a disadvantage against the national carmaker Dacia-Renault, which produces the highest number of cars not meeting EU standards. After a Romanian citizen challenged the bill in a provincial court (and won on the basis of EU legislation), the EC began discussing an infringement procedure, and the bill was eventually renegotiated with the EC and sent by the government to Parliament, where it was stalled again. Citizens who paid the importation tax in 2006 have started to apply for a refund from the government.

In 2006, the National Agency for Regulating Communications (ANRCTI) was established at the request of the EU (its legal status was included in the *acquis communautaire*) to independently ensure a level playing field in the area of telecommunications. In 2008, the agency was restructured from above, despite its presumptive autonomy, via an emergency ordinance. The agency head was fired, and the name of the agency was changed. An administrative court sided with the head of the former agency and declared the emergency ordinance illegal. Prime Minister Călin Popescu-Tăriceanu appealed the decision. The EU commissioner for telecommunications disapproved of the intervention and started an infringement procedure.

The financial influence of European integration has remained a powerful incentive for Romania to fulfill its accession agreements. Romania has signed the European stability pact and entered procedures to take on the EU common currency, the euro, bringing scrutiny from the European Central Bank. While Romania has achieved economic growth of 5–6 percent in the last years, strong

demands for increasing wages in the public sector, as well as the 2007 increase of pensions, widened the budget deficit. In light of a serious trade deficit (Romania imports far more than it exports), the International Monetary Fund warned the government that giving in to popular demands for wage increases after entering the EU and accumulating expenses in the public debt may lead the country into a financial crisis not unlike that of its neighbor, Hungary. By the 2008 elections, the Romanian government faced demands for wage increases from nearly all public sectors: A 50 percent increase of teachers' salaries passed Parliament unanimously despite lack of funding for it within the 2009 budget.

In October 2008, Romanian lawmakers endorsed the property bill introduced by Romania's Conservative Party (formerly the Humanistic Party) against returning property confiscated by the Communist regime to its former owners, effectively overturning Romanian law allowing for property restitution. The bill's supporters—mainly left-wing and nationalist parties—claimed that one million people living on property nationalized by the Communists would be made homeless if restitution was allowed. Lawmakers instead voted to provide cash compensation for nationalized property at market prices (with no impact evaluation on the budget). Romania's former restitution law had resulted from a 2000 deal between Social-Democrats and right-wing political parties and the number of cases won in the European Court of Human Rights in Strasbourg by former property owners.

In January 2008, following an appeal of the Greater Romania Party, the Romanian Constitutional Court ruled that the Romanian intelligence agency, the Council for Screening Archives of Communist Securitate (CNSAS), was unconstitutional and suggested transforming the institution into an archive. The CNSAS once ruled on people's former collaboration with the Securitate on the model of the Gauck institution in Germany. The Court had ruled several times before on the CNSAS, an institution created in 1999, without coming close to such a radical decision. Although the decision can and has been contested in lower-level courts by a number of politicians, the Constitutional Court ruled that the CNSAS was in fact making itself into a court by issuing this decision, which had a *de facto* legal verdict. The "verdict," however, had no legal consequences, as Romania does not have lustration legislation punishing former collaborators or restricting their access to public positions. According to the ruling, applicants to some public positions must declare if they had collaborated with the CNSAS, and if such declarations are proven untrue, the applicant can be legally pursued for false statement. In February, the government passed an emergency ordinance to keep the CNSAS open, stating that the CNSAS can close a case only if they find a person did not collaborate, but the CNSAS must automatically send the case to a general court to rule if the accused did in fact inform to the Securitate. Although the ordinance weakened the CNSAS considerably, the ordinance eventually adopted by Parliament in October was even weaker. New exceptions were added excluding Orthodox priests from the individuals who can be checked under the law. In August 2008, Mona Musca, a politician who had been found guilty of cooperation with the Securitate (a verdict confirmed by the courts), was the first person to be charged under this article.

