



Office for Democratic Institutions and Human Rights

ROMANIA

PARLIAMENTARY AND PRESIDENTIAL ELECTIONS

28 November and 12 December 2004

OSCE/ODIHR ASSESSMENT MISSION REPORT



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I. EXECUTIVE SUMMARY

In response to an invitation by the Permanent Mission of Romania to the OSCE, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for the 28 November parliamentary and presidential elections in Romania. The OSCE/ODIHR assessed the overall parliamentary and presidential election processes in terms of their compliance with the 1990 Copenhagen Document and other election-related commitments, although the EAM did not undertake a systematic observation of election day proceedings.

The respective parliamentary and presidential elections offered voters a wide and genuine choice. A high number of political parties, electoral alliances and organizations representing national minorities, as well as individual independent candidates¹, participated in the parliamentary elections. For the Chamber of Deputies, voters could choose from between 21 political parties, three political or electoral alliances, 28 organizations representing national minorities, and ten independent candidates. For the Senate, they could choose among 21 parties, three alliances, one national-minority organization, and two independent candidates.², 12 candidates competed for the office of President, one of them an independent candidate. The campaign was vigorously contested and debate was lively, although there were occurrences of negative campaigning, as well as instances in which false or deceptive campaign materials were distributed.

A diverse media landscape exists in Romania, but reported pressure on journalists raised concerns. The Election Law provided all contestants with access to the broadcast media during the official campaign period. Campaign-related provisions of the Law, however, obliged broadcasters to strictly follow relevant regulations, often at the expense of lively and interesting campaign coverage. Print media were virtually unrestricted in their campaign coverage. The Law in its present form contains several inconsistencies and vague provisions related to the media which should be reviewed.

The parliamentary and presidential elections were conducted under revised Parliamentary and Presidential Election Laws. Both laws were adopted at a very late stage and took effect only two months before the elections. While the legal framework generally provides an adequate basis for elections to be conducted in line with OSCE commitments, certain issues, such as more precise regulations regarding election-related complaints and appeals, remain to be addressed. Also, the government's adoption of emergency ordinances in relation to the conduct of the elections appears to raise constitutional issues.

¹ The Election Law does not permit multi-name lists of independent candidates.

² The BEC did not count the ethnic-Hungarian UDMR as an organization representing a national minority in these statistics.

The election administration in general operated in a transparent and efficient manner, although certain deficiencies noted at polling station level indicated the need for more thorough training. Overall, however, election day appeared well-administered in the limited number of polling stations visited by the EAM. Certain decisions taken by the Central Election Bureau (BEC) increased the transparency of the process. However, the requirement that Polling Boards should include presidents and deputies with a legal background proved difficult to implement, and many such posts were filled from lists of candidates compiled by the government-appointed county prefects, raising numerous complaints that the selection of Polling Board presidents had been politically biased. Romania now has a Permanent Election Authority (AEP) which will function between election cycles, although the current method of appointment to the AEP should be reviewed to ensure an inclusive and balanced composition.

The main problem in these elections concerned potential challenges to the integrity of the vote. Although the Law stipulates that voter cards should be used, Parliament suspended their use for these elections. Instead, paper stickers indicating that a person had voted, were affixed to the back of ID cards. However, since the stickers could easily be removed, this was not an equivalent substitute for the voter cards which can be clearly stamped to indicate that a person had voted. The OSCE/ODIHR EAM did not receive any convincing explanation for the suspension of the usage of voter cards for these elections. As Romanian voters are able to vote at almost any polling station in the country through special voter lists, suspension of voter cards removed an important safeguard against multiple voting and appeared to affect public confidence in the overall election process. Election participants and domestic observers alleged that multiple voting indeed occurred on 28 November, but substantial evidence was not presented to the OSCE/ODIHR EAM.

Following alleged irregularities on 28 November, the BEC partially addressed concerns by restricting voting on special voter lists to a limited number of special polling stations. While reducing the possibility of fraud, this measure, and the manner in which it was implemented, also created some confusion and may have disenfranchised part of the electorate. It is also questionable whether the BEC had the right to modify relevant provisions of the Election Law by adopting this decision.

Another problem witnessed in the first round concerned incorrect tabulation of results, ostensibly due to lack of training and faulty design of results protocols. Allegations that the tabulation software had been manipulated to “reassign” invalid votes to the ruling party were dispelled by an audit.³ However, it became apparent that many polling boards had not established the number of voters who voted by counting voters’ signatures on the registers. This appears to have been also overlooked when defective protocols were corrected later on, thus removing another potential safeguard against electoral malpractice. To address these shortcomings, the BEC, for the second round, ordered that the signatures on voter lists should be counted, and it also changed the design of the results protocols.

Recognized national minorities are entitled to special parliamentary representation. However, some ambiguities in the legal framework for the election of national minority representatives should be addressed. Romanian citizens belonging to a national minority were able to

³ The audit was conducted by a Serbian non-governmental organization, the Center for Free Election and Democracy

participate in the elections without difficulties, with the exception of concerns expressed by representatives of the Roma parties and organizations.

While the number of women running for office increased substantially, their representation in the newly elected parliament remains limited.

Civil society played an important role in these elections, monitoring various aspects of the process. Over 3,000 domestic non-partisan observers were deployed on each polling day.

The OSCE/ODIHR stands ready to support the Romanian authorities in addressing the recommendations offered in this report, prior to any future elections.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Assessment Mission (EAM), headed by Ambassador Stephen Nash (United Kingdom), was deployed from 20 November to 15 December 2004. For the first round of voting on 28 November 2004, the EAM consisted of 18 experts from 13 OSCE participating States, and for the second round of the presidential elections on 12 December, of 15 experts from nine participating States. In addition to experts based in Bucharest, the OSCE/ODIHR EAM deployed to the regional centres of Constanța, Cluj, Iași and Timișoara for the first round of the elections, and to Craiova, Galați and Sibiu for the second round. An expert specializing in Roma issues visited several counties with significant Roma populations.

In line with standard OSCE/ODIHR practice, the deployment of an EAM does not envisage any systematic observation of election day procedures. Although polling stations were visited on election day by EAM members, this was on a limited basis, and therefore not sufficient to draw general conclusions on the overall voting process throughout Romania. Also, due to the limited duration of its stay in Romania, the EAM undertook no systematic media monitoring.

The OSCE/ODIHR expresses its appreciation to the Ministry of Foreign Affairs for the assistance afforded to the mission throughout its stay, as well as to the Central Election Bureau, and all authorities, civil society organizations and individuals for the cooperation and assistance offered to the EAM.

III. BACKGROUND

The Romanian parliamentary and presidential elections, held on 28 November and 12 December 2004, were the fifth such elections since the fall of the Communist regime in 1989. Previous elections for parliament and president had been held in 1990, 1992, 1996, and 2000. Apart from 1996, all elections had been won by predecessors of the Social Democratic Party (PSD)⁴, with then party leader Ion Iliescu winning the presidency. In 1996, the Democratic Convention of Romania (CDR) coalition became the strongest parliamentary force and subsequently formed a coalition government, while CDR leader Emil Constantinescu defeated Iliescu in the presidential elections.

⁴ The Front of National Salvation (FSN) in 1990, the Democratic Front of National Salvation (FDSN) in 1992, and the Party of Social Democracy in Romania (PDSR) in 1996 and 2000.

In the 2000 elections, the Party of Social Democracy in Romania (PDSR) emerged as the strongest political force but fell short of a parliamentary majority. Ion Iliescu was returned to the presidency, winning the run-off against Corneliu Vadim Tudor, president of the nationalistic Greater Romania Party (PRM). The PRM came in second in the parliamentary elections, while the parties of the previous government – with the notable exception of the Democratic Union of Hungarians in Romania (UDMR) – suffered a serious electoral setback. The electoral alliance formed by the leading party in the outgoing government, the Christian-Democratic National Peasant Party (PNȚCD), even failed to pass the parliamentary threshold.

Following the 2000 elections, the PSD formed a minority government led by Adrian Năstase, who also became party leader. The government relied on parliamentary support of the UDMR and the group of deputies representing national minorities.

Since 2003, the political party system underwent a certain amount of consolidation, most notably with the formation of the Alliance for Truth and Justice (*Alianța Dreptate și Adevăr – D.A.*) by the National Liberal Party (PNL) and the Democratic Party (PD).

The 2004 national elections came at an important juncture for Romania's future development. Earlier in the year, the country had joined the North Atlantic Treaty Organization (NATO). Membership talks with the European Union (EU) were at an advanced stage. The EU and Romania concluded the technical negotiations days before the second round of the presidential elections, and at the 16–17 December EU Ministerial Council, the country was formally invited to join the EU as a full member on 1 January 2007.

IV. LEGISLATIVE FRAMEWORK

The legislative framework for national elections in Romania includes the 1992 Constitution (as amended in 2003); separate laws for parliamentary and presidential elections; and related legislation (such as the laws on political parties and political party finance and campaigning, of 2003); special Government ordinances and emergency decrees; and other legal instruments including court decisions.

A. CONSTITUTIONAL BASIS

The Romanian Parliament consists of a Chamber of Deputies and Senate. Both chambers are directly elected for a four-year term. The number of parliamentary mandates is not fixed but determined through the election law: in the Chamber, one deputy is elected per 70,000 inhabitants, while one senator represents 160,000 inhabitants. In addition, each recognized national minority which fails to pass the regular threshold for representation in the Chamber is entitled to a single deputy if it meets a much lower special threshold.

The President is also directly elected. To win the presidency outright, a candidate must receive the votes of more than half of all registered voters. Otherwise, the two leading candidates contest a second round, which is won by the candidate receiving the most votes.

Prior to the recent constitutional amendments, the term of the president was the same as that of Parliament, so that regular presidential elections were held concurrently with parliamentary ones. As of these elections, however, the president is elected to a five-year term.

Under the Constitution, the parliament has plenary legislative power, and the government has limited power to adopt regulations. With respect to the electoral system, parliament must enact organic laws, with support of an absolute majority of the membership of both chambers. As a result, a practice has arisen for the government to supplement the legislative basis for elections through the adoption of emergency ordinances and other decrees. The power of the government to enact emergency ordinances was clarified through the recent constitutional amendments, which were intended to bring the political structure more in line with EU member states.

B. ELECTION LEGISLATION

The Laws on Elections for the Chamber of Deputies and the Senate (“Parliamentary Election Law”, or “Election Law”) and on Election of the President of Romania (“Presidential Election Law”) were originally enacted in 1992 and have been repeatedly amended. Parliament amended and re-enacted both laws in September 2004, and they were published in the Official Gazette on 29 September 2004, less than two months before election day.

