



Office for Democratic Institutions and Human Rights

ROMANIA

PARLIAMENTARY ELECTIONS

9 December 2012

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

25-27 September 2012



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ROMANIA
PARLIAMENTARY ELECTIONS, 2012

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Permanent Mission of Romania to the International Organizations in Vienna to observe the 9 December 2012 parliamentary elections and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 25 to 27 September 2012. The NAM included Nicola Schmidt, Deputy Head of the OSCE/ODIHR Election Department, and Alexander Shlyk, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the forthcoming parliamentary elections. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and the election administration, as well as with representatives of political parties, civil society, media, and international community. A list of meetings is annexed to this report.

OSCE/ODIHR would like to thank the Ministry of Foreign Affairs for its assistance and co-operation in organizing the visit. OSCE/ODIHR is grateful to all of its interlocutors for taking the time to meet with the mission.

II. EXECUTIVE SUMMARY

In the forthcoming elections, voters will elect 315 members of the lower house of the parliament, the Chamber of Deputies, and 137 members of the upper house, the Senate, for four-year terms.

The legal framework has not been significantly amended since the last elections. OSCE/ODIHR NAM interlocutors pointed out that some provisions of the legal framework remain vague or lack detail and that government ordinances continue to detail some important legal provisions. The legal framework specifies avenues for the resolution of electoral disputes of various kinds, but does not always provide for appeals before courts of decisions on complaints.

Many OSCE/ODIHR NAM interlocutors noted a high level of political polarization, which, in their view, could impact the conduct of elections. The OSCE/ODIHR NAM was informed that the campaign has been ongoing for several months and has been dominated by issues related to the 29 July referendum on President Traian Băsescu's impeachment. OSCE/ODIHR NAM interlocutors did not voice concerns about candidate registration, but expected the campaign to reflect the political polarization.

The legal framework for political finance has been modified slightly by the Permanent Electoral Authority (PEA), which introduced regulations on internal sources of political parties' income. Although interlocutors referred to the important role of political finance, few of them raised substantial concerns with regard to its oversight.

A diverse media landscape provides for a vibrant coverage of electoral issues, however most OSCE/ODIHR NAM interlocutors highlighted media's political polarization. Broadcast media, both private and public, are subject to strict and detailed regulations of campaign coverage. A number of OSCE/ODIHR NAM interlocutors noted the complexity of existing regulations and were of the opinion that monitoring of media coverage during the elections would be of value.

Representatives of national minorities can stand for election nationwide and be elected on the basis of a lower threshold. Organizations representing minorities can nominate members to lower-level election commissions. A number of OSCE/ODIHR NAM interlocutors alleged that the practice of vote-buying is widespread among certain national minority groups, with the more economically deprived regions of the country being more susceptible to such practices.

Most OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality of the election administration and their ability to organize elections in a professional manner. At the same time, many interlocutors opined that the high level of political polarization could impact upon some aspects of the electoral process.

As few previous OSCE/ODIHR recommendations have been implemented, several areas would benefit from focused attention. This particularly relates to the implementation of the legal framework, voter registration, media coverage of the electoral campaign and its overall conduct, electoral disputes resolution, and the participation of national minorities in the electoral process.

Given these circumstances and the fact that no significant concerns were expressed regarding the conduct of election day proceedings, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM) with a core team of experts and 20 long-term observers to be seconded by OSCE participating States. This recommendation is contingent upon the availability of additional funds for the deployment of such a mission. In this case and in line with the OSCE/ODIHR's standard methodology, the LEOM would include a media monitoring element. While the mission would visit a limited number of polling stations on election day, systematic observation of voting, counting or tabulation of results on election day is not envisaged.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Voters will elect 315 members of the lower house of the parliament, the Chamber of Deputies, and 137 members of the upper house, the Senate, for four-year terms by direct, universal suffrage. In the previous elections, held in 2008, the Democratic Liberal Party (PDL) won 115 seats in the Chamber of Deputies and 51 in the Senate, an alliance between the Social Democratic Party (PSD) and the Conservative Party (PC) – 114 and 49, the National Liberal Party (PNL) – 65 and 28, respectively. The Democratic Union of Hungarians in Romania (UDMR) obtained 22 seats in the Chamber of Deputies and 9 in the Senate, while 18

representatives of other national minorities formed a Parliamentary Group of National Minorities in the lower house.¹