Electoral Process

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
2.75	3.00	3.00	2.75	2.75	2.75	2.75	2.75	2.75	2.50

In 2007, a parliamentary majority adopted a preliminary version of a bill on electoral reform, which was later revised by Parliament following the intervention of the Constitutional Court. By March 2008, a final bill was promulgated proposing a unique mixed system. In the Romanian mixed system, seats are not allocated a priori: All seats are initially open for election in single-unit constituencies, allowing voters to support candidates, not party lists, and thereby keeping members of Parliament (MPs) accountable following elections. However, only candidates receiving more than 50 percent of the vote are elected, and the remaining seats are divided proportionally.

A parliamentary committee led by the informal alliance of the Social Democratic Party (SDP) and the National Liberal Party (NLP) set about to engage in gerrymandering, trying to craft single-unit constituencies following the party majorities in local elections, in order to create “safe” constituencies for the parties. As the committee could not reach an agreement, the government intervened and passed a new emergency ordinance establishing voting districts. Most key political figures therefore had “safe” constituencies where their party enjoyed a majority, and ran practically unopposed in legislative elections. A string of unknown political candidates ran in the most disputed areas. The electoral reform bill was attacked for gerrymandering by the Greater Romania Party (GRP). The GRP claimed that the government did not have the right to establish voting districts and this should have been done by the parliamentary electoral committee. The court of appeals in Bucharest, however, decided that elections could go forward and referred the lawsuit to the Constitutional Court.

The new electoral legislation also introduced direct election of county heads in local elections. But the new law does not overlap with the current powers that administrative law confers to county heads, who were nicknamed “local barons” by virtue of their informal power. The electoral changes proposed by the SDP empowered voters.

The Coalition for a Clean Government (CCG), including several non-governmental organizations (NGOs) and unions, monitored the corruption of candidates for this position and informed voters with the help of local media, leading to electoral losses for many allegedly corrupt officeholders.

An independent candidate was elected for the first time in the Bucharest local elections. Dr. Sorin Oprescu, a longtime member of the SDP, ran an independent campaign in the 2008 local elections. His former party rallied behind him in the second round when he faced President Traian Băsescu’s candidate, former minister Vasile Blaga. Bucharest, the largest single-unit constituency, is considered a political springboard for any politician, especially presidential hopefuls who have served as its mayor.

The opposition SDP and President Băsescu's ruling Democratic Liberal Party (LDP), both gained about 28 percent of the vote in nationwide, local elections. About 18 million people were eligible to vote for 3,200 mayors, 40,000 members of district councils, and 41 chairmen of district councils. The vote was marred by low voter turnout, with less than 50 percent of eligible voters going to the polls, five percentage points below turnout in 2004. The turnout was especially low in Bucharest, with only 31 percent of eligible voters casting ballots.

The pattern of rising voter apathy was again manifest in the November parliamentary elections, when only 39 percent of voters turned out at the polls. It was the first time in Romania's post-1989 democratic history that parliamentary elections were held separately from the presidential race. According to official results, the center-left alliance formed by the SDP with the Conservatives won 33.1 percent in the Chamber of Deputies, just ahead of the LDP with 32.4 percent, the NLP with 18.6 percent, and the Democratic Union of Hungarians in Romania (DAHR) with 6.2 percent. The results were similar in the Senate, where the SDP won 34.2 percent, just ahead of the LDP with 33.6 percent. Compared with the 2004 election, the SDP-led alliance lost a few percentage points in the national vote share. The LDP and NLP, former members of the 2004 Justice and Truth Alliance, registered uneven performances. The LDP made significant gains in 2008, and owing to the new electoral system won more seats than the SDP in both houses (despite having fewer votes), while the NLP made smaller gains. Support for the DAHR remained largely unchanged at 7 percent. Owing to competition between the two radical populist parties, neither managed to win any constituency. The GRP fell from 13 percent in the 2004 elections to under the 5 percent threshold in 2008. The other nationalist party, the New Generation Party—Christian Democratic, also failed to cross the 5 percent threshold for representation.

President Băsescu constitutionally holds the power to appoint a prime minister and nominated Teodor Stolojan from his own party, LDP, which had obtained the highest number of seats. As the two main parties were so close to each other, Stolojan received the mandate to form a coalition with the other main party, SDP. Four days after his nomination and one day after a coalition protocol was signed, Teodor Stolojan announced his resignation as prime minister designate. That same day, President Băsescu signed a decree nominating the mayor of Cluj-Napoca and president of the LDP, Emil Boc, for the position. Boc vowed to create a government with the SDP and bring Romania out of the economic crisis but failed to agree with his allies on the reappointment of Monica Macovei, former minister of justice noted for her tough anticorruption position. An agreement was finally struck to keep Cătălin Predoiu as minister of justice, in exchange for his promise to reappoint Daniel Morar as chief attorney of the Romanian National Anticorruption Directorate (NAD).