1. Parliamentary Elections

Under the Parliamentary Election Law, the parliament elected in 2004 consists of 137 senators and 314 deputies, and no more than 18 deputies elected from national minorities. Election to both bodies is through proportional representation. The electoral contests are conducted in 42 separate constituencies (which correspond to the 41 counties, or *judet*, and the Municipality of Bucharest); the constituencies are of unequal population and elect proportionate numbers of candidates.

For parties to achieve parliamentary representation, they must pass a national legislative threshold of five percent of the total valid vote. Electoral alliances of parties must achieve higher thresholds – an additional three per cent for the first additional party and one per cent for each party thereafter, up to a maximum of ten per cent. In the 42 constituencies, the parties or alliances (and independent candidates) win mandates outright if they pass the electoral quotient – *i.e.*, the total number of valid votes cast divided by the number of mandates available in that constituency (*viz.* the Hare formula). The “unused” votes for each party from this first stage of seat allocation are accumulated at the national level and used to allocate mandates which were not distributed in the first stage. This second stage of seat allocation at the national level is done using the d’Hondt formula.

One provision contained in the new Law deserves special mention. The provision, Art. 5 (7), enables an incumbent president to run for parliament as an independent candidate on a party list if his or her term is in its final three months. This provision contains an obvious inherent contradiction. It also appears to have been a provision especially enacted for this election, since in the future, parliamentary and presidential elections will only coincide once every 20 years.

Furthermore, strictly speaking, the provision may not even be necessary, since the Constitution provides only that the president should not be a member of a political party, and there is no *explicit* requirement that a candidate for parliament from a party list must be a member of the party which nominates him or her. There is, however, a provision in the Law that bars independent candidates from being included in candidate lists submitted by parties or electoral alliances, and another one which specifies that in the case of electoral alliances, the party affiliation of candidates must be mentioned on the candidate list. While the law fails to provide precise definition of what is “an independent candidate on a party list” and “affiliation”, both provisions combined could be interpreted as banning non-party members from running on party lists.

2. Presidential Election

The Presidential Election Law is considerably shorter than the Parliamentary Election Law, to which it refers with regards to many aspects of a presidential election, including, *inter alia*, many of the campaign regulations and voting procedures. The main portions of the law which differ from the Parliamentary Election Law concern candidate nomination, tabulation and publication of results, and complaints and appeals. The relevant provisions will be addressed in more detail in later sections of this report.

C. EMERGENCY ORDINANCES

As in previous elections, the government supplemented the legislative framework for the 2004 national elections by enacting emergency ordinances. The Parliamentary Election Law was modified through an ordinance published in the Official Gazette on 14 October, and the Presidential Election Law, by an ordinance published on 9 October. Consolidated texts of the laws and ordinances only appeared somewhat later, in a compilation of the consolidated election legislation and other relevant documents which were distributed to election officials and, in a multi-lingual version, to the international community.

The OSCE/ODIHR Election Observation Mission for the 2000 national elections expressed concern⁵ about the potential unconstitutionality of special ordinances and emergency decrees for elections, since the Constitution requires the adoption of organic laws on electoral matters. This requirement remains, and in addition, it is not clear whether appeals can be filed against the implementation of such emergency ordinances. The recent constitutional amendments further limited the conditions under which urgent legislation can be adopted through decree. In particular, an ordinance on matters subject to organic legislation requires approval by an absolute majority of each parliamentary chamber. The Constitutional Court, in a Decision published prior to the constitutional referendum, affirmed: “[E]lection rights ... are part of the rights stipulated by the Constitution, a field already excluded from regulation by emergency ordinances.”

For these elections, the emergency ordinances enacted by the government were much more limited than in the past. This may reflect the fact that Parliament had only recently amended and re-enacted the relevant election legislation.

⁵ OSCE/ODIHR, Romania: Presidential and Parliamentary Elections, 26 November and 10 December 2000, Final Report (Warsaw, 15 January 2001)

The main area affected by the emergency ordinances involved the rules for domestic non-governmental organization (NGO) observers, which are set forth in the Parliamentary Election Law. The Law as adopted by Parliament continued the previous rules, which limited domestic observers to one *per* polling station, with the observer being accredited to a single polling station. If more than one observer applied for a specific polling station, the selection would be made by drawing lots. In the past, these rules threatened to disrupt the efforts of certain well-established NGOs to deploy large numbers of observers. This occurred because often, shortly before elections, legally registered NGO's, although with little apparent prior knowledge or interest in election processes, would appear and claim the right to assign observers.

Although procedurally questionable, the new rules for domestic observers adopted for these elections through emergency ordinance are a considerable improvement. Under these rules, requests for accreditation go to Constituency Election Bureaus, not to the BEC, and observers can be accredited to attend electoral operations throughout the constituency, not just in a single polling station. Regrettably, some polling station officials seemed to be unaware of these new rules and reportedly denied accredited observers their rightful access.

The emergency decrees also addressed other subjects, including the use of passports for identification (to prevent potential double voting by passport holders) and the elimination of minor inconsistencies between procedures necessary for presidential elections and the provisions of the underlying Parliamentary Election Law. Some provisions were also required to implement suspension of the use of voter cards (discussed below).

Many of these issues are longstanding, and it is not clear why they were not resolved with the parliamentary amendment and re-enactment of election legislation earlier in 2004. More generally, the fact that presidential and parliamentary elections will in future not be held concurrently, indicates that electoral and other relevant legislation may need to be combined in a comprehensive election code.

D. OTHER LEGISLATION

1. Political Party Law

A new Law on Political Parties was enacted in 2003. A draft of this law was the subject of an OSCE/ODIHR review⁶, which determined the provisions of the draft law to be generally consistent with comparative standards and practices. Issues were pointed out, however, concerning:

- Whether the requirements to demonstrate and maintain certain levels of voter support, including in a large number of counties, could impede the ability of national minorities and/or regional interests to participate in the political process; and
- If the administrative requirements for registration were overly onerous, or would be applied arbitrarily or unfairly.

⁶ OSCE/ODIHR, Romania: Draft Law on Political Parties, OSCE/ODIHR Review (Warsaw, 13 December 2002)

The Law now requires political parties wishing to be registered to submit to the Bucharest Tribunal the personal data and signatures of at least 25,000 founding members, with no less than 700 in each of at least 18 of the counties (including the Municipality of Bucharest). Such membership lists must be resubmitted to the Tribunal at the end of a year preceding a scheduled election. Parties must also receive at least 50,000 votes in two consecutive elections (local or parliamentary) to remain registered.

2. Law on the Funding of Political Parties and Electoral Campaigns

The funding of political parties and electoral campaigns was previously regulated through the old Political Party Law, but a new law on this subject was enacted in early 2003. As in the previous provisions, the primary body responsible for implementation and application of the new Law is the Court of Accounts.

The Law contains a number of restrictions and prohibitions on political and campaign finance. These include ceilings on overall contributions received by a political party *per annum* (doubled during election years), as well as the maximum contribution by an individual or legal entity, and the amount expended during an election campaign. Contributions from certain sources (such as foreign sources, with certain exceptions; state bodies and enterprises; and labour unions) are prohibited. The Law also deals with subventions normally received by parties from the government for elections. For these elections, however, Parliament did not enact legislation providing such additional funds for parties or minority organizations.

One of the primary innovations of the new Law is the requirement that parties and candidates appoint a financial manager, or treasurer, who is responsible for compliance. The treasurer as well as the party or candidate is potentially subject to sanction for violations.

There are two main disclosure and reporting requirements under the Law. Each party must provide an annual report on its finances by the end of March each year. In addition, parties contesting elections must provide a report on their campaign financing within 15 days after the end of the electoral period. If the parties fail to publish their reports in the Official Gazette, the Court of Accounts is unable to take action directly, but it or aggrieved parties must petition the High Court for relief.

For the most part, examination of financial reports by the Court of Accounts under the Law is based on an internal audit of the records received. In addition, the Court has imposed sanctions for certain violations, such as publication of posters without proper identifying marks. However, the Court or affected parties can seek to initiate a wider investigation only based on the submission of substantial evidence of violations. One non-governmental organization, the Pro Democracy Association (APD), did petition the High Court in such a regard, based on its estimates of the costs of observed campaign spending during the June 2004 local elections. However, its petition was denied due to insufficient evidence.

Political finance regulation is ultimately a practical matter which can best be assessed through performance of the existing regulations and effective oversight. It remains to be seen whether the financial reports to be filed by the parties for these elections are realistic, and that the parties have been prevented from violating the Law.

E. COMPLAINTS AND APPEALS

Under the Parliamentary and Presidential Election Laws, the BEC and Constituency Election Commissions (BECJs) have the power to resolve complaints concerning their own activities and those of subordinate election bureaus and offices. The timelines for such complaints are often not set forth in detail, although limitations can be derived from the time periods in which these bodies must accomplish the various tasks attributed to them.

The Parliamentary Election Law specifically provides for certain judicial appeals against actions of election bodies. Complaints concerning appointment of polling station election bureaus can be made to the relevant BECJ; complaints against the composition of a BECJ to the BEC; and complaints against the composition of the BEC to the High Court. Appeals about registration or denial of candidacies for parliamentary elections by the BECJ can be taken to the relevant Court of Appeals. A complaint might also be taken to the BEC, however, it is unclear whether a judicial appeal would be generated by a decision of the latter. Complaints about campaign violations are submitted to the BECJs: from there an appeal may be brought to the BEC, and the decision of the BEC would be final.

Whether other appeals can be pursued in court is, however, unclear. For example, it is not certain whether only appeals of a single type can be heard by the respective court, or whether other appeals could also be made to that court. It is also unclear whether, in a case in which an action is made by a BECJ, but could be the subject of a complaint to the BEC, if two different channels of judicial appeal exist – to the relevant Court of Appeal from the action of the BECJ, and to some court from the decision of the BEC. Clarity is also needed when the Law does not address a particular kind of complaint, on whether an action by a BECJ or the BEC be appealed in court.

The Election Law is silent on whether appeals to court are available for decisions of the BECJs and the BEC with regard to the tabulation of the results in parliamentary elections, as well as the publication of preliminary and final results of such elections. The OSCE/ODIHR EAM was informed by the Chief Judge of the High Court, however, that decisions of the BEC on such matters are final and not open to appeal.

With respect to parliamentary elections, the BEC is mandated to cancel elections in a constituency if it finds that the voting or establishment of results was based on irregularities which have the potential to affect the distribution of mandates. “Electoral fraud” as such is very broadly defined. Unfortunately, as noted earlier, there are no provisions in the Election Law concerning the timelines for submission of complaints to the BEC, nor are there clear procedures for judicial appeal, on these important matters.

