

INTERIM REPORT
27 October–10 November 2009

13 November 2009

I. EXECUTIVE SUMMARY

- The Government of Romania on 2 September called a presidential election for 22 November 2009, with a possible second round on 6 December if no candidate receives the required absolute majority of the votes of all registered voters. Also on 22 November, a referendum on parliamentary reform called by President Traian Băsescu will be held.
- Twelve candidates will contest the election, out of 27 who submitted their nomination. The Central Election Bureau (BEC) registered the candidates in an inclusive manner. Two of the candidates are members of national minorities. There are no female candidates.
- The election campaign is unfolding against the backdrop of a governmental crisis. While active and to a degree based on candidates' platforms, it is largely dominated by the referendum issue. While free from major incidents and hindrances, the campaign has also seen instances of strong language and negative campaign materials, at times anonymous.
- The Presidential Election Law was consolidated by Government Ordinance in September 2009. Amending election legislation shortly before elections is not in line with good electoral practices, and doing so by means of emergency ordinance may raise constitutional issues.
- The presidential election and the referendum will be administered by a three-tiered election administration, comprising the BEC, 48 mid-level commissions, and 21,707 Polling Station Election Bureaus. The Permanent Election Authority (AEP), the Ministry of Administration and the Interior and other state and local authorities assist the election process.
- More than 18 million voters are registered in the voter lists. Citizens who are away from their place of residence on election day can vote in one of 3,360 special polling stations. Despite measures to prevent multiple voting, including monitoring cameras at special polling stations and *post factum* checks of supplementary lists used in special polling stations, several interlocutors have raised their concerns that such irregularities may nonetheless occur.
- Romania has a dynamic and pluralistic media environment providing voters with ample and diverse political information. The Presidential Election Law provides for free airtime for candidates on public and private broadcast media and prohibits paid advertisement in broadcast media.
- About 20 complaints were filed with the BEC and mid-level election bureaus, all of which were resolved in a timely manner. The Constitutional Court adjudicated two complaints regarding obstruction of candidates' campaigns in the media, providing effective remedy.
- The OSCE/ODIHR Limited Election Observation Mission opened its office in Bucharest on 28 October, with an 11-member core team and 14 long-term observers drawn from 17 OSCE participating States and deployed to seven locations around the country.

II. INTRODUCTION

The Government of Romania on 2 September 2009 called a presidential election for 22 November, with a possible second round on 6 December. Following a Needs Assessment Mission recommendation and an invitation from the Permanent Delegation of Romania to the International Organizations in Vienna, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established a Limited Election Observation Mission (LEOM) on 27 October. The LEOM, led by Vadim Zhdanovich, consists of an 11-member core team based in Bucharest and 14 long-term observers who were deployed on 4 November to Bucharest and six regional centres around the country. The OSCE/ODIHR LEOM is drawn from 17 OSCE participating States. In line with standard practice for LEOMs, the mission will not carry out a systematic or comprehensive observation of the voting, counting and tabulation on election day, but mission members will visit a limited number of polling stations across the country to follow procedures.

III. BACKGROUND

The upcoming presidential election will be held separately from parliamentary elections for the first time, following the 2003 constitutional amendments which extended the President's term of the office from four to five years, while keeping the term of the Parliament at four years.

A specific feature of this election is that on 24 September, President Traian Băsescu announced his intention to call a referendum aimed at making the Parliament unicameral and at reducing the number of its members from the current 471 to a maximum of 300. This referendum, which was formally called on 22 October, will coincide with the first round of the presidential election. The OSCE/ODIHR will assess the referendum only to the extent that it has an impact on the conduct of the presidential election.

The presidential election has been unfolding against the backdrop of a severe governmental crisis. Following the November 2008 parliamentary elections, the Government was formed by the centre-right Democratic Liberal Party (*Partidul Democrat Liberal*, PD-L), the centre-left Social Democratic Party (*Partidul Social Democrat*, PSD) and the small Conservative Party (*Partidul Conservator*, PC). On 1 October, the PSD-nominated ministers resigned following the dismissal of the Minister of Administration and Interior, Dan Nica (PSD), by Prime Minister Emil Boc (PD-L) after the former alleged that the PD-L was preparing to manipulate the election. On 13 October, Parliament passed a motion of no confidence in the Boc Government. President Băsescu then nominated Lucian Croitoru, councilor to the Governor of the Romanian National Bank, as Prime Minister; however, Croitoru on 4 November failed to receive a vote of confidence in Parliament. On 6 November, the President mandated Liviu Negoită (PD-L), Mayor of Sector 3 of Bucharest Municipality, to form a new Government.