Boc's coalition government was approved by Parliament in a 324–115 vote, and Boc was sworn in on December 22, 2008. Mircea Geoană of the SDP became head of the Senate, and Roberta Alma Anastase of the Democratic Party became president of the Chamber of Deputies. By the beginning of 2009, Romania had

defeated predictions of presidential impeachment and early elections after the hung vote in November and was preparing to face the economic crisis with its first left-right coalition from which NLP was excluded.

Civil Society

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
3.00	3.00	3.00	2.75	2.50	2.25	2.25	2.25	2.25	2.50

Roughly 17,000 of the 60,000 NGOs registered in the country submitted an annual balance account report in 2007—likely an accurate figure of the active NGOs in the country. According to the Romanian Civil Society Development Foundation, the total budget of the sector amounts to about US\$20 million, not including tax-deductible donations. Around 15 percent of the population donates 2 percent of their income tax to NGOs. In total, the state allocations for civil society remain very small.

Civil society was active and innovative in 2008, with projects ranging from heritage protection to fighting corruption in the educational system. At the same time, efforts to create a counter-civil society reached a peak. A group of paper-based NGOs close to the NLP, led by Mugur Ciuvica, a politician related to a small party that merged with the Popular Alliance, gained notice by supporting government attacks on the NAD. The group posted a statement claiming that the EU monitoring report was erroneous, in language similar to that of the government. Mr. Ciuvica acknowledged on a talk show that he received funding from two major “oligarchs” under investigation by the NAD, Dan Voiculescu and Dinu Patriciu, who have donated to several charities in 2008.

In a parallel development, the well-known head of an environmental foundation advocating for the preservation of the Danube Delta, Liviu Mihaiu, was appointed governor of the area, a position of considerable economic clout. Mr. Mihaiu led the alliance, Save Danube Delta, and had been successful in attracting funds from major businesspeople before becoming governor. He has also been a leading journalist in the Academia Catavencu group, and some of his sponsors became targets of disclosure in his newspapers. Rather than being seen as the first civil society success in engaging business and government, his appointment was reported in the Romanian media as proof of co-optation of civil society.

In 2008, Parliament adopted legislation with the potential to repress critical NGOs. The new law forbids NGOs from using names that might be confused with official institutions (even if legally registered under this name), and a court complaint is enough to initiate a procedure to close them down. Two active watchdogs, Institute for Public Policy (IPP) and Romanian Academic Society (SAR), are potential targets. Their names do not duplicate any existing institution, but the law is so ambiguous that NGOs may not use words such as “academic” or “institute,” which

are reserved for official use only. Some politicians have threatened to immediately move against such organizations. Both SAR and IPP faced harassment in 2008. SAR was investigated by the police at the request of Gheorghe Funar, currently an MP for the GRP, for “faked analysis,” despite the absence of any article in the criminal code on such a “crime.” IPP sued Bucharest City Hall for being denied public information and was likewise sued for overstepping its founding statute under this litigation. Although policemen and judges are unlikely to pursue this very far, they are also unlikely to quickly dismiss these investigations if pressed by politicians or judges. However, an investigation of Freedom House Romania initiated by former justice minister Tudor Chiuariu in 2007 was dismissed by prosecutors.

Independent Media

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
3.50	3.50	3.50	3.75	3.75	4.00	4.00	3.75	3.75	3.75

Romania was downgraded in both the Reporters Without Borders Worldwide Press Freedom Index and the IREX Media Sustainability Index in 2008. However, the media faced the same threats pinpointed a year ago: concentrated ownership, many outlets without clear or legitimate support, and systemic corruption—meaning a large part of the media uses what analysts call “black and gray” public relations, which frequently amounts to disinformation. Such propaganda media are not profitable. Nevertheless, bankruptcy turnover is low, and low-audience media persist. Media market institutions are not fully functioning, and advertising is not rigorously correlated to audience.