Appeals concerning presidential elections follow a different pattern. The Constitution provides generally that “[the] election returns for the Presidency of Romania shall be validated by the Constitutional Court”. The Presidential Election Law implements this provision very broadly, by also providing that appeals against the voting and establishment of results also go to the Constitutional Court. Cancellation of a presidential election based on fraud could occur only if the extent of alleged fraud would affect the assignment of the mandate or the candidates entering into a second-round election. An appeal on these grounds must be submitted to the Court within three days of the close of voting.

V. ELECTION ADMINISTRATION

A. COMPOSITION AND FUNCTIONS

These elections were administered by a three-tiered election administration: the Central Electoral Bureau (BEC), 42 Constituency Electoral Bureaus (BECJ), and 17,564 Polling Station Bureaus (including 153 abroad). They were supported in their work by a newly-created Permanent Electoral Authority (AEP), prefects (appointed regional representatives of the Government), mayors, and related central and local technical commissions.

1. The Permanent Electoral Authority

Until 2004, election administration was based on an entirely temporary structure of election bureaus which operated only during electoral periods. Only with the recent amendments to the Election Law, the Permanent Election Authority (AEP) was established, constituted on 1 July 2004; but its mandate is to ensure the provisions of the law between elections. Its creation took into consideration a recommendation contained in the OSCE/ODIHR Final Report on the 2000 elections that identified the lack of continuity between elections as a weakness of the electoral process in Romania. Civil society organizations also advocated the formation of a permanent election administration. In establishing the AEP, Parliament opted for the creation of a new institution instead of turning the BEC – or at least part of its membership – into a more permanent body.

The two chambers of Parliament jointly appoint the president of the AEP, while the two vice-presidents are appointed by the President and the Prime Minister, respectively. All three serve for eight-year terms. According to the Election Law, they become *ex officio* BEC members with full voting rights during election periods.

The AEP will continue to operate after the election period. Its main objective is to perform election-related tasks between elections and to monitor relevant activities of other state bodies, as defined through the Election Law and the supplementary Government Directive. Apart from analyzing past elections, drawing lessons and formulating concrete recommendations to Parliament with a view to addressing shortcomings and improving the electoral process, the AEP will also play a monitoring role in overseeing the updating of voter lists, ensuring the delivery and storing of election material, the printing of voter cards, preparing training material, etc. By the end of 2004, the AEP was expected to be fully operational, with 105 permanent staff (65 of which in its Bucharest headquarters), several regional branches and an annual budget of about € 17 million for 2005.

While the establishment of permanent electoral administration functions may be a positive development, the current method of appointment to the AEP has raised concerns about possible lack of inclusiveness, or even impartial performance, since its senior officers may well all be appointed by the same political party or formation. In addition, the inclusion of officials from the AEP on the BEC could detract from the advantages of a bureau primarily constituted of judges or other professionals.

2. The Central Electoral Bureau

The BEC is composed of 27 members: seven judges from the High Court of Cassation and Justice – formerly the Supreme Court – who are selected by lot and who then elect the BEC Chairman from among themselves by secret vote; the president and vice-presidents of the AEP; 16 representatives of political parties; and one representative of the parliamentary group representing national minorities. Parliamentary parties are entitled to representation on the BEC, while the remaining party seats are filled after the registration of candidate lists, based on the number of candidates fielded by non-parliamentary parties. For the 2004 elections, six parliamentary and ten non-parliamentary parties were represented on the BEC.

The BEC oversees the election process, and ensures the uniform interpretation and implementation of the law throughout the country. It registers presidential candidates. The BEC aggregates the number of valid votes received by political parties and alliances, and determines those who passed the parliamentary representation threshold. In general, it appeared that the BEC operated in a relatively efficient, professional and transparent manner.

3. The Constituency Election Bureaus

The mid-level election administration consists of 42 election bureaus, one for each constituency for the parliamentary elections. Thus, 41 Constituency Election Bureaus (BECJ) were formed in each of the 41 *judet* (counties, which correspond to parliamentary electoral constituencies), while a Municipal Election Bureau (BEM) was formed for Bucharest.⁷ In Bucharest, six separate election offices, which fulfilled some tasks normally performed by BECJs, were established under the BEM, one for each of the city's six sectors (administrative districts).

BECJs are made up of three judges from the relevant judicial tribunal and no more than ten representatives of political parties, political alliances, and national minority organizations running in the constituency. Party representation on BECJs is based on the number of candidates submitted for both chambers of Parliament in a given constituency. The BECJs play an important role in the registration of candidate lists, and in the adjudication of complaints related to the election campaign, and to the operations at polling stations. They also count the total of valid votes for each electoral contestant and allocate parliamentary seats at the constituency level.

EAM election experts visited the BECJs in the following constituencies: Alba, Arad, Bacău, Braşov, Bucharest, Buzău, Cluj, Constanţa, Craiova, Dâmboviţa, Dolj, Galaţi, Iaşi, Neamţ, Prahova, Sibiu, Teleorman, Timiş, Tulcea, Vaslui, and Vrancea. In these constituencies, election activities at the time of the visits were well underway and in accordance with the deadlines set in the election laws. Compared to other levels in the election administration, BECJs seem to have enjoyed a greater level of public confidence.

⁷ The BEM has exactly the same attributes, composition and responsibilities as a BECJ. Therefore, any reference to BECJs also refers to the Bucharest BEM, unless specifically mentioned.

4. Polling Station Election Bureaus

Polling stations are administered by Polling Station Election Bureaus (*Biroul Electoral al Secției de Votare* – BESV). BESVs are headed by a President and a Vice-President who, by law, should “as a rule” be magistrates or other jurists. They are joined by up to seven party representatives whose nominations follow the same rules as for the BECJ.

Controversy arose about the selection of BESV presidents and vice-presidents. The law stipulates that if the BESV presidents or vice-presidents are magistrates, they should be selected by lot from the membership of the local tribunal, and if they are other jurists, they should be selected from a list drawn up by the prefect, together with the president of the local court and representatives of all parliamentary parties. If there is a shortage of potential candidates with legal education, the list can be completed by the prefect, who should choose “other persons enjoying a good reputation with the inhabitants and who belong to no political party”.

Since qualified personnel with a legal background often showed little interest in chairing a BESV, lists drawn up by prefects were frequently and extensively used. Concerns were raised about the possible lack of political impartiality of some of the persons selected by the prefects and that some of them (state employees, teachers, etc.) might be vulnerable to pressure from county or local authority leaders.

The BEC confirmed to the EAM that many complaints had been lodged on BESV formation. The PNL representative on the BEC claimed that out of 234 polling stations analyzed in Bucharest, only 18 had a president or vice-president with a legal background; in Timiș county, only 12 chairs or deputy chairs of the 578 polling stations had such a background. In Constanța constituency alone, some 50 out of 517 BESV chair persons did not take up their posts or resigned, according to the BECJ. Similar observations were made in other constituencies. As a result, BESV formation was often delayed, leaving little time for election preparations.

In the run-up to the elections, the OSCE/ODIHR EAM heard many concerns and complaints from opposition political parties about irregularities during the pre-election period and potential abuses on election day, indicating a decreased level of confidence in the work of election administration compared to previous elections. For example, there were numerous complaints that the selection of Polling Board presidents had been politically biased.

5. Governmental and Local Authorities

Support for election bureaus is provided by the relevant governmental authorities. At the national level, there is a Central Technical Commission, organized by the Ministry of Administration and the Interior. At lower levels, there are inter-agency technical commissions coordinated by the county prefects. Mayors also have election-related tasks to fulfill, mostly of a logistical and security nature.

Prefects are responsible for designing control stamps, printing the ballot papers under supervision of the BECJ, and for seeing to their distribution to polling stations. The mayors, together with the prefects, are in charge of procuring and delivering election material (polling booths, ballot boxes, control stamps, etc.) under appropriate security conditions. The mayor’s

offices are also responsible for the compilation and updating of permanent voter lists on an annual basis, as well as before an election, and for identifying polling station locations and setting up special sites for electoral posters.

This tripartite electoral structure – election bureaus, prefects and mayors – seems to have created some ambiguities in the division of labour and responsibilities in election organization. Indeed, the role of the local authorities appears to have gone beyond the strict provisions of the law, and election-related tasks were sometimes shared by mayors and prefects. In addition, doubts were raised about the strict political neutrality of election administration at all levels.

The OSCE/ODIHR EAM heard numerous concerns about the lack of impartiality of some prefects, mayors, or vice-mayors. In one county, a vice-prefect acted openly as PSD campaign manager, indicating a clear conflict of interest. In addition, the EAM heard several reports about the presence of mayors and vice-mayors at polling stations, and their actual involvement in the electoral process on polling day. Other allegations concerned the use of state-owned means of transport by some mayors to bring voters to polling stations.

B. REGISTRATION OF CANDIDATES AND POLITICAL PARTIES

The Romanian constitution stipulates that candidates must fulfill certain requirements, including age requirements, in order to run for elected office. The BEC is responsible for the registration of presidential candidates, who must submit no less than 200,000 valid signatures from registered voters in support of their registration. Presidential candidates are also required to provide a statement as to whether they worked for or collaborated with the *Securitate* (the secret police of the Communist period), as well as a declaration of assets.

The BECJs are in charge of registering candidate lists of political parties and alliances, and independent candidates for the parliamentary elections. Registration procedures are different for parties and independent candidates. All election contestants submit registration documents to the BECJ. However, independent candidates must be supported by at least 5% of the total number of voters permanently registered in the constituency where they intend to run. As for presidential candidates, no empirical signature checking is carried out to ascertain the veracity of signatures collected by independent candidates. Once registration is completed, BECJs publish the final list of candidates for their constituency.

The registration process for both the presidential and the parliamentary elections proceeded in accordance with the law. While various complaints were filed with the BEC and BECJs, the EAM did not receive any specific information of concern on this important aspect of the electoral process.

C. VOTER REGISTRATION AND VOTER CARDS

Romanian election legislation provides for two kinds of voter lists, permanent and special.

The permanent voter lists are drawn up by mayors' offices, based on computerized population records, overall responsibility for which rests with the Ministry of Administration and the Interior. They are extracted, for each individual polling station, from the permanent voter registers that are updated annually on 1 March, and also within 15 days of an election being

called. Voters are entitled to check whether they are registered in the permanent voter registers at their place of residence, and political parties and alliances are entitled to copies of the registers from local governments within ten days of the announcement of an election.

There are two types of special (or supplementary) voter lists, to which voters' names can be added at polling stations on election day. Type 1 includes: voters who are entitled to vote at a polling station but have been omitted from the permanent voter lists; voters voting in special polling stations (see below); members of Polling Boards; and Romanian citizens residing abroad who vote in Romania. Type 2 is intended for voters who vote at a polling station outside their place of permanent residence.