According to the Constitution, the President may dissolve Parliament if no vote of confidence has been obtained to form a Government 60 days after the first request was made (in this case, 4 November 2009), and only after rejection of at least two requests for investiture. The Constitution also stipulates that Parliament cannot be dissolved during the last six months of the President's term of office (the current presidential term comes to an end on 20 December 2009).

The governmental crisis has changed the configuration of the pre-electoral political setting. From a coalition partner of the PD-L, the PSD has now become, along with the National Liberal Party (*Partidul Național Liberal*, PNL), a major opposition party.

IV. THE LEGAL FRAMEWORK AND ELECTION SYSTEM

The legal framework for the presidential election consists primarily of the Constitution of Romania (adopted in 1991 and amended in 2003 after a referendum) and the Law on the Election of the President of Romania (2004) as amended by Government Emergency Ordinance 95/2009, which entered into force on 3 September 2009. The ordinance aimed at consolidating the law by removing cross references to the 2004 Parliamentary Election Law which was amended in 2008. The ordinance brought about some changes, mainly in regards to special polling stations. The practice of amending electoral laws shortly before elections, although a recurrent feature in Romania, is not in line with good electoral practices; furthermore, amending and enacting electoral legislation by means of emergency ordinances may raise constitutional issues since the Constitution excludes the field of electoral rights from regulation by emergency ordinances.

Other applicable laws are the Law on Political Parties (2003), the Law on the Funding of the Activities of Political Parties and Electoral Campaigns (2006) and the Law on Radio and Television Broadcasting (2002, last amended in 2008). Furthermore, the Government can issue decisions on certain aspects of the election and the Central Election Bureau (*Biroul Electoral Central*, BEC) is competent to issue decisions and resolutions to ensure the uniform application and interpretation of the electoral law.

The President of Romania is elected directly for a term of five years and may serve a maximum of two terms. In order to be elected in the first round, a candidate needs to obtain the votes of more than one half of all registered voters. In case no candidate is elected in the first round, a second round takes place between the two candidates who obtained the highest number of votes, two weeks after the first round. The candidate who obtains the majority of valid votes cast in the second round will be declared elected.

V. THE ELECTION ADMINISTRATION

The election administration consists of the Permanent Election Authority (*Autoritatea Electorală Permanentă*, AEP) and of a three-tiered structure established for each election, which is headed by the BEC. The middle level comprises 41 County Election Bureaus (*Birourile Electorale Județene*, BEJs), one election bureau for each of the six sectors of Bucharest Municipality, and one electoral bureau for polling stations abroad. Polling will be administered by 21,707 Polling Station Election Bureaus (*Birourile Electorale ale Secțiilor de Votare*, BESVs): 18,053 for regular polling stations, 3,360 for special polling stations, and 294 for polling stations abroad. BEC and BEJs sessions are not public. In addition, the BEC in its first resolution decided that minutes of their sessions are not public documents.

The AEP, the Ministry of Administration and the Interior (MAI) and the state and local administration assist the election process by delineating the borders of precincts and setting up polling stations, seconding technical staff to the BEC and BEJs, ensuring the accuracy and printing of voter lists, producing ballot papers and the voting stamps used by voters to mark their choice on the ballots, and providing other assistance.

The BEC has overall authority for organizing an election. It consists of five judges from the High Court of Cassation and Justice, who elect the BEC president from among themselves, the president and the two vice-presidents of the AEP, and up to ten representatives of political parties participating in an election (for this election, the nine parties which nominated

candidates).¹ Independent candidates are not represented at any level of the election administration. The appointment of the current 17 BEC members was completed on 29 October.

Membership of mid-level election bureaus was finalized on 5 November. BEJs consist of three judges from county-level courts, one member appointed by the AEP, and up to seven political party representatives. BESVs are composed of a president, a deputy president and up to seven members representing political parties that have candidates in the election. Several interlocutors have raised concerns that the selection of candidates for BESV presidents and deputy presidents by the Government-appointed county prefects (who draw up the lists of candidates together with the presidents of county courts) may be politically influenced.

As a rule, voters vote in the polling station serving their place of permanent residence. However, voters who on election day are away from their place of residence can vote in any special polling station throughout the country, of which there is at least one in each municipality, town and commune.² The number of such polling stations has been limited and some safeguards have been added in order to avoid possible abuses, in particular multiple voting. Voters will have to sign a declaration that they will not vote more than once in each contest, and cameras will be installed at each special polling station for monitoring purposes. The MAI has launched a “Correct Vote” campaign aimed at discouraging multiple voting and vote buying and will have a hotline where citizens can report irregularities. Nonetheless, several interlocutors have voiced concerns that multiple voting may occur.