The political environment prior to the forthcoming parliamentary elections is polarized, following a change of the majority coalition and appointment of Victor Ponta of the PSD as prime minister in May 2012. Local elections held on 10 June yielded a significant victory for the new ruling coalition with 36 of the 41 county council presidents elected on the ticket of the Social Liberal Union (USL), comprising the PSD, the NLP, and the PC. The Parliament suspended President Băsescu from office on 6 July 2012. A 29 July 2012 referendum on his impeachment was declared invalid by the Constitutional Court due to the turnout falling short of the legally required threshold of 50 per cent.

The OSCE/ODIHR has previously deployed election-related activities to the 2004 presidential and parliamentary elections, as well as to the 2009 presidential election. The OSCE/ODIHR Limited Election Observation Mission (LEOM) to the 2009 presidential election noted that the election took place in an environment characterized by respect for fundamental political freedoms and was generally conducted in conformity with OSCE commitments and international standards for democratic elections, as well as with national law.² Among other issues, the mission recommended that the electoral legislation be consolidated, that voter registration be amended to prevent possibility of multiple voting, that election day procedures be strengthened, that the rules on complaints and appeals be clarified, and that the legislation be changed to provide for political parties and independent candidates to accredit observers.

B. ELECTION SYSTEM AND LEGAL FRAMEWORK

The number of members of either house is determined based on a quota of one deputy of the lower chamber per 70,000 and one Senator per 160,000 citizens. Elections are held in 43 multi-member constituencies related to 41 counties, the municipality of Bucharest, and a constituency for Romanian citizens with domicile abroad. Each constituency contains a number of single-member districts that corresponds to the population of that constituency. Mandates are first allocated to the candidates who obtain an absolute majority of valid votes cast in their single-member districts, with the remaining seats distributed by the rule of greatest remainder first at the level of multi-member constituencies and then nationally among the parties who cross a complex threshold established by the law.³ A representative of an organization representing a national minority who obtains the largest number of votes obtains a seat in the lower house, if the number of votes received by the respective organization exceeds 10 per cent of the nationwide natural threshold.

Parliamentary elections are primarily regulated by the 1991 Constitution, amended in 2003, the 2008 Law for the Election to the Chamber of Deputies and the Senate (Election Law), the 2003 Law on Political Parties, the 2006 Law on Financial Activity of Political Parties and Electoral Campaigns (Political Finance Law) supplemented by a 2007 government decision

¹ National minorities account for approximately 10 per cent of the Romanian population, with the Hungarians being the most numerous, followed by the Roma, Ukrainians, Swabians, Russians, Turks, Crimean Tatars, Serbs, and Slovaks, according to the 2002 national census.

² For all previous OSCE/ODIHR reports on Romania, see: <http://www.osce.org/odihr/elections/romania>.

³ Crossing the threshold corresponds to fulfilling one of the following conditions: a party or an organization representing a national minority obtaining at least 5 per cent of the valid votes cast nationwide (or at least 10 per cent in case of coalitions, depending on the number of parties in it) or having the candidates of a party, coalition or an organization representing a national minority obtaining at least 6 Chamber of Deputies seats and at least 3 Senate seats.

on its application, and the 2002 Law on Radio and Television Broadcasting (Broadcasting Law). The legal framework also includes various government decisions and regulations of election management bodies that specify areas of the electoral process, such as voter registration, political finance, and election day procedures. The schedule of electoral activities and samples of key election-related materials were established by government decisions on 10 September. Some of the provisions introduced by emergency government ordinances in 2008 were reiterated in laws adopted in 2009 and 2012.⁴

The Election Law explicitly provides for observation of voting and counting by international observers, domestic civil society organizations (given that they have been registered for at least six months prior to the elections), and the media.