Though a plurality of media sources exist, most media owners belong to vested interest groups linking business and politics. Frequently, the same characters move from one part to another, so there is no de facto separation between the business of media, politics, and business in general. In Romania, Ringier and CEMI are the only large-scale foreign investors. Three Romanian media tycoons, Dan Voiculescu, Dinu Patriciu, and Sorin Ovidiu Vantu, own the rest of the media. All three have been unsuccessfully investigated by prosecutors on various counts over the years and have used their media outlets to denigrate the justice system and intimidate their investigators. President Băsescu has often criticized these media “oligarchs,” with little to no effect. Professional journalists (as opposed to propagandists) are becoming scarce. Media outlets where working does not mean compromising personal ethics to please the employer are becoming more difficult to find as employment alternatives are increasingly confined to electronic media, especially in light of the 2008 closures of both the BBC Romanian Section and Radio Free Europe Romania.

In 2008, two MPs managed to pass through Parliament an amendment to the Law on Broadcasting obliging television and radio stations to ensure that

half of their news coverage consists of “positive news.” The draft law, initiated by Senator Gheorghe Funar of the GRP, and NLP deputy Ioan Ghișe, was denied promulgation by President Bănescu. The Senate (upper house) unanimously adopted the amendment on June 25, despite rejections from both the Chamber of Deputies (lower house) and the Senate’s Human Rights Commission. The National Audiovisual Council of Romania and the Union of Professional Journalists also opposed the proposed law.

Local Democratic Governance

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
n/a	n/a	n/a	n/a	n/a	3.00	3.00	3.00	3.00	3.00

The year 2008 has seen a continuation of the negative trends of 2007 in the field of local governance. While steady economic growth and an increase in the price of local assets (mainly land) led to an unprecedented increase in local budgets, accountability of public spending decreased dramatically. Increased revenues at the central level have allowed the government to set up new transfer funds on top of existing ones, for which no criteria or allocation rules were created. As a result, local budgets went up in absolute sums—as did the fraction that can be controlled discretely by upper echelons: by the Ministry of Finance and county councils, and by the latter in their relationship with local councils and mayors. This informal (and unconstitutional) budgetary subordination reinforces the existing patterns of political favoritism and clientelism in the administration. Furthermore, in 2008 the total pool of funds for financial equalization across territorial units was exempted from the legal allocation requirements (a formula that sends more money to poorer localities). Instead, lump sums were given to localities on the whim of the county council presidents, as was the custom prior to the 1998–1999 reforms.

Just one month before general elections, the government distributed RON 2 billion (roughly US\$800 million) from its reserve budgetary fund to local governments of counties and municipalities. The funds were distributed disproportionately in favor of counties where SDP and NLP politicians were voted into office. The situation is even more disproportionate where mayors are concerned. Mayors from the ruling government party, 22 percent of the total number of mayors, received 42 percent of the total funds. The electoral constituencies of the prime minister and of SDP leader Mircea Geoană received the biggest bonuses, more than entire counties in areas that had elected LDP leaders.

The government attempted to create an advantage for loyal, local politicians, as well as their informal allies, the SDP, to gain reelection. For instance, the funds given to county councils for repairing district roads are regularly underestimated in budget proposals, as the sum must in principle be distributed according to technical criteria, to be supplemented by 200 percent only through ad hoc amendments negotiated during the fiscal year with county council presidents and

their lobbyist MPs, on a case-by-case basis. This does not appear to be a genuine planning mistake, but a deliberate strategy to shortcut procedures. In another example, the Ministry of Education has run a large-scale school rehabilitation fund for two years where mayors can apply with projects. No transparent criteria or justifications were produced explaining how funding decisions are made: Funds are granted to a list of localities, which creates suspicions of party favoritism, especially during an electoral year.