The Parliamentary Election Law provides for the establishment of various kinds of polling stations. In addition to regular stations serving the residents of particular voting districts, these include various kinds of special polling stations, *viz.* – those in certain residential facilities (including military bases, hospitals and maternity wards, sanatoriums and homes for disabled persons, medical and rehabilitation centres, student hostels, and nursing homes); at transportation hubs (railway stations, bus terminals, ports and airports); on Romanian vessels at sea; and at diplomatic and consular facilities abroad.

Under the Law, voters are permitted to cast ballots at either their regular polling station; or if they are away from home, at a regular polling station in another locality, or at a special polling station (except those at military bases and student hostels). Absentee voting is not provided for under the Law, and there is no requirement for voters to inform their local authorities (or obtain permission) if they wish to go to a polling station other than in their home precinct.

The ability of voters freely to cast ballots away from their home areas expands the franchise for Romanians who are traveling or temporarily residing away from home. In the absence of adequate security measures, however, this system is vulnerable to the potential for multiple voting.

Since its original enactment in 1992, the Parliamentary Election Law has provided that voting is based on presentation of a voter card. Due to problems with the issuing of voter cards in the 1992 and 1996 elections, the programme was discontinued, and voters instead presented their national identity (ID) booklets, which were endorsed with the stamp "Voted" after they cast their vote.

In 1997, new forms of national ID were introduced, – plastic cards containing the individual's photo, personal ID number and other information. By 2000, some 2.5 million new-style ID cards had been issued, when it was realized in connection with the local elections that year that the cards could not be securely endorsed. As a temporary measure, an adhesive paper sticker was applied to the reverse of the card and stamped. The entire sticker could easily be removed; but in local elections voters are not as free to cast ballots outside their regular polling stations.

For the 2000 national elections, the government at that time responded to the implications of the ID card for security of the vote with a crash programme to issue a new kind of voter card. The new voter card was generated directly from the database for national ID cards and contains the same information, including a photograph. It differs from the ID card, however,

by being plasticized only on the front – leaving uncoated paper on the reverse, which could therefore be securely stamped.

Since 2000, the new voter cards have continued to be issued to adult citizens receiving an ID card for the first time, and to citizens turning 18 after receiving an ID card earlier. With the total number of registered voters at around 17.9 million for the 2004 national elections, about 9.3 million voter cards had been issued to the approximately 10.5 million holders of ID cards (not all of whom are eligible voters since citizens can be issued with ID when they turn 14). Nearly 2.5 million new IDs, and voter cards, are being issued annually.

The distribution of ID cards and voter cards, as well as civil and voter registration more generally, is currently the responsibility of the Ministry of Administration and the Interior. Notwithstanding the continued issuing of voter cards, the government suspended their use during the local elections earlier in 2004, as well as in the constitutional referendum the previous year.

Several references to the voter card continue to exist in the Election Law, although numerous other references were deleted or modified through the government's emergency ordinances modifying that law and the Presidential Election Law. In addition, the Election Law contains a "transitional and final" provision which provides that the voter cards would not be used for the 2004 parliamentary elections and that, instead, ID cards would once again – but for the first time in national elections – be stamped with "Voted" using a paper sticker. The provision also indicates that use of voter cards will be resumed for the 2008 parliamentary elections, and that voter cards shall be issued to all registered voters by the end of 2006.

It is not at all clear why Parliament suspended the use of voter cards for the 2004 elections. Numerous reasons have been mentioned, including the lack of security features in the current ID and voter cards and the possible introduction of a new type of ID in the future; voter confusion about use of IDs and voter cards; and the possibility that voters might have lost their voter cards.

Confusion was generated, but was lessened by not accepting the voter cards issued to so many voters. In terms of lost voter cards, new clearly-labeled duplicates can be speedily issued upon voter request. In addition, officials argue that voters would be deterred from multiple voting by potential criminal penalties, and that election contestants would be able to investigate the extent of this problem by examining voter lists after the election.

The suspension of voter card use during the current elections posed obvious problems for the security of the vote, and appears to have affected confidence in the results. The ID cards held by over half of registered voters cannot be securely endorsed, since the paper sticker can easily be removed, and no other reliable method was developed to prevent multiple voting. While individual cases of multiple voting, if substantiated, could be referred to the police or other authorities for investigation, it was virtually impossible for election contestants to prove organized multiple voting and seek an electoral remedy without systematically comparing voter lists from regular and special polling stations.

D. TRAINING

The EAM addressed the question of training of election officials, since the election law was substantially altered only a few weeks before election day. Many judges considered that they needed no training since they were used to dealing with legislation. As a result, no training was provided to BECJ members, but they could ask questions directly to BEC members if in doubt about the interpretation of the law.

Although BESV presidents and deputies should have had a legal education, it became apparent that many of them had no legal background whatsoever. Before the first round, BECJs organized some training for them. However, since a substantial number of BESV presidents and deputies had to be replaced only days before the elections, it is very likely that their replacements did not receive any training. In addition, no special manual was prepared for BESVs to use during the voting and counting process. Before the second round of the presidential elections, the BEC responded to the apparent shortcomings in the training of polling station officials, as well as changed regulations for the second round (see below), by issuing a directive which *inter alia* provided that additional training should be provided for all BESV members, and by adopting a manual describing polling-day procedures in detail.

E. TRANSPARENCY

Although the Election Law lacks some important transparency provisions – e.g. regarding the right of domestic non-partisan observers and the publication of results – electoral practice reflected an adequate level of transparency, especially as a result of BEC decisions issued prior to election day. EAM experts were given access to all electoral documents they requested without hindrance, and could meet any interlocutors without any problems.

Multiparty commissions are an important safeguard built into the Romanian electoral system to ensure a high level of transparency. Representation on multi-party commissions gives major election stakeholders direct access to election-related decision-making and documentation. Giving domestic observers the right to attend sessions of election commissions at all levels would further strengthen the transparency of the process.

In the last days before the parliamentary and first-round presidential elections, the BEC took three important decisions to increase the transparency of the process, which Parliament could consider incorporating into legislation:

- After an initial refusal, political parties were allowed to conduct parallel vote tabulation within the premises of the BECJs;
- BESVs were to post a copy of the protocols in their premises after completing the vote count. The EAM could not ascertain, however, whether this BEC instruction was implemented widely. The parliamentary and presidential election laws are not consistent on the posting of election results. For the presidential election, election commissions at all levels are obliged to post protocols in their premises, while the Parliamentary Election Law is silent on this issue;
- All political parties received upon request a set of DVDs containing detailed results of all polling stations. The BEC prepared this set of data, which contained copies of results protocols from all polling stations (including corrected versions where

applicable), within days of the first round of elections and made it available to interested parties on 3 December, allowing them to audit the results.

VI. PARTICIPANTS IN THE ELECTIONS

The high number of candidates and parties running in the presidential and parliamentary elections afforded Romanian voters a wide and genuine choice. For the Chamber of Deputies, voters could choose between 21 political parties, three political or electoral alliances, 28 organizations representing national minorities, and ten independent candidates. For the Senate, they could choose among 21 parties, three alliances, one national-minority organization, and two independent candidates.⁸ Finally, 12 candidates competed for the presidency, one of them an independent candidate.

For the parliamentary elections, only two formations submitted complete candidate lists for both chambers of parliament in all 42 constituencies – the National Union PSD+PUR and the Alliance D.A. PNL–PD. Eight more parties had complete lists in more than 30 constituencies: the Greater Romania Party (PRM), the Romanian Ecological Party (PER), the New Generation Party (PNG), the Christian Democratic National Peasant Party (PNȚCD), the United Socialist Party (PSU), the Socialist Alliance Party (PAS), the Democratic Force of Romania Party (FDR) and the Popular Action (AP). The remaining parties had a more limited presence on the ballots. The overall number of candidates as published by the BEC was 9,997 for the Chamber of Deputies, and 3,681 for the Senate.

Of the 12 candidates registered by the BEC to participate in the presidential elections, eleven were nominated by political parties and alliances, while one was an independent candidate. The main candidates running for the presidency were Prime Minister Adrian Năstase (nominated by the National Union PSD+PUR), Bucharest Mayor Traian Băsescu (Alliance D.A. PNL–PD), Senator Corneliu Vadim Tudor (PRM), Senator Markó Béla (UDMR), Timișoara Mayor Gheorghe Ciuhandu (PNȚCD) and the President of Steaua Bucharest football club, George Becali (PNG).

VII. THE CAMPAIGN

The campaign was dynamic and lively, and public interest in the elections was high. While the Election Law limits the official campaign period to 30 days before an election, many parties actually started campaigning months earlier. The two main alliances, in particular, ran high-profile campaigns. Parties and presidential candidates were generally free to campaign throughout the country, although there were some reports about minor incidents and impediments by local authorities during the campaign period. There were, however, allegations about use of administrative resources by local government officials, as well as of mayors using their authority to influence voters. Such cases were reportedly more common in rural areas.

⁸ The BEC did not count the ethnic-Hungarian UDMR as an organization representing a national minority in these statistics.

The main topics of the campaign centred on economic and social policies, as well as the fight against corruption, which was widely perceived as one of the key problems facing Romania. Foreign policy issues were less dominant, seemingly a reflection on the general consensus regarding Romania's Euro-Atlantic orientation and EU accession. The PSD+PUR Union and the D.A. Alliance relied heavily on their respective presidential candidates during the campaigns, both with regard to campaign and media appearances, and electoral material such as billboards and flyers.

Especially in the closing stages of the first-round campaign and between the two rounds, the tone of the campaign became more aggressive, and many instances of negative campaigning were noted. In addition, false and deceptive campaign material was widely distributed. Many falsified campaign flyers looked like genuine campaign material, but in fact contained slanderous contents intended to undermine the candidates who had supposedly issued them. Contrary to provisions of the Election Law, they bore no indication as to their source, or where they had been printed. Both PSD+PUR and the D.A. Alliance accused each other of engaging in such practices.

Outgoing President Ion Iliescu became involved in the PSD+PUR election campaign. He did not limit his campaign appearances to Bucharest, where he was a candidate, but also visited other parts of the country, often accompanied by PSD candidates. According to an APD analysis, Iliescu's visits outside Bucharest increased significantly between August and November (none in August, 2 in September, 3 in October, and 10 in November), and billboards depicting him with Prime Minister Năstase were in evidence throughout Romania. Iliescu also participated in events which were ostensibly meetings between citizens and government officials, but gave the appearance of PSD campaign meetings.