The AEP will receive all voter lists after the election and will check voter information and signatures in order to discover any instances of multiple voting. This process should be completed within six months, after which the AEP will forward its findings to the competent authority for prosecution.

Voting abroad is organized by the Ministry of Foreign Affairs and overseen by an election bureau based in Bucharest, which will receive the results from abroad by fax or email. The presidents of BESVs abroad are selected by the Ministry of Foreign Affairs, mainly among diplomats.

The presidential election and the referendum will be organized by the same election bureaus, and voting will take place in the same polling stations. The BEC and the Government, through their decisions, issued timely instructions to election bureaus for the parallel conduct of the polls. Voters should be given a choice which contest they wish to vote in, and separate columns will be provided on the voter list for voters’ signatures. The authorities have yet to launch a voter education campaign in order to familiarize voters with the particularities of this polling process.

VI. VOTER REGISTRATION

Voter lists used in regular polling stations are updated by mayors’ offices, based on residency records. Voters can check their records and request corrections. In addition, there will be supplementary voter lists in special polling stations and in polling stations abroad. As of 1

¹ At all levels of the election administration, parliamentary parties are entitled to be represented on the election bureaus. After their places have been filled, the remaining number of party seats is filled from non-parliamentary parties which have a candidate. If there are more nominations from such parties than seats left, lots are drawn.

² Up until the first round of the 2004 presidential election, voters could vote in any polling station if they were away from their place of residence. After allegations of serious irregularities, the BEC decided to strictly limit the number of special polling stations for the second round of the 2004 presidential election. In the 2007 referendum on recalling the President and in the 2009 European Parliament elections, voters could again vote in any polling station if they were away from their place of permanent residence.

October, the total number of registered voters in Romania was 18,347,396. The number of ballot papers printed includes a legally prescribed reserve of 10 per cent of the total number of registered voters. An additional 1,245,992 ballots were printed for use in special polling stations, a figure decided upon based on experience from previous elections.

VII. CANDIDATE REGISTRATION

Any Romanian citizen with voting rights who has permanent residence in Romania and is at least 35 years old on election day may run for President, unless he or she belongs to one of the categories of citizens that are not allowed to join political parties under Article 40 of the Constitution.³ Presidential candidates may be nominated by political parties or run as independent candidates, and are registered by the BEC. Nomination documents must contain supporting signatures of at least 200,000 registered voters. Voters can only sign in support of one candidate. Supporting signature sheets were scrutinized by the BEC for obvious mistakes and incomplete records as well as for clear signs of manipulation. The BEC was not in a position to check each and every signature against the voter list, due to a lack of time and resources.

Of a total of 27 nominations submitted to the BEC within the legal deadline of 23 October, the BEC registered 12 candidates in an inclusive process. Nine candidates were nominated by political parties while three run as independents. Fourteen nominations were rejected because they were not supported by the required number of signatures, while one nomination had not been signed by the authorized representative of the nominating party, due to an internal leadership struggle within that party. The BEC decisions on 20 nominations were appealed to the Constitutional Court, which in all cases upheld the relevant BEC decisions. The candidate registration process was concluded on 29 October.

The candidates nominated by parliamentary parties are: incumbent President Traian Băsescu (nominated by the PD-L); President of the Senate and PSD Chairman Mircea Geoană; PNL Chairman Crin Antonescu, and Hunor Kelemen, nominated by the Democratic Union of Hungarians in Romania (*Uniunea Democrată Maghiară din România*, UDRM).

The candidates nominated by non-parliamentary parties are: Corneliu Vadim Tudor, President of the Greater Romania Party (*Partidul România Mare*, PRM); George Becali of the Christian Democratic New Generation Party (*Partidul Noua Generație – Creștin Democrat*, PNG-CD); Remus Cernea of the Green Party (*Partidul Verde*, PV); Constantin Rotaru of the Socialist Alliance Party (*Partidul Alianța Socialistă*, PAS); Ovidiu-Cristian Iane of the Romanian Ecologist Party (*Partidul Ecologist Român*, PER). The three independent candidates are Sorin Oprescu, the Mayor of Bucharest, Constantin Ninel Potîrcă and Gheorghe-Eduard Manole.

VIII. THE CAMPAIGN ENVIRONMENT

The official election campaign period started on 23 October and will end at 07:00 hours on 21 November. The campaign has gathered momentum, with posters, billboards, and banners of many candidates in evidence. The eight presidential candidates whom the OSCE/ODIHR LEOM has thus far met have characterized the electoral campaign as being conducted in an overall calm environment, without major incidents or hindrances to their respective campaigns.