Since the last elections, the legal framework has not been amended to a significant degree. Some provisions of the legal framework remain vague or lack detail; government ordinances continue to detail some important legal provisions. OSCE/ODIHR NAM interlocutors noted that the current polarization might impact due implementation of existing legal provisions. A series of government ordinances and laws were adopted following the replacement of the Ombudsperson on 3 July. The Ombudsperson is the only official authorized to challenge the constitutionality of government ordinances before the Constitutional Court.

C. ELECTION ADMINISTRATION

Elections are administered by two administrative structures: the Permanent Electoral Authority (PEA) and a three-tier structure of election bureaus that is established for each election and is headed by the Central Election Bureau (CEB). The mid-level is comprised of 43 Constituency Election Bureaus (*Birou Electoral de Circumscripție*, BECs). Voting will be organized in approximately 18,500 Polling Station Election Bureaus (*Birourile Electorale ale Sectiilor de Votare*, BESVs). The MFA is responsible for the logistical preparations and organization of some 300 polling stations for citizens with domicile abroad. Most OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality of the election administration and their ability to organize elections in a professional manner.

The PEA is led by a President who is appointed by a joint session of the two chambers of parliament at the proposal of parliamentary groups. The President is supported by two Vice-Presidents – one appointed by the President of Romania and the other by the Prime Minister. The PEA is responsible for issuing decisions and instructions to detail the legal framework, ensuring logistical arrangements for the conduct of elections, revising the delimitation of constituencies to account for changes of population, developing training programmes for the elections officials, and conducting by-elections. The PEA supervises the implementation of political finance regulations, including reviewing regular and campaign-related reports of the political parties.

The CEB consists of 5 judges of the Supreme Court of Cassation and Justice (selected from among all judges in the court by the drawing of lots) who elect the President of the CEB and his/her deputy from among themselves. The CEB also includes the President and 2 Vice-Presidents of the PEA, and up to 12 representatives of electoral contestants. BECs are composed of 3 judges, a representative of the PEA, and up to 9 representatives of electoral contestants. BESVs comprise a chairperson and his/her deputy, who are usually lawyers, and

⁴ Laws No. 323/2009 and No. 76/2012.

up to 7 representatives of electoral contestants. Parliamentary parties have priority in appointing members to the election bureaus at all levels.⁵ Remaining seats at the CEB are filled by representatives of non-parliamentary parties and coalitions in the order of the number of candidacies submitted by these contestants in the single-member districts. Although the law contains a vague provision calling for the appointment of “people having a good reputation to the BESVs in the event that there is an insufficient number of lawyers and does not provide for the representation of independent candidates in the bureaus of any level, only a few OSCE/ODIHR NAM interlocutors raised concerns with regard to the rules and the process of appointing CEB and BESV members.

D. VOTER REGISTRATION

All citizens over the age of 18 are eligible to vote, unless disenfranchised by a final court decision for reasons of legal incapacity (including for mental disability) or as part of a judicial sentence.

Voter registration is based on a system of civic registration maintained by the Ministry of Administration and Interior (MAI) and its territorial branches. Voter lists are extracted by the National Centre for Database Management of the People’s Records (NCDMPR) from the civic register and are sent to the mayors and are to be publicly displayed for verification by voters by 25 October. The MAI informed the OSCE/ODIHR NAM that mayors employ a variety of methods in checking voter lists, including door-to-door visits, and are required to formally adopt a decision summarizing all amendments to the lists provided to them by the MAI. After this process, updated lists are to be distributed by the NCDMPR to the mayors and the BESVs by 6 December.

In line with a previous OSCE/ODIHR recommendation, voters will only be able to cast their ballots at the polling stations where they are registered. Voters will be included in supplementary voter lists if they reside in the corresponding locality and present identification and proof of their domicile. Nevertheless, despite previous OSCE/ODIHR recommendations, any voter with valid identification can cast a ballot in a polling station abroad, provided that they can prove their residence there. No measures will be taken to exclude such voters from voter lists in-country.