VIII. THE MEDIA

A diverse and broad range of broadcast and print media operates in Romania. According to the National Audiovisual Council (CNA), which oversees the broadcast media, some 70 TV stations are currently operating in the country, among them public TV broadcasting body, Romanian Television (*TVR*), which transmits on four channels and also has regional programmes; *Pro TV* and *Antena 1*, the most popular commercial television channels; and *Realitatea TV*, the only specialized news channel in Romania. Over 400 radio stations have regular transmissions. The publicly-owned *Societatea Română de Radiodifuziune* (SRR) broadcasts on four national and several regional channels. The main commercial radio stations are *Europa FM* and *Kiss FM*. About 20 national newspapers are published daily, with relatively low circulation figures; the best-selling daily is the tabloid-type *Libertatea* with around 200,000 copies sold every day. Regional print media also exist but have much lower circulation figures than national papers. Due to the limited duration of its stay in Romania, the OSCE/ODIHR EAM undertook no systematic media monitoring.

The overall media situation appears to have deteriorated since 2000, when the OSCE/ODIHR noted a general absence of direct state interference. Over the past two years, there have been reports of threats and physical attacks against journalists, especially in the provinces, together with a lack of criticism of the government in the broadcast media, which are reportedly subject to pressure from the authorities; there has been an erosion of private broadcast media independence because of the media owners' involvement in politics or high debts to the state

budget (mainly tax arrears). Moreover, self-censorship and lack of professionalism among journalists, and the practice of publishing paid articles without marking them as such, make it difficult for Romanian citizens to access genuine information. The OSCE/ODIHR EAM heard widespread expressions of concern about these issues.

During the immediate election period, some cases of political interference in the work of media organizations received public attention. A news reporter from *TVRI*, the public broadcaster's main channel, publicly denounced censorship and political control within *TVRI*'s news department. Despite the threat of eventual sanctions and dismissals by Romanian Television, several colleagues, some from a regional branch of *TVR*, sided with that journalist, and signed a protest accusing *TVR* of violating its duty to impart correct information.

The Election Law provides contestants with access to public and private broadcast media during the official campaign period. The regulations grant more airtime to parliamentary parties, who on private broadcasts received a combined 75% of the overall campaign coverage, divided among them in proportion to their strength in parliament. Presidential candidates received equal amounts of airtime. This system was strongly criticized by many broadcasters, most of whom had to conduct internal media monitoring to ensure compliance with the Law. Findings from the CNA show that broadcasters generally met their legal obligations, and that the presidential candidates received the same opportunity in debates.

The Election Law foresees three types of programmes in which election contestants can promote themselves: debates, generally broadcast live; electoral programmes, normally pre-recorded, where contenders can present their platforms; and news bulletins with information about the election campaign (regular newscasts could be extended by up to 15 minutes by these bulletins). The format of the news bulletins was criticized by broadcasters who said that some candidates were unable to create media events but still had to receive coverage under the Law. However, broadcasters were free to select among the various formats, and in fact *Realitatea TV* chose not to cover the campaign in its news bulletins. On the whole, broadcasters were more anxious to avoid possible sanctions by the CNA than to produce worthwhile programmes. A noteworthy exception was the lively debate between candidates Năstase and Băsescu held on 8 December on *TVRI* and rebroadcast on *Realitatea TV*.

Despite a recommendation of the 2000 OSCE/ODIHR Election Observation Mission to lift the restrictions on the duration and timing of campaign messages, a number of constraints remained in the new Election Law, such as the limitation described by Article 61.1 on providing candidates with broadcast time only on weekdays (according to the CNA, this restriction was meant to apply to live broadcasts only). This was one of the legal restraints most severely enforced by the CNA: four of the seven financial penalties imposed by the CNA in the first round arose from such violations. For the second-round presidential election, the week-end blackout, combined with the fact that the results of the first round were not validated until Friday, 3 December, significantly reduced the time-frame for campaigning on air. Overall, the legal restrictions regarding campaign coverage appear to have resulted in a reduced flow of political information, which some interlocutors said was lower than in non-campaign periods.

Commercials for election campaign purposes were prohibited both on print and broadcasting media. While broadcasters avoided airing paid political advertisements, newspapers routinely

printed electoral advertisements, although these were not always indicated as such. In the absence of regulations and monitoring bodies for the print media, consideration could be given to canceling the prohibition on commercials in the print media, while making it obligatory to mark all paid electoral advertisements published during the election campaign as such.

The Election Law also contains inconsistencies on the duration of the electoral campaign. According to Article 55.1, the election campaign ends on the Saturday before election day at 07:00 hours, while Article 66 states that 48 hours before election day, the broadcasting of electoral programmes, the presence of candidates on TV or radio programmes, and the publication of opinion polls, are prohibited.

IX. CIVIL SOCIETY

As in previous elections, civil society played an important role in the 2004 elections. NGOs were involved in various aspects of the electoral process, providing the general public with information, and monitoring the conduct of the elections.

Before the elections were officially called, 12 NGOs formed the Coalition for a Clean Parliament (CPC). The CPC screened potential candidates of major political parties and alliances to establish whether they met certain criteria laid down by the Coalition in agreement with the parties. The main negative criteria used by the CPC included: frequent migration from one political party to another; collaboration with the Communist-era secret police (*Securitate*) or with the Ceaușescu regime in general; abuse of a public position for personal or family benefit; wrong or implausible declarations of income and assets; and violation of the principle of equitable competition by favouring personal clients or clients of the candidate's party.

The Coalition alerted political parties on which candidates it considered unsuitable before they submitted their candidate lists but did not make the information public at this stage. After the certification of the electoral lists and examining the parties' objections, however, the CPC publicized the names of the candidates deemed unsuitable, and in the latter stage of the parliamentary election campaign, it distributed in each constituency a large number of leaflets containing information on these candidates. The final CPC list included 153 candidates put forward by the four major political formations, including 95 candidates from the National Union PSD+PUR, 46 from PRM, nine from the D.A. Alliance, and three from the UDMR.

The National Union PSD+PUR, in particular, accused the Coalition of political bias in favour of the D.A. Alliance. Shortly before 28 November, falsified leaflets which resembled those published by the CPC appeared in many constituencies. These leaflets included persons not originally on the CPC's list, mostly from the Alliance, while they did not contain any names of PSD candidates; most candidates from other parties had also been omitted. In addition, these leaflets included personal accusations, sometimes slanderous, which went far beyond the scope of the CPC's criteria.

Numerous NGOs observed both rounds of the elections. The main domestic non-partisan observer organization, the Pro Democracy Association (APD), has been observing elections since 1992. Before the elections, the APD threatened not to deploy observers unless

safeguards were introduced in the Election Law to protect the integrity of the vote. While some of the APD's concerns were addressed, the main points, including the use of stickers instead of voter cards, were not resolved. The APD nonetheless decided to observe the elections, and on 28 November deployed around 3,300 observers in 33 constituencies, mostly to rural areas.

Following what it considered to be widespread irregularities during the first round of polling, the APD announced that it would not observe the presidential run-off on 12 December. Later on, and in the face of some criticism of this decision, it made its participation contingent on the limitation of voting on supplementary voter lists. After the BEC decided to restrict voting on such lists to a limited number of special polling stations, the APD decided to observe on 12 December and deployed around 3,300 observers to 32 constituencies, focusing again on rural areas.

In addition to the NGOs mentioned above, a number of other civic organizations were active during the election period, including the Media Monitoring Agency, which monitored media behavior and media coverage before and during the election campaign and also recorded cases of pressure exerted on journalists and media outlets.

X. PARTICIPATION OF NATIONAL MINORITIES

A total of 20 national minorities are represented on the Council of National Minorities, a consultative body that reports to the Prime Minister but has no direct role in elections. Representation on the Council is the basis under which minorities are recognized as such in the Election Law (Article 4.1).⁹

The largest minority group are the Hungarian minority (approximately 1.5 million, *i.e.* around 7% of the total population), who form a majority of voters in two counties (Covasna and Harghita) and live mainly in the regions of Transylvania and Banat. In the outgoing parliament, the ethnic-Hungarian UDMR was represented by parliamentary groups in both chambers, while 18 national minority organizations represented a total of 19 smaller minorities in the Chamber of Deputies (the Slovak minority and Czech minority are jointly represented).

The legal framework governing the participation of national minorities in Parliament is ambiguous and even contradictory in some areas. Firstly, the Constitution (Art. 62 (2)) provides each national minority that fails to pass the five-per cent threshold for the normal distribution of mandates with the right to a single seat in Parliament (regardless of the number of national minority organizations competing in the election), under the terms of the electoral law. However, the Election Law stipulates that a national minority is entitled to parliamentary representation if the number of votes that the organizations representing the community receive throughout the country equals 10% of the average number of valid votes needed to obtain one mandate (Article 4 (2)). The apparent constitutional guarantee of parliamentary

⁹ The Council of National Minorities has registered organizations representing the following national minorities: Albanians; Armenians; Bulgarians; Croats; Greeks; Jews; Germans; Hungarians; Italians; Macedonians; Poles; Roma; Lipovan Russians; Ruthenians; Serbs; Slovaks; Czechs; Tatars; Turks, and Ukrainians [source: Website of the Department of Interethnic Relations – www.dri.gov.ro].

representation may in fact be undermined by the failure of the smallest national minorities to muster enough votes to pass the threshold.

Secondly, the Election Law (Article 4 (2)) defines national minorities as those represented in the Council of National Minorities. Although there are 20 national minorities so represented, this article is contradicted later in the Law (in the footnote to Appendix 1) by a provision specifying that no more than 18 national minorities will receive special deputy mandates in this manner.

Finally, under the Election Law, national minority organizations not represented in the outgoing parliament need to fulfill certain stringent membership requirements, in order to run in elections.¹⁰ There is no such provision for organizations already represented in the Chamber of Deputies. This provision arguably creates unequal conditions among national minority organizations.

While the Election Law stipulates that only political parties or electoral alliances of political parties may submit candidate lists for parliamentary elections, this provision does not apply to organizations representing national minorities, which can also be civic associations. This enables national minorities to participate in elections even if their community is too small to establish a political party which would meet the minimum membership requirement of the Law on Political Parties. Virtually all organizations representing national minorities, including the UDMR, are civic associations. Another provision in the Law specific to national minorities states that unlike parties and alliances, organizations representing national minorities can submit the same candidate list in more than one constituency.