Most of the appropriation of government spending for localized projects is done legally, by adopting “exemptions” from local finance legislation, but individual corruption also persists. An impressive number of mayors from major cities and the main political parties have been charged by NAD with corruption. Mayors claim that a very restrictive legislative framework pushes them to breach laws to get things done. However, under Romanian anticorruption legislation, NAD can accuse a person only if indication of personal profit is found, not just proof of enacting illegal decisions. The CCG, a civil society group including NGOs and trade unions, monitored the integrity of candidates running for county council presidency in the June 2008 local elections. The posts, which are key for the implementation of both national and EU funds on a local level, were filled by direct election. Out of 150 candidates, the majority of which were incumbents, the coalition found that 54 had previous integrity lapses, corruption charges, and material profit from conflicts of interest or broken fiscal regulations in the distribution of funds. The majority of allegedly corrupt county council presidents were not reelected, but 13 of the 54 questionable candidates concerned were elected. CCG did not monitor the integrity of mayors.

Judicial Framework and Independence

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
4.25	4.25	4.25	4.25	4.25	4.00	4.00	3.75	4.00	4.00

In January 2008, a government proposal to replace former justice minister Tudor Chiuariu, who was under investigation for corruption, with MP Norica Nicolai was met with considerable opposition, including from President Traian Băsescu. The president has the constitutional right to reject a proposed minister, but a constitutional clash in 2007 led to the conclusion that if the prime minister makes the same nomination twice, the president cannot refuse it the second time. After President Băsescu turned down Nicolai’s nomination, the prime minister nominated her again. The Constitutional Court overturned their 2007 decision, and Băsescu suspended her nomination a second time. The prime minister then nominated a young business lawyer close to the NLP, Cătălin Predoiu, who became minister of justice just a few months ahead of the EU monitoring report released in July.

As part of the effort to secure the independence of the judiciary, most powers regarding the selection, career, and control of magistrates passed from the

Ministry of Justice to the self-governing judicial council, the Superior Council of Magistracy (SCM). The SCM acts more as a corporate union, protecting the interests of magistrates, rather than as a body ensuring accountability. While the minister of justice can propose laws, he does not have such authority in policy formulation. The human resources policy, for instance, lies within the authority of the SCM, which is subject to monitoring by the EC. Despite intense discussions on the issue (and assistance programs from donors such as the World Bank), the SCM has yet to develop objective criteria for promoting magistrates as judges of the High Court of Cassation and Justice, appointing SCM inspectors, nominating heads of department, and transferring magistrates—all of which depend on the arbitrary will of the SCM. The examination for management positions in courts and prosecution offices includes a verbal test requiring the candidate to present a “project” in accordance with the description of the intended position. The examination is subjective, with no clear scores or justifications. Moreover, the many appointments made by the SCM are made with no set methodology, no database of persons meeting the examiner’s profile, and no random appointment of members. The lack of transparency of these procedures is enhanced by the fact that the salaries of committee members are not disclosed.

NGOs also criticize the SCM for lacking transparency. Although its meetings are usually open to the public, many important decisions are made in closed meetings, and their justification for these decisions is not made public. Transparency is a widespread problem in the Romanian court system; despite being equipped to do so, courts publish only brief case solutions on their Web sites, not the motivations or logic behind their decisions, which would enable interested parties to analyze their odds in a dispute or monitor the practice of courts or judges.

Despite three, critical reports from the EC, and a special clause included in the Cooperation and Verification Mechanism concerning its activity, the SCM has made no progress in enhancing its own accountability: Breach of ethics and potential conflicts of interests of its members persist. The activities foreseen in the action plan for meeting the benchmarks of the EU Cooperation and Verification Mechanism fail to address this problem, as no mechanism has been identified for increasing the accountability of the SCM, and the SCM has constantly denied that corruption is even a problem within the Romanian judiciary. However, a scandal broke in 2008 when NAD brought charges against top magistrates for fraud in the competition for management positions within a high-level prosecution office.

The July 2008 EC report predictably warned Romania to clean up its justice system while cutting aid to Bulgaria and leveling unprecedented criticism at the bloc’s newest countries for failing to tackle corruption. Romania was let off with a warning to overhaul its judiciary. The SCM called these EU criticisms “constructive” but did nothing to address them.