Many interlocutors informed the OSCE/ODIHR NAM about allegations of fraud related to voter registration during the 2012 referendum. A number of cases are currently pending in courts or are under investigation by the Prosecutor General’s office. Against the backdrop of a highly-polarized political environment, the significant role played by the newly-elected mayors in the verification of the voter lists was a source of concern to some OSCE/ODIHR NAM interlocutors.

The OSCE/ODIHR NAM was told that the transition to a permanent voter register and the use of special voting cards was postponed until after the elections. Thus, as a measure to prevent possible multiple voting, adhesive stamps will be applied to voters’ plastic identification cards or their paper identification documents will be stamped. Some OSCE/ODIHR NAM interlocutors voiced concerns that this might not effectively prevent multiple voting.

⁵ The same priority is enjoyed by national minorities having their own groups in the parliament, as well as, in the case of CEB formation, the parliamentary group of national minorities in the lower chamber.

E. CANDIDATE REGISTRATION

According to the law, each citizen with the right to vote can stand in elections if they are 23 years old for election to the Chamber of Deputies or 33 for election to the Senate. Following the 2009 amendments to the Election Law, senior public officials can only stand for election if they terminate their public service obligations by the time of submitting their candidacies. Additionally, each party and candidate is required to name a financial agent, through whom all financial transactions have to be processed, as a prerequisite for registration. OSCE/ODIHR NAM interlocutors did not voice any concerns with regard to candidate registration.

BECs register candidates in the single-member districts in the respective multi-member constituencies. According to the law, candidates can be nominated by political parties, their coalitions, organizations representing national minorities, or run independently.⁶ While political parties and their coalitions can only nominate one person in each single-member constituency, a candidate of an organization representing national minorities can run in all of them. Prospective independent candidates need to collect supporting signatures of at least four per cent of voters included in the voter lists in the single-member constituency where they wish to stand. Each voter can only give a supporting signature to one prospective independent candidate for either house of the parliament.

In order to be registered, all candidates have to submit a deposit in the amount of five minimum gross salaries (a total of RON 3,500).⁷ These deposits are reimbursed to the candidates if a party, coalition or an organization representing a national minority obtained at least two per cent of the valid votes nationwide. In contrast, deposits of independent candidates can be reimbursed only to those who obtain at least 20 per cent of the valid votes in a corresponding single-member district.

F. ELECTION CAMPAIGN

The official campaign period will commence on 9 November, 30 days before election day and some 10 days after expiration of the period for adjudicating complaints and appeals regarding candidate registration. A number of OSCE/ODIHR NAM interlocutors pointed out that the campaign has been ongoing for several months and has been dominated by the invalidated 29 July referendum on the impeachment of President Băsescu.

Many OSCE/ODIHR NAM interlocutors expected the campaign to reflect this political polarization. They underscored that political confrontation between the USL, backing Prime Minister Ponta, and the Right Romania Alliance, formed by the PDL, the Christian-Democratic National Peasants' Party, and the Civic Force, could dominate the campaign. The economic situation, relations with the European Union, and recent reforms introduced by the USL are also considered possible main campaign topics.

A number of OSCE/ODIHR NAM interlocutors alleged that the practice of vote-buying is

⁶ Organizations representing national minorities that have obtained a seat in either house of the Parliament may nominate candidates without further pre-conditions. If another organization representing a national minority wishes to nominate candidate(s), it should provide a list of people constituting at least 15 per cent of the citizens who declared themselves as belonging to the respective minority.

⁷ The exchange rate is approximately 4.6 RON for 1 EUR.

widespread among certain national minority groups, with the more economically deprived regions of the country being more susceptible to such practices.

G. POLITICAL FINANCE

Political finance is primarily regulated by the Political Finance Law with the supervisory functions vested with the PEA. The legal framework for political and campaign finance has been modified slightly by the Permanent Electoral Authority (PEA) which introduced regulations regarding treatment of internal sources of political parties' income.