Most candidates are touring the country in order to get their message to the electorate. While candidates present their political platforms to the voters, focusing on the economic crisis, social

³ Judges of the Constitutional Court, the advocates of the people (ombudspersons), magistrates, active members of the Armed Forces, policemen and other categories of public servants, established by an organic law, are forbidden to join political parties.

policy, and proposals to resolve the current political stalemate, the referendum has become the most prominent and controversial issue in this campaign and is largely dominating it. President Băsescu's campaign in particular puts a strong stress on the proposed parliamentary reform, which has been strongly criticized as a populist move by his competitors and other interlocutors, both in public and in their meetings with the OSCE/ODIHR LEOM.

In Iași, the BEJ decided that banners promoting the referendum which were put up by the PD-L had to be removed from spaces allocated for campaign material of presidential candidates. Following a complaint by the PD-L, the BEC overturned that decision, maintaining that the conduct of the referendum is regulated by the Presidential Election Law and the banners, therefore, could be put in such places.

There have been several instances of candidates and leading party figures attacking other contestants in strong language. Crin Antonescu publicly distanced himself from a statement of the first Deputy President of the PNL, Ludovic Orban, that Băsescu would only receive the votes of "gypsies, prostitutes and drug addicts". Towards the end of the reporting period, billboards and banners attacking the incumbent were put up, without any indication of who is responsible for the content (in violation of Article 29 of the Law on Funding of Political Parties and Election Campaigns). Within days, big stickers accusing previous PSD-led Governments of corruption were put on some of these billboards. Several formal complaints were lodged by political parties regarding destruction of their candidates' campaign posters, including by the PD-L branch in Iași and the PSD branch in Dolj county.

Candidates from non-parliamentary parties complained during their meetings with the OSCE/ODIHR LEOM that the election legislation, and in particular its implementation, favors the parties represented in the Parliament, e.g. with regard to campaign financing provisions and representation on election-administration bodies. Candidates of non-parliamentary parties and independent candidates also said that they were at a disadvantage in terms of media access and media coverage, as well as due to local administrations being loyal to major political parties.

IX. THE MEDIA

Romania has a dynamic and pluralistic media environment, including public and private broadcasters and a variety of print media; the number, range and accessibility of media outlets provide voters with ample and diverse information about politics and elections, mainly through news and election-related debates.

TV is the main source of political information. Private Pro TV and Antena 1, and the first channel of public Romanian Television, TVR 1, are the most popular channels; however, private information channels Realitatea TV and Antena 3 usually increase their ratings during election campaigns. Among the quality press, *Adevărul* currently enjoys the highest readership, but the paper decided not to cover the campaign in order to clearly distance itself from any of the candidates.

Media coverage of the campaign is gathering momentum and focusing on the candidates of the main parliamentary parties. However, the media are focusing less on candidates' platforms than on the incumbent President and his management of the current political crisis as well as his talks with the International Monetary Fund.

The Presidential Election Law regulates access to the media during an election campaign. The National Audiovisual Council, an autonomous body responsible to the Parliament, is in charge of supervising and monitoring the broadcast media. As a result of the recent amendments to the

Presidential Election Law, candidates are entitled to equal amounts of free airtime not only on public broadcast media, but also on private ones. The National Audiovisual Council through Act No. 662/5.X.2009 further detailed the implementation of the media-related provisions of the Presidential Election Law. Broadcast media may not sell airtime to candidates or political parties during an election campaign.

Two of the candidates (Constantin Ninel Potîrca and Gheorghe-Eduard Manole) filed complaints with the Constitutional Court with regard to their access to free airtime on public television and radio. In both cases, the Constitutional Court accepted the complaints and ordered corrective measures and airtime to be granted to the candidates.

The OSCE/ODIHR LEOM started its media-monitoring activities on 29 October. It is monitoring the campaign coverage during the prime-time period (18:00–24:00 hours) on five television channels with nationwide coverage (public TVR 1, Pro TV, Realitatea TV, Antena 1, and Prima TV); it is also monitoring the campaign coverage of five newspapers (*Cotidianul*, *Evenimentul Zilei*, *Jurnalul Național*, *Gândul* and *România Liberă*).

X. COMPLAINTS AND APPEALS

The electoral legislation foresees resolution of election-related disputes both by the election administration and by judicial bodies. In addition, mayors can decide on complaints related to the updating and public scrutiny of voter lists. The BESVs have the competence to resolve complaints concerning their own activities and the voting process. The BEJs and the BEC are competent to decide on complaints against their own activities and appeals against decisions of the subordinate electoral bureaus. Challenges on the formation and composition of election bureaus must be filed with the superior-level election bureau, and in the case of the BEC, with the High Court of Cassation and Justice. The BEJs also resolve complaints pertaining to the election campaign, except for cases falling within the competency of the Constitutional Court.