The Romanian judicial system is currently characterized by a lack of predictability and consistency. The criminal code, currently undergoing fundamental rewriting, stems from the Communist era and has been modified 11 times since 1997. The most stable civil code was adopted in 1864, suspended during the Communist

rule, and reintroduced in 1993 with only one modification since. The criminal procedure code has been modified 18 times since 1997. An additional modification to the code has been criticized by the EU and NGOs and has been submitted to the Constitutional Court. The equivalent procedure code for civil law has been modified 10 times since 1993. In 2008, despite criticism from the European Court of Human Rights of the non-unitary case law used by the High Court of Cassation and Justice, neither the SCM nor the Ministry of Justice was able to consolidate the case law.

Since June 2007, half of the 14 elected members of the SCM continue to act in a double capacity as council members and in other positions. Although at least two days per week are spent at the SCM, all magistrates receive a full-time salary from the courts where they work. Some permanent SCM members remit their managerial positions in courts and prosecution offices until the end of their SCM tenure, leading to a state of provisional affairs in courts and prosecution and unstable local management (for instance, the Bucharest Court of Appeals is headed by interim presidents who are changed every six months).

Further efforts are needed to complete staffing and organizational reforms within the judicial system and to assure its sustainability. The SCM suggestion of filling vacancies through “fast track” admission procedures alongside annual competitions raises concerns as to the quality of new recruits to the judiciary. At the end of 2008, there were 428 vacant positions for judges out of a total of 4,469 judicial posts, and 604 vacancies for prosecutors from a total of 2,784 prosecution posts.

Corruption

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
4.25	4.50	4.75	4.50	4.50	4.25	4.25	4.00	4.00	4.00

The Constitutional Court ruled that ministers who are also MPs can be charged for crimes only with the approval of the chamber to which they belong, despite the removal of immunity for MPs in the 2003 constitutional reform package. Parliament postponed discussions on a NAD request to lift immunity for MPs that NAD had earlier charged (former ministers), so allowing them to stand trial, despite pressure from the media and Brussels. The judicial committees asked for complete files on the ministers’ cases in order to decide if investigations are current and not “politically motivated.” In August, the mandate of Daniel Morar, chief prosecutor of Romania’s anticorruption agency, expired. Despite warnings from the EU that NAD should not be interfered with, Minister of Justice Cătălin Predoiu replaced Morar, proposing a magistrate with no anticorruption prosecuting record. The nomination was negatively received by the SCM and was returned to President Băsescu, who has final appointment power over prosecutors general. In an extraordinary summer session, Parliament voted to spare their colleagues 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 the SCM instead. The bill ended in the Constitutional Court. Meanwhile, the prosecutor general gave interim powers to Morar until a final appointment was made. Labor Minister Paul Pacurariu, featured on television in an audio recording asking that a public job be granted to his son, lost his immunity and was immediately sacked by the president. He is officially the first Romanian minister dismissed for corruption.

Even more detrimental than hindering the cases of MPs from reaching the courts, Parliament modified amendments to the procedural code to favor criminals over prosecutors. Despite warnings from the EU that such amendments risk compromising the EU's ability to fight organized crime in an increasingly coordinated EU home and justice space, the Romanian Parliament maintained its main points even after the law was returned from promulgation by the president. The most notorious amendment calls for prosecutors to provide suspects with an advance warning prior to carrying out a home search warrant.

A crucial part of Romania's 2008 evaluation by the EU rested on the functioning of the National Integrity Agency (NIA), which monitors the assets and conflicts of interest of politicians, civil servants, and magistrates. The NIA Law, crippled the previous year by Parliament, curtailed the powers of the agency and was again amended by a government emergency ordinance to bring it closer to EU guidelines. By summer, however, the agency had an insufficient budget, which then prime minister, Călin Popescu-Tăriceanu deemed "not a priority." After the critical EU report, a compromise was made allowing the agency to check 17 politicians by the beginning of the fall 2008 electoral campaign. It also fined individuals who did not compile the legally required statements of assets. It is too early to assess the agency's ability to fulfill its competences.

Romanian civil society has continued to play an effective role in anticorruption, monitoring Parliament, universities, and locally elected bodies. While the print media reports on corruption, television stations, whose owners are accused in various cases, have ignored or downplayed any investigation or substantial discussion on the matter.

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¹ European Commission, MEMO/07/262, "Key findings of the progress report on the Cooperation and Verification Mechanism with Romania", Brussels, June 27, 2007.