With the exception of the Roma minority, most national minority interlocutors seemed satisfied with inter-ethnic relations and recent legal changes improving the status of minorities and did not expect ethnicity to be a campaign issue. Contrary to some mainstream parties, national minority organizations generally expressed a high level of confidence in the election process. Most commented that political competition is now largely intra-minority in nature, citing the proliferation of national minority organizations seeking to win a single seat in Parliament. Some groups have cited concerns regarding the authenticity of these newer organizations. For example, the Cultural Union of Bulgarians from Banat claimed that two other Bulgarian NGOs competing for the mandate available to the Bulgarian minority could not have gained the necessary number of signatures to register; they noted that in Mehedinți county, where only four ethnic Bulgarians were registered in the 2001 census, the new organizations managed to collect some 600 signatures.

The inclusion of national minority groups on the Chamber of Deputies ballot was impressive, with 28 organizations participating in the elections. The OSCE/ODIHR EAM heard of only one case where a national minority organization's candidate list was refused. In this case it appears the BECJ in Iași prevented the chairman of the local branch of the Alliance for Roma Unity (AURR) from modifying the list to withdraw incomplete candidatures. The AURR

¹⁰ Non-parliamentary organizations must collect signatures of at least 15% of the minority population (to a maximum of 25,000 persons) of which not less than 300 signatures have to be collected in each of at least 15 different counties of Romania and the municipality of Bucharest (Election Law, Art, 4 (5)). See also the Council of Europe's Congress of Local and Regional Authorities' Report on the Observation of Local and Regional Elections in Romania, 16 July 2004, p. 11.

chairman expressed his concern over what he considered a deliberate attempt to exclude his community from the electoral process, but it was not clear if the case was made the subject of a formal complaint.

A. PARTICIPATION OF ROMA

According to the last census, the Roma minority numbers some 535,250, making them the second largest minority group. However, some interlocutors estimate the Roma minority to number more than 1.5 million. Unlike the Hungarian minority and some other minority groups, Roma are geographically dispersed throughout the country. Many reports indicate that, despite official efforts to improve their situation, Roma remain widely discriminated against in public life, including education, employment, and access to public services. Such reports also note police brutality, harassment, as well as social exclusion and marginalization. The mainstream parties did not manifest particular interest toward this group, and as a rule did not target them in their campaigns.

The Roma minority has been represented in Parliament since 1992. In 2000, two Roma were elected to Parliament, representing the Roma Party (since renamed the Roma Social Democratic Party – PRSD) and the PSD. In 2004, two Roma organizations registered candidate lists, the PRSD and the AURR. Both organizations complained about lack of media access during the campaign, and also stated their interest in having more Roma members on Polling Boards, indicating that the state should ensure their participation in BESVs.

Organizations representing the Roma often appear to lack political experience, and subsequently fail to understand the election process adequately. Thus, in the 2004 elections, neither Roma organization had a written electoral platform. Some interlocutors told the EAM that Roma parties do not enjoy much support among Roma, who prefer to vote for mainstream parties.

Some Roma leaders expressed concerns regarding individual local government officials and party activists who allegedly used their positions to influence and manipulate the Roma electorate. In some communities, mayors reportedly threatened Roma voters that their eligibility for social benefits depended on their voting behavior. The EAM also received reports, for example from Iași county, that the Roma vote would be bought through promises and gifts. However, such allegations could only be substantiated in isolated cases (e.g. in Medgidia, Constanța county).

Voter turnout among the Roma community is estimated to be lower than the national average, one of the causes being that they often lack identity documents. There are estimates that, for a variety of reasons, as many as 20% of Roma do not have identity documents and are therefore unable to vote, although some interlocutors said the overall situation had improved compared to 2000. In some localities, the problem is compounded by the fact that Roma communities were relocated to new settlements but remain registered in their old place of residence, thus encountering difficulties in exercising their right to vote. While under Romanian legislation the onus for registering a new place of residence lies with the citizens concerned, it appears that the authorities did little to help these citizens to re-register.

Limited analysis suggests that the number of invalid ballots in predominantly Roma communities was above the national average, indicating a lack of understanding of election

procedures. Voter turnout among Roma appears to have dropped on 12 December compared to the first round of 28 November.

XI. PARTICIPATION OF WOMEN

In the 2000 elections, relatively few women were elected to Parliament (accounting for 10.4% of Deputies and 7% Senators). The share of women candidates on the lists of major parties in 2000 varied between 10 and 15%. At the time of the 2004 elections, only two of 24 government ministers and minister delegates were women.

In the 2004 elections, the share of female candidates running for Parliament increased substantially. Of a total of 9,997 candidates for the Chamber of Deputies, 2,724 (27.2%) were women. For the Senate, 969 of 3,681 candidates (or 26.3%) were women. The increase in the number of female candidates appears to be partly due to the fact that under the new Election Law, candidate lists for Parliament must ensure representation of both genders.

Regrettably, the increased percentage of women candidates will not be reflected in the newly-elected Parliament. Only 46 out of a total of 469 Members of Parliament elected are women (9.8%); of which eight are Senators (5.8% of the Senate membership), and 38 are members of the Chamber of Deputies (11.4% of Deputies).¹¹ Of these 46 women, 18 will represent the PSD, nine the PD, eight the PRM, five PUR, four the PNL, and two, national minorities. Not a single woman running for the UDMR was elected. No women ran for the presidency. Two women submitted registration requests which were rejected for lack of proper documentation.

Women were generally well-represented in the election administration. On the BEC, ten of the 27 members were women, of which four were judges and six were representatives of political parties. Women were also well-represented on the BECJs visited by the EAM, often as presidents or vice-presidents. At the polling station level, limited visits suggest that many women held positions as presidents or vice-presidents of BESVs, especially in rural areas, and that they had good representation on Polling Boards overall.

XII. ELECTION PROCEDURES, TABULATION AND AGGREGATION OF RESULTS

In keeping with standard practice during an Election Assessment Mission (EAM), the EAM did not undertake systematic election-day observation. While EAM members visited a limited number of polling stations on both election days in the constituencies of Braşov, Bucharest, Cluj, Constanţa, Dâmboviţa, Dolj, Galaţi, Iaşi, Ilfov, Neamţ, Prahova, Sibiu, Teleorman, Timiş, Tulcea, Vaslui, and Vrancea, the number of such visits does not provide a basis on which to draw overall conclusions regarding the voting process throughout Romania.

¹¹ Source: Chamber of Deputies website (<http://www.cdep.ro>). The figures in this section refer to the allocation of mandates immediately following the parliamentary elections. The composition of Parliament will change if elected MPs take up positions which are incompatible with the status of Member of Parliament (Constitution, Art. 71). Indeed one woman MP elected for the PD was replaced by a man after she became one of the new President's advisers.

The voting process in those polling stations visited by the OSCE/ODIHR EAM seemed generally efficient and well-administered, and voters demonstrated a good understanding of election-day procedures. However, a number of issues emerged after the first round of voting which should be addressed before future elections. These include outstanding issues such as the need to secure the integrity of the ballot through proper voter identification, transparent and accurate procedures for ballot reconciliation; the need for adequate training of election officials, and an efficient and timely response to reports of alleged irregularities, including possible multiple voting, pressure on voters, and possible political influence on the process by local government officials.

A. PARLIAMENTARY AND FIRST-ROUND PRESIDENTIAL ELECTIONS, 28 NOVEMBER 2004

1. Incorrect Tabulations

The presidential candidate of the Alliance D.A., Traian Băsescu, on 30 November publicly called on the Central Election Bureau (BEC) to invalidate the 28 November parliamentary and presidential elections, alleging systematic fraud in the tabulation of the results through manipulation of the software used in the computerized results aggregation.

Mr. Băsescu based his demand on press releases issued by the BEC on 29 and 30 November, which contained partial election results. During the interval between the two press releases of 29 November, the difference between the number of voters who voted and the number of recorded valid votes decreased by around 160,000. Mr. Băsescu claimed that this discrepancy occurred because votes had been taken from the invalid ballots and had been “reassigned” to the PSD by means of manipulated tabulation software used by the BEC.

In the afternoon of 30 November, the BEC and experts from the National Statistics Institute (INS), which was involved in the tabulation and aggregation of the results, at a press conference explained that errors had been made by BESV members when they filled in the results protocols. When asked on the protocol to fill in the number of voters registered in the permanent voter list who had presented themselves to vote, the BESVs instead filled in the total number of voters on the permanent voter list. Ostensibly, this was because exactly the same phrase was used in the two corresponding lines of the protocol. The BEC and the INS determined that some 500–600 polling stations were affected by this error.

Once the cause of the problem was discovered on 29 November, the BEC instructed the BECJs to correct the protocols. Under the Law, the correct procedure to correct a protocol would be for the BECJ to call in the polling station president and other members of the polling bureau (since the Law requires polling bureau presidents to be accompanied by two other BESV members when they submit their protocols to the BECJ); get them to correct the protocol in a proper manner, reflecting the actual number of voters who voted; and then for both the BECJ and polling bureau to sign and stamp the corrected line with their respective stamps. The Law, in Art. 86 (1) (b), requires that the protocol contain “the total number of voters appearing in the electoral lists existing at the polling station, which have participated in voting ...”. Thus the actual number of voters who had voted, or received ballot papers, should have been calculated directly from the number of voter signatures on the voter lists.

There is little evidence to show that other BESV members accompanied the presidents when they returned to the BECJs to make the corrections in question; furthermore, it would appear

that the BECJs contacted only the polling board presidents. Political parties also claim that the corrections were made at the BECJs without the presence of their representatives.

As indicated previously, the BEC has provided comprehensive information on the tabulation, including scanned protocols from the polling stations, to political parties, civil society, the press and international observers. In addition, the BEC readily agreed to permit international experts to check the software and examine the data used in the tabulation. Such a check was carried out days before the presidential run-off by a Belgrade-based non-governmental organization, the Center for Free Elections and Democracy (CeSID), which was given full access to all relevant documents and information. After several days of investigation, CeSID concluded that “no incorrect or incorrectly entered data ... were found” and that the results returned by their software exactly matched the official results.

A serious question mark remains, however, whether in correcting the protocols, the BECJs and the polling bureau presidents filled in the real number of voters who had voted by going back to the voter lists and counting the number of signatures, or whether they simply calculated it by adding up the number of valid and invalid ballots from the relevant sections of the protocols. There are reasons to believe that filling in the number of voters who voted in the protocol with an artificial number during correction of the protocols actually occurred, especially since the corrected numbers nearly always exactly match the sum of the valid and invalid ballots. When questioned by the EAM, leading members of the BEC changed their position on whether the voter registers had to be consulted in order to determine the number of voters who voted. One of the officials from the AEP said it would be understandable if, when it was late at night and the BESV members were tired, such action might be overlooked.

Since the information required by the Law has not changed, it is unclear why the problem arose in these elections and not previously. The BEC and the INS argued that the main reason was the design and the wording of the results protocols, but it appears that training of election officials or other factors might also have been an issue.