The Constitutional Court validates the election results and decides on petitions to annul the election. An election may be annulled if irregularities occurred of a scale which impacted on the allocation of the presidential mandate or on which candidates contest a possible second round. The Constitutional Court also adjudicates challenges against BEC decisions to accept or reject a candidacy and against BEC decisions to accept or reject a contestant's electoral symbol. Complaints alleging obstruction of a candidate, of a political party or a political alliance to conduct their election campaign are also resolved by the Constitutional Court.

Thus far, around 20 complaints and appeals were filed with BEJs and the BEC, all of which were resolved in a timely manner. These complaint and appeals pertained mainly to the formation of BEJs and to election campaign issues. The Constitutional Court adjudicated two complaints regarding obstruction of candidates' campaign in the media and provided effective remedy.

XI. PARTICIPATION OF WOMEN AND NATIONAL MINORITIES

Under the Constitution, men and women enjoy equal rights, freedoms and opportunities. However, Romanian legislation does not provide for a quota system for women's representation in political life. Women are under-represented both in the Parliament and the Government (46 of the 471 members of Parliament are women, as are two of the 11 Ministers of the current caretaker Government). In the context of women's participation in the election administration, one of the two Vice-Presidents of the AEP is a woman. The President and the Vice-President of the BEC are also women, as are five more BEC members. None of the registered candidates is a woman, and there were only two women among the 27 nominees.

According to the latest population census conducted in 2002, there are 19,399,597 Romanians (89.47 per cent of the population), 1,431,807 Hungarians (6.6 per cent), and 535,140 Roma (2.46 per cent), while other national minorities (Ukrainians, Germans, Russians, Turks, Bulgarians, Greeks, Armenians, etc.) account for slightly more than 1 per cent.

The Constitution protects the rights of persons belonging to national minorities, as well as their individual rights and freedoms regardless of race, nationality, language or religion. A total of 20 national minorities are represented in the Council of National Minorities, a consultative governmental body. In the current Parliament, the UDMR has nine seats in the Senate and 22 seats in the Chamber of Deputies. The latter also includes 18 MPs who represent the other 19 national minorities (the Czech and Slovak minorities are jointly represented by one MP) and are elected under a constitutional provision which establishes a special representation threshold for representatives of national minority organizations.

Two presidential candidates belong to national minorities, Hunor Kelemen, who is an ethnic Hungarian, and Constantin Ninel Potîrcă, who is a member of the Roma community.

XII. DOMESTIC AND INTERNATIONAL OBSERVERS

The election legislation provides for domestic and international observation. Domestic observers can be appointed by non-governmental organizations (NGOs) active in the field of human rights and democratization, and by the media. Political parties and candidates do not have the right to appoint observers but the candidates themselves are allowed to observe election-day proceedings.

Thus far, observers from more than 20 NGOs have been accredited. The Pro Democracy Association (*Asociația Pro Democrația*, APD) intends to deploy around 1,000 observers in static and mobile teams. In addition, as part of an alliance with the NGO Active Watch–Media Monitoring Agency and the Cartel Alfa trade union, APD will monitor candidates' and parties' spending for outdoor campaign material in 14 county capitals and Bucharest. Several NGOs have warned that political parties may try to accredit their activists under the guise of NGO observers, in contravention of the law which provides that domestic observers may not be party members. One organization which plans to deploy a significant number of observers in Bucharest and Ilfov county told the OSCE/ODIHR LEOM that they would accredit sympathizers of several major parties under the organization's name. The chair of the PSD in Suceava county publicly stated that his party would field 700 activists accredited under the umbrella of various "foundations" on election day.

XIII. OSCE/ODIHR LEOM ACTIVITIES

The OSCE/ODIHR LEOM opened in Bucharest with a press conference on 28 October 2009. The Head of Mission has met the members of the BEC, the Permanent Election Authority, State Secretaries of the Ministry of Foreign Affairs and of the MAI, eight of the 12 presidential candidates, including the incumbent, the President of the Constitutional Court, representatives of civil society, and the Greek Ambassador as the representative of the OSCE Chairman-in-Office. The OSCE/ODIHR LEOM also met representatives of governmental institutions involved in the election process and has established regular contacts with the BEC and the AEP, candidates' campaign offices, political parties, civil society, and the media.