State subsidies to political parties (some RON 38 million) are divided between political parties that have obtained parliamentary seats (75 per cent of the total) and those who have gained at least 50 local council seats (25 per cent) in proportion to the valid votes obtained in the corresponding elections. Although public funding can be increased in proportion to the number of women elected to parliament, OSCE/ODIHR NAM interlocutors pointed out that this does not appear to stimulate their greater participation. The OSCE/ODIHR NAM was also informed that state subventions received by organizations representing national minorities under separate legal provisions cannot be used for campaign purposes.

The Political Finance Law establishes campaign expenditure ceilings of RON 245,000 for each candidate for the Chamber of Deputies and RON 350,000 for the Senate. In addition, each political party can spend up to RON 35,000 per each candidate it fields. Several OSCE/ODIHR NAM interlocutors pointed out that spending appears to exceed these established ceilings.

The Political Finance Law sets deadlines for submitting regular and campaign-related reports on income received by political parties. Additionally, political parties have to submit a declaration of adherence to the stipulated ceilings of campaign expenditures to the PEA prior to the validation of mandates of elected deputies and senators.

H. MEDIA

A diverse media landscape provides for vibrant coverage of political issues, however most OSCE/ODIHR NAM interlocutors highlighted media's political polarization. Apart from the public *Televiziunea Română* (TVR), which comprises seven national and five regional channels, popular television stations include *Antena 3*, *Realitatea TV*, OTV, Pro TV, and others.⁸ Newspapers with the largest circulation include *Adevarul*, *Jurnalul National*, *România Liberă*, and *Evenimentul Zilei*. Most OSCE/ODIHR NAM interlocutors pointed out that while Romanian citizens rely mostly on television for their information on political issues, the role of the internet is increasing.

Campaign coverage by the broadcast media, both private and public, is subject to strict and detailed regulations. These are broadly outlined in the Election Law and the Broadcasting Law and are to be further detailed in a decision that the National Audiovisual Council (*Consiliul Național al Audiovizualului*, CNA) plans to issue. Amendments introduced to the Broadcasting Law since the last elections detailed the terms used in the legislation, the powers of the CNA, and revised the sanctions applicable in cases of violations. Additionally, a Regulatory Code of the Audiovisual Content was introduced in 2011 to replace provisions

⁸ There are a total of 241 terrestrial, 32 satellite, and 6 cable television channels.

regarding political advertising previously regulated by a government decision. Some OSCE/ODIHR NAM interlocutors voiced concern with regard to the liability borne by broadcasters for the contents of aired programmes.

The Election Law provides for free coverage of electoral contestants by the public broadcasters and requires that private broadcasters apply the same tariff for paid campaign coverage to all electoral contestants. Additionally, the Election Law requires that the airtime offered to electoral contestants by private broadcasters is proportional to that offered by the public broadcaster, a regulation that was questioned by some OSCE/ODIHR NAM interlocutors.

The OSCE/ODIHR NAM was informed that, according to existing regulations, all electoral contestants wishing to benefit from the free airtime on the public broadcaster should have requested it within 48 hours of the announcement of elections. The CNA also informed the OSCE/ODIHR NAM that those broadcasters wishing to cover the election campaign have to provide a schedule of election-related programmes they plan to broadcast to the CNA. According to the CNA, during the official campaign period, broadcasters will only be able to transmit programmes featuring contestants' direct speech and campaign debates. Broadcasters are obliged to observe general principles of equity, balance, and impartiality in their election-related coverage, including in the news. CNA regulations provide that candidates who hold public office can only comment on issues regarding the exercise of their public duties, while broadcasters are obliged to ensure fairness and diversity of views. A number of OSCE/ODIHR NAM interlocutors noted the complexity of existing regulations and thought that monitoring of media coverage during the elections would be of value.

