



Office for Democratic Institutions and Human Rights

ROMANIA

PRESIDENTIAL ELECTION

22 November 2009

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

23-25 September 2009



Warsaw
14 October 2009

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation from the Romanian authorities to observe the presidential election scheduled for 22 November 2009, the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Romania from 23 to 25 September 2009. The Mission was conducted by Mr. Konrad Olszewski, Deputy Head of the OSCE/ODIHR Election Department and Mr. Mats Lindberg, OSCE/ODIHR Election Adviser. The purpose was to assess the pre-electoral environment and to advise on a possible OSCE/ODIHR observation activity.

The OSCE/ODIHR NAM held meetings in Bucharest with representatives of the Ministry of Foreign Affairs, the Permanent Election Authority, the Constitutional Court, three of the parliamentary parties, the National Audiovisual Council, representatives of civil society, as well as the Ambassador of Greece to Romania, in his capacity of representative of the current OSCE Chairmanship (see the annex for a list of meetings). The OSCE/ODIHR is grateful to the MFA for its co-operation and assistance during the NAM.

II. EXECUTIVE SUMMARY

On 2 September 2009, the government of Romania called a presidential election for 22 November, with a possible second round on 6 December.¹ Previously, parliamentary and presidential elections were held concurrently. Due to an extension of the presidential mandate from four to five years in 2004, this presidential election will be held separately from the parliamentary elections for the first time. In addition, the president announced the intention to hold a constitutional referendum to make the parliament unicameral and to reduce the number of members of parliament to 300. The referendum would coincide with the first round of the presidential election.

In September, the government adopted an emergency ordinance to amend the 2004 Law on Presidential Elections. This practice remains an unusual feature and OSCE/ODIHR has, in the past, recommended that it be reconsidered. Furthermore, late amendment of the election legislation is not in line with electoral good practices.

There are some 18 million voters in Romania; 3 million of these are believed to live abroad. The regular voter list is updated by mayors' offices, based on residency records.

¹ The presidential election was called by Government Decision No. 985, issued on 2 September 2009 and published in the Official Gazette on 4 September 2009.

In addition, supplementary lists of voters are drawn up on election day to allow voters away from home to cast their vote. To this effect, approximately 3,500 ‘special polling stations’ will be formed in addition to the some 18,000 ordinary polling stations.

This election will be administered by the Permanent Electoral Authority as well as by a Central Electoral Bureau (BEC)², 43 County Election Bureaus (BEJs)³ and some 21,500 Polling Station Election Bureaus (BESVs).⁴ All bureaus are formed anew for each election and are generally composed of judges and representatives of presidential candidates. At the time of its visit, the OSCE/ODIHR NAM was informed that some judges were on strike, putting the formation of the BEC and the BEJs at risk, but the judges agreed to resume their normal duties at the end of September.

Romania has a wide and diverse range of media. For the first time in a presidential election, candidates will be provided with free airtime not only on public TV, but also on private TV channels. Private broadcast media are not obliged to accept campaign spots, but if they do, they must provide them to all contestants free of charge. The same applies to campaign news coverage.

The legislation provides for election observation by both domestic and international organizations. OSCE/ODIHR has yet to receive the invitation to observe this election.

While interlocutors expressed general confidence in the process, some raised concerns regarding proceedings in special polling stations and the possibility for double voting despite increased safeguards. Almost all interlocutors welcomed the possibility of an OSCE/ODIHR election observation activity and felt that the presence of observers could be beneficial. In this context and based on the findings of this report, the OSCE/ODIHR recommends the deployment of a Limited Election Observation Mission that will include a media monitoring element to *inter alia* monitor the application of the new media provisions on free airtime.

In addition to the deployment of a core team of experts, the OSCE/ODIHR will request OSCE participating States to second 20 long-term observers (LTOs) to be deployed throughout Romania by the end of October. They will focus on reviewing the newly amended legal framework for elections, the formation of election commissions, the quality of the voter lists, and the participation of national minorities in the elections. The OSCE/ODIHR LEOM will not undertake a systematic and comprehensive election day observation but will visit a limited number of polling stations and will pay particular attention to special polling stations.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

In 2000, OSCE/ODIHR concluded that “the 2000 presidential and parliamentary elections were conducted in accordance with OSCE commitments for democratic elections

² Biroul Electoral Central.

³ Biroul Electoral Judeţean.

⁴ Birourilor Electorale din sectiile de Votare.

formulated in the 1990 Copenhagen Document. [...] The 2000 polls further demonstrated that democratic elections are firmly entrenched in Romania.”

On 2 September 2009, the government called a presidential election for 22 November, with a possible second round on 6 December between the two candidates who received the highest number of votes. In previous elections observed by the OSCE/ODIHR, parliamentary and presidential elections were held on the same day. Due to the extension of the presidential mandate in 2004 from four to five years, however, this election will be held separately for the first time.⁵ Furthermore, on 24 September, the president announced the intention to hold a constitutional referendum to make the parliament unicameral and to reduce the number of members of parliament to 300. This referendum would coincide with the first round of the presidential election.

Romania is a semi-presidential republic. According to Article 80 of the Constitution, the president of Romania shall represent the Romanian State and is the safeguard of the national independence, unity and territorial integrity of the country. The same article further stipulates that the president shall guard the observance of the Constitution and the proper functioning of the public authorities. To this effect, he shall act as a mediator between the Powers in the State, as well as between the State and society. The president must not be a member of any political party, once elected. The incumbent president, Mr. Traian Băsescu, was nominated in 2004 by an alliance of the centre-right National Liberal Party (PNL)⁶ and the Democratic Party (PD).⁷ In 2007, parliament