As quoted above, the Law does require the number of actual voters to be entered on the protocol but remains silent on how this number should be determined. The provision does not explicitly require BESVs to count the number of signatures before proceeding with the count, or to reconcile them with the overall number of ballots. As a result, unless there is a high level of vigilance at the polling station during voting and counting, there is no safeguard against potential manipulation, e.g. through ballot box stuffing. Some evidence of such violations was detected by domestic and international observers during both election rounds.

2. Complaints and Appeals

Few formal complaints were lodged with the BEC after the first round, concerning the polling procedures or the count. The day after polling day, the D.A. Alliance submitted a request for a copy, on CD, of the consolidated permanent list of registered voters, which had not previously been made available to the contestants. The Alliance also submitted two complaints concerning pre-election decisions by the county election bureaus (BECJ), but both were rejected. The PSD+PUR Union also filed a post-election complaint concerning a BECJ decision: this was accepted.

The timeline for complaints to the BEC is not clear in the Law, although 48 hours is sometimes mentioned. This comes from Articles 92–93 of the Parliamentary Election Law, which indicate that the BECJs have that amount of time to submit final results, having been advised by the BEC how the mandates have been assigned within the constituencies. The BEC then resolves any objections and submits a final written report on the results to both chambers of Parliament.

As noted previously, BEC action on results is final and not open to appeal. The only judicial remedies that might be available to a party whose complaints to the BEC were rejected would need to be sought outside the electoral system. After the electoral period, an interested person might file a regular law suit demanding the termination of an electoral mandate which was awarded in a questionable fashion. (One such action succeeded against a mayor elected in local elections earlier in 2004.) But the effect of invalidation of a parliamentary mandate would have much greater impact than a similar action against the mandate of a local official. A very high standard of proof would be required in such an action. Another non-electoral remedy would be to seek criminal or other legal enforcement against a demonstrated violation of the Election Law or procedures; but this would almost certainly have no effect on the result of an election.

Another problem arose with respect to potential complaints by the D.A. Alliance concerning the incorrect tabulations discussed earlier, and other potential concerns regarding the method of voting (*eg* suspected multiple voting) or counting (*eg* incorrect recording of the number of voters who had voted). The problem was caused by the short time allotted for complaints, as well as the inaccessibility of relevant evidence, – in both cases the registers of voters, both on the regular and special lists, at the polling stations. The Law requires polling board presidents to deposit these records with the local court. The Alliance and other political parties and coalitions did not gain effective access to them prior to the expiration of the period for complaint. Ultimately, the BEC instructed the BECJs to facilitate access, but that action was not completely effective, and it remains to be seen whether the parties will continue to have access after the formal dissolution of the BEC and BECJs at the end of the electoral period. By the time the OSCE/ODIHR EAM departed from Romania, no party had produced evidence to substantiate its allegations of organized multiple voting.

3. Other Issues

Election contestants and civil society organizations reported alleged irregularities, especially in the first round on 28 November. The most serious allegations concerned multiple voting by persons moving from polling station to polling station and being entered on the special voter lists. Such irregularities would certainly have been facilitated by the fact that the stickers on ID cards could easily be removed and that voters could be entered on special voter lists without additional checks. Some political parties and domestic observer organizations claimed that multiple voting was organized. APD referred to incidences of multiple voting in several constituencies, especially Ilfov county near Bucharest, where many voters from the capital voted on special lists and where the turnout on 28 November was significantly higher than in previous elections and higher than the national average. While the OSCE/ODIHR EAM is not in a position to substantiate these allegations, it took note that some of the concerns raised – especially with regards to the security and integrity of the vote – stemmed from deficiencies in the Election Law and its application.

Another allegation involved reported pressure on voters by local authorities and party representatives, especially in rural areas. Indeed, OSCE/ODIHR EAM members who visited polling stations in Iași and Vaslui counties on 28 November saw instances of such pressure on voters, often instigated by mayors.

The D.A. and other opposition parties made further claims of electoral violations. For example, they alleged that ballots filled in by their supporters were double-stamped (and thereby invalidated) by poll workers, most likely during the count. This accusation was often made in previous Romanian elections. The OSCE/ODIHR EAM has compared the overall rates of ballot invalidity with those in previous national elections. While higher than desirable, especially for parliamentary elections, presumably due to the ballot design (a booklet rather than one sheet of paper for each contest), the invalidity rate was not significantly higher than previously.

B. SECOND-ROUND PRESIDENTIAL ELECTION, 12 DECEMBER 2004

The two main electoral issues that arose during the parliamentary and first-round presidential election concerned potential multiple voting on special voter lists, and defective tabulations of voter numbers at the BESVs. Meeting with the OSCE/ODIHR EAM after the first round, the BEC acknowledged that irregularities such as multiple voting and tabulation errors had occurred. In both cases the BEC took corrective action. In addition to taking the legal action described below, the BEC also ordered the BECJs (with the cooperation of the prefects) to provide polling board presidents with additional training in these areas.

Although the BEC took corrective action after the first round, it did not investigate the allegations relating to multiple voting, arguing that this fell outside its competence. A more pro-active attitude would have raised the level of confidence in the impartiality of the BEC.

1. Limitation of Voting on Special Lists

On 7 December, the BEC adopted Decision No. 105 which limited voting on special lists. Under this Decision, unless they had access to certain types of polling stations (*eg* military bases, certain state residential facilities, and student hostels), voters could not vote on special lists except at special polling stations situated at transportation facilities (railway stations, bus terminals, airports and ports). Realizing that this new procedure was too restrictive and could lead to the disenfranchisement of a large number of voters, the BEC took additional action. *Inter alia*, it enabled BECJs to designate a limited number of regular polling stations for special voting (in Bucharest, for example, five more polling stations were so designated, in addition to the special polling station at the main train station); it encouraged the prefectures to inform voters of the locations of such polling stations, and permitted voters with official temporary residence status to vote in the areas where they were living. The BEC also instructed BESVs to post extracts from the Election Law relating to sanctions for multiple voting in polling stations.

In general, the measures introduced to limit voting on special lists were supported by major election stakeholders, including the government, election administration, the coalitions whose candidates contested the runoff election, and civil society. In practice, however, the late adoption of Decision 105, and the way in which it was communicated, led to problems. It

appears that there was a lack of understanding of the new measures, and their implementation was uneven.

This was evidenced by the confusion and overcrowding of special polling stations on election day. In some localities, most notably in Bucharest, hundreds of voters were waiting for hours outside special polling stations throughout the day to exercise their right to vote. Although it was apparent that voters would still be queuing at the close of polling at 21:00 hrs., the BEC chose only to relax the rules to allow voters who were already inside the buildings where the polling stations were located to stay and vote. In some instances this rule was not applied, and only voters actually inside the polling stations were allowed to vote. At Bucharest's main train station, the special polling station, which on 28 November was located in a spacious waiting room, had inexplicably been moved to a much smaller room which could only accommodate a very limited number of voters at a given time. A BEM decision taken on 12 December to allow voting on special lists in an additional ten polling stations in Bucharest was invalidated by the BEC following a complaint from the PSD.

In addition to problems of implementation, questions must be raised concerning the legal basis of Decision No. 105 and related actions on special voting. Where and how to vote are basic components of the right to vote. Under the Constitution, electoral legislation must be adopted through organic law. While the government has the ability to enact emergency ordinances under some circumstances, in the area of electoral rights they are prohibited outright. In other areas subject to organic law, emergency ordinances are tightly controlled and should be authorized by parliament in advance, as well as subjected to an expedited parliamentary debate thereafter. In this case, however, neither the government nor Parliament acted formally on this major change in the electoral system applied in the middle of the election process.

The BEC based Decision No. 105 on its authority under the Presidential Election Law to "interpret" that law. It also interpreted a stipulation indicating that certain provisions of the Parliamentary Election Law should be followed as carrying a negative implication that other applicable areas of the parliamentary election procedures could be modified.

The BEC's action appears to exceed the usual standards of judicial practice under the Constitution and laws of Romania, as well as comparative principles of statutory interpretation. In addition, the action failed to respect Art. 15 (1) of the Presidential Election Law, which explicitly states that "[the] ... progress of the elections for the office of President of Romania shall take place under the provisions of the Law on the Elections for the Chamber of Deputies and the Senate, unless otherwise stipulated in the present section." The section in question (Sec. 4 on the Election Campaign and Election Progress) does not include any alteration of the procedures for voting contained the Parliamentary Election Law. In addition, Chapter III of the Parliamentary Election Law, also on "Election Progress", is the chapter of that Law which regulates where voters may vote. In fact, it is Art. 77 (2) in that chapter which specifically permits voters to vote in nearly any polling station.

2. Filling-in of Protocols

On 6 December, the BEC adopted a modified protocol form to make clearer that the number of voters who voted was to be calculated differently from the number of registered voters, the error which had led to defective tabulations in the first round. The BEC also distributed a new

brochure containing instructions for polling bureau presidents on how to fill in the protocols. This brochure was provided directly to polling board presidents during their special training shortly before the second round. In the instruction concerning the relevant section of the protocol, the brochure makes clear that the number of voters who voted was supposed to be calculated based on the number of signatures on the voter register.

It is not clear to what extent these instructions were adhered to by polling board presidents. Information from domestic and international observers indicated that some polling board presidents resisted counting the actual number of signatures in addition to the total number of ballots; while in other polling stations, the number of signatures was properly counted and efforts were made to resolve discrepancies between that number and the number of ballots in the box. Thus it cannot be determined if the number of ballots may have exceeded, or in some other way varied from, the actual number of voters, at some polling stations. In any event, the need to correct the protocols which arose after 28 November did not occur again after 12 December.

XIII. RECOMMENDATIONS

The OSCE/ODIHR is pleased to offer the following recommendations for consideration by the Romanian authorities, and stands ready to support them in addressing the recommendations prior to any future elections.

A. LEGAL FRAMEWORK

1. Election legislation should not be enacted in the period immediately preceding an election, except when such action is necessitated by severe defects in the law or its application, and there is a broad consensus in support of the amendments.
2. Relevant legislation should be included in a comprehensive election code. This would eliminate inconsistencies between relevant statutes, and incorporate into law desirable practices that have thus far been only partially implemented through Government ordinance or instructions from the election administration.
3. To the extent possible, adoption of election rules through emergency ordinances should be strictly limited; if such ordinances are required, they should be adopted and published in consolidated texts well in advance of an election. It is particularly inappropriate, and possibly unconstitutional, to regulate electoral rights through special executive measures.
4. The right of election contestants to seek effective and timely legal scrutiny of the election administration, at every level, should be clearly established in election legislation. Specific rules and procedures for complaints and appeals should be set forth with respect to all aspects of electoral operations, including the tabulation of results. In addition, reasonable standards of evidence should be adopted so that justified grievances may be remedied; and election contestants must have access to all electoral materials required to investigate alleged violations.
5. Definite standards and procedures should be established through law for the examination of voter signatures submitted by presidential candidates, as well as for other electoral and political purposes. In addition, the relevant state bodies should be obliged to provide the necessary assistance for verification of the information and signatures of voters contained in petitions of support.

6. Consideration should be given to review and clarify Article 5 (7) of the Parliamentary Election Law, which allows a sitting president to run as an independent on a party's list in the last three months of his or her term.
7. The provision of the Election Law dealing with completing protocols by polling board officials should be amended to make explicit the procedures for determining the number of voters who voted. It would also be desirable for the Law to also require that, before the vote count begins, the polling board should count the number of ballots taken from the box and reconcile this number with the number of signatures on the register (as well as the numbers of cancelled, invalid and unused ballots).

B. ELECTION ADMINISTRATION

8. The current method of appointment to the Permanent Election Authority (AEP) should be reviewed to avoid the potential that the most senior officers are all appointed by the ruling political party. Means should be found to ensure inclusive and balanced composition of the AEP.
9. The legal provisions on the selection of BESV chairs and vice-chairs with a legal background requirement are difficult to implement and should therefore be revised. In particular, it should be ensured that appointments by prefects do not create a political imbalance on BESVs. In addition, maintaining a permanent roster of potential appointees to these positions could improve the performance of polling boards. Such a roster should be maintained on a transparent basis, and parties and civil society should have the opportunity to review the credentials, experience and reputation of potential appointees.
10. The division of responsibilities between mayors and prefects with regards to election-related matters should be clarified in order to increase transparency and accountability.
11. Training of election officials, especially those without legal education or previous relevant experience, should be strengthened in order to ensure a uniform and consistent application of the Law. Training should be extended to all polling board members. In addition, polling station manuals should be produced and distributed to all polling stations.
12. The Election Law should oblige Polling Boards to post copies of the results protocols at the polling station.
13. Parliament should consider amending the law to require the BEC to publish detailed results from each polling station on its Website as soon as they are processed.
14. Election contestants and domestic observer groups should be entitled to a copy of the compilation of results protocols in electronic form.
15. In order to address the problem of potential multiple voting, participants in the elections should be entitled to receive copies of extracts of voter lists used on polling days.

C. VOTER REGISTRATION AND VOTING PROCEDURES

16. As long as Romanian voters are entitled to cast ballots at nearly any polling station, reliable means must be found to deter, detect and respond to cases of possible multiple voting. Where credible allegations of such irregularities exist, the competent authorities should investigate them promptly and thoroughly, and act accordingly.
17. In the current legal framework whereby voters are permitted to cast their ballots in virtually any polling station in the country, attaching stickers to national ID cards has failed to instill sufficient confidence as a prevention against possible multiple voting

because stickers proved to be easily removable. The Romanian authorities should seriously consider amending the framework in order to ensure the integrity of the ballot by relevant safeguard procedures.

18. As long as voters have the legal right to vote at virtually any polling station in the country, the relevant state authorities should ensure that all eligible voters are issued with voter cards in time for the next elections, and that there is no repeat of the suspension of the use of voter cards.
19. The Election Law should specify that signatures on the voter lists must be counted before opening the ballot box in order to establish the number of citizens who voted. It would be desirable if the Law also required that immediately after opening the ballot box, BESVs should count the total number of ballots in the box in order to reconcile this with the number of signatures on the registers.
20. The format of the ballot papers should be revised in order to reduce the number of invalid ballots and the possibility of errors during the vote count. The current booklet format should be replaced by one-page ballots.
21. There should be greater transparency and quality control in the printing of ballot papers.

D. CAMPAIGN AND THE MEDIA

22. Measures should be taken to prevent mayors, prefects and other officials from becoming unduly involved in the campaign and from abusing their position to influence voters.
23. The competent authorities should undertake steps to investigate the origin of false and deceptive campaign material seemingly attributed to contestants in the elections.
24. Conflicting deadlines in the Law regarding the campaign period and media coverage of the campaign should be harmonized in order to have a uniform silence period for various kinds of campaign activities.
25. In general, the overregulation by the Election Law of the broadcasting media during the election campaign should be reviewed. Additionally, the Law should specify which bodies are responsible for interpreting and enforcing the Election Law with regards to campaign coverage by the media.
26. The provision in the Election Law which limits access of election contestants to the broadcast media to weekdays only should be repealed.
27. The ban on paid political advertisements in the print media should be lifted. Media should instead be obliged to mark all paid electoral advertisements published during the election campaign as such.
28. Since the print media are not monitored for violations of the campaign silence, Parliament could consider lifting the campaign silence provisions for the print media only.

E. CIVIL SOCIETY AND DOMESTIC OBSERVATION

29. The Law should be amended to secure access for domestic non-partisan observers to be accredited to a whole constituency rather than to a single polling station.
30. Consideration should be given to the fact that transparency is further enhanced when domestic observer organizations have the right to attend sessions of the election commissions at all levels, including the BEC.
31. Efforts should be made to ensure that NGOs applying to accredit observers are *bona fide*, and not associated with political parties or other formations with an interest in the outcome of elections.

32. Domestic observers should be entitled to receive copies of polling station protocols.

F. PARTICIPATION OF NATIONAL MINORITIES

33. Provisions in the Election Law should be worded in a way which ensures that each recognized national minority is eligible for a special seat.
34. Consideration should be given to removing provisions which set different requirements for national minority organizations already represented in parliament and for extra-parliamentary organizations.
35. Voter education among the Roma community in particular should be intensified.
36. The authorities should facilitate the registration of Roma citizens and the issuing of identity documents to them, so as to enable them to exercise their right to vote.

IX. ANNEX – ELECTION RESULTS

A. PARLIAMENTARY ELECTIONS, 28 NOVEMBER 2004

	Chamber of Deputies	Senate
Total number of registered voters on permanent voter lists and on special voter lists Type 1	18,449,344	18,449,344
<i>Number of registered voters on permanent voter lists</i>	17,897,017	17,897,017
<i>Number of registered voters on special voter lists Type 1</i>	552,327	552,327
Total number of registered voters who turned out to vote	10,794,653	10,794,653
<i>Number of voters registered on permanent voter lists who turned out to vote</i>	9,547,284	9,547,284
<i>Number of voters registered on special voter lists Type 1 who turned out to vote</i>	541,630	541,630
<i>Number of voters registered on special voter lists Type 2 who turned out to vote</i>	705,739	705,739
<i>Turnout in percent</i>	58.51%	58.51%
Total number of valid votes	10,188,106	10,231,476
Number of invalid votes	599,641	556,128
<i>Invalid votes in percent of votes cast</i>	5.55%	5.15%

Party/Alliance	Chamber of Deputies			Senate		
	Votes	Percent	Mandates	Votes	Percent	Mandates
National Union PSD+PUR	3,730,352	36.80%	132 (PSD: 113; PUR: 19)	3,798,607	37.17%	57 (PSD: 46; PUR: 11)
Alliance D.A. PNL–PD	3,191,546	31.49%	112 (PNL: 64; PD: 48)	3,250,663	31.81%	49 (PNL: 28; PD: 21)
PRM	1,316,751	12.99%	48	1,394,698	13.65%	21
UDMR	638,125	6.20%	22	637,109	6.23%	10
PNG	227,443	2.24%	0	241,486	2.36%	0
PNTCD	188,268	1.86%	0	196,027	1.92%	0
Others (all below 1%) ¹²	559,909	5.52%	0	681,854	6.66%	0
National Minority Lists ¹³	294,066	2.90%	18	19,109	0.19%	0
<i>Total excl. independent candidates¹⁴</i>	<i>10,136,460</i>	<i>100,00%</i>	<i>332</i>	<i>10,219,553</i>	<i>100,00%</i>	<i>137</i>

¹² The number of parties (excluding parties and associations representing national minorities) which received less than 1% of the total number of valid votes was 20 for both the Chamber of Deputies and for the Senate.

¹³ Excluding the ethnic-Hungarian UDMR, a total of 28 organizations representing 18 national minorities competed for the special minority seats in the Chamber of Deputies. The only party representing a national minority which had candidates for the Senate was the Alliance for Roma Unity.

¹⁴ The BEC calculated the percentage for party lists based on the total number of valid votes cast for parties and alliances, but excluding the votes cast for independent candidates. Independent candidates running for the Chamber of Deputies received a total of 51,646 votes, and those running for the Senate, 11,923 votes.

B. PRESIDENTIAL ELECTIONS, 28 NOVEMBER AND 12 DECEMBER 2004

	First Round	Second Round
Total number of registered voters on permanent voter lists and on special voter lists Type 1	18,449,344	18,316,104
<i>Number of registered voters on permanent voter lists</i>	17,897,017	17,934,719
<i>Number of registered voters on special voter lists Type 1</i>	552,327	381,385
Total number of registered voters who turned out to vote	10,794,653	10,112,262
<i>Number of voters registered on permanent voter lists who turned out to vote</i>	9,547,284	9,297,657
<i>Number of voters registered on special voter lists Type 1 who turned out to vote</i>	541,630	380,749
<i>Number of voters registered on special voter lists Type 2 who turned out to vote</i>	705,739	433,856
<i>Turnout in percent</i>	58.51%	55.21%
Total number of valid votes	10,452,205	10,008,317
Number of invalid votes	339,010	103,245
<i>Invalid votes in percent of votes cast</i>	3.14%	1.02%

Candidate	First Round		Second Round	
	Votes	Percent	Votes	Percent
Adrian Năstase (Nat. Union PSD+PUR)	4,278,864	40.94%	4,881,520	48.77%
Traian Bănescu (Alliance D.A. PNL–PD)	3,545,236	33.92%	5,126,794	51.23%
Corneliu Vadim Tudor (PRM)	1,313,714	12.57%		
Markó Béla (UDMR)	533,446	5.10%		
Gheorghe Coriolan Ciuhandu (PNȚCD)	198,394	1.90%		
George Becali (PNG)	184,560	1.77%		
Petre Roman (FDR)	140,702	1.35%		
Gheorghe Dinu (independent)	113,321	1.08%		
Marian Petre Miluț (AP)	43,378	0.42%		
Ovidiu Tudorici (URR)	37,910	0.36%		
Aurel Rădulescu (APCD)	35,455	0.34%		
Alexandru Raj Tunaru (PTD)	27,225	0.26%		

Source: Central Election Bureau

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, legislative support, and trafficking in human beings. The ODIHR implements a number of targeted assistance programs annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States and to discuss particular thematic areas.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).