I. COMPLAINTS AND APPEALS

The legal framework specifies avenues for the resolution of electoral disputes of various kinds, but does not always provide for appeals of the resulting decisions before a court. For instance, while complaints regarding CEB composition are adjudicated by the High Court of Cassation and Justice, complaints regarding composition of BECs and BESVs are adjudicated by a higher-level commission without the possibility for appeal to a court. Similarly, complaints regarding campaign conduct can be addressed to the BECs whose decisions could be appealed to the CEB without the possibility of further appeal to a court.

Complaints against errors in the voter lists can be addressed to the mayor, whose decision can be appealed to the local court. Complaints over BEC decisions on nominations can be lodged with a local court, with the possibility to subsequently appeal to the Court of Appeals.

IV. CONCLUSION AND RECOMMENDATION

Most OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality of the election administration and their ability to organize elections in a professional manner. At the same time, many interlocutors noted a high level of political polarization in the country, which, in their view, could impact upon some aspects of the electoral process.

As few previous OSCE/ODIHR recommendations have been implemented, several areas would benefit from focused attention. This particularly relates to the implementation of the legal framework, voter registration, media coverage of the electoral campaign and its overall

conduct, electoral disputes resolution, and the participation of national minorities in the electoral process.

Given these circumstances and the fact that no significant concerns were expressed regarding the conduct of election day proceedings, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM) with a core team of experts and 20 long-term observers to be seconded by OSCE participating States. This recommendation is contingent upon the availability of additional funds for the deployment of such a mission. In this case and in line with the OSCE/ODIHR's standard methodology, the LEOM would include a media monitoring element. While the mission would visit a limited number of polling stations on election day, systematic observation of voting, counting or tabulation of results on election day is not envisaged.

ANNEX: LIST OF MEETINGS

AUTHORITIES

Ministry of Foreign Affairs:

Petrișor Dumitrescu, Director General
Ruxandra Stănescu, First Secretary

Permanent Electoral Authority:

Ana Maria Pătru, President
Cristian-Alexandru Leahu, Director
Bogdan Popescu, Head of External Relations Office

National Audiovisual Council:

Ioan Onisei, Vice-President

Central Election Bureau:

Paula C. Pantea, President
Liliana Vișan, Vice-President
Iulia Manuela Cîrnu, Member
Maricela Cobzaru, Member
Aurelia Rusu, Member
Gabriela Antipa, Member
Cristian Ene, Member
Mihai Traian Mustăciosu, Member
Aristide Roibu, Member
Ivan Truțer, Member
Cristiana Uzună, Member
Zsuzsánna Péter, Member

Constitutional Court:

Augustin Zegrean, President
Aspazia Cojocaru, Judge
Acsinte Gaspar, Judge
Petre Lăzăroiu, Judge
Mircea Stefan Minea, Judge
Iulia Antoanella Motoc, Judge
Ion Predescu, Judge
Valentin Zoltan Puskás, Judge
Tudorel Toader, Judge

Ministry of Administration and Interior:

Constantin Cătălin Chiper, Secretary of State
Constantin Mihart, Director General

Presidential Administration:

Cristian Diaconescu, Presidential Adviser

POLITICAL PARTIES AND PARLIAMENTARY GROUPS (in alphabetical order)

Democratic Union of Hungarians in Romania (UDMR):

Péter Kovács, Secretary General

Group of National Minorities in the Parliament of Romania:

Varujan V. Pambuccian, MP, Leader of the Parliamentary Group

Liberal Democratic Party (PDL):

Cezar Preda, MP

Social Democratic Party (PSD):

Eugen Bejinariu, MP

Andrei Dolineaschi, MP

Alexandru Batagui, Adviser to the Secretary General

MEDIA

TVR:

Ion Stavre, Journalist

Norina Ionescu, Legal Advisor

DigiTV:

Elena Vijulie, Political Editor

CIVIL SOCIETY

Active Watch:

Mircea Toma, President

Asociația Pro Democratia:

Cristian Pirvulescu, President

INTERNATIONAL COMMUNITY

David Costello, Deputy Head of Mission, Embassy of Ireland in Bucharest

Niculae Idu, Head of Representation, European Commission Representation in Romania

Dorina Maria Năstase, Head of Political Section, European Commission Representation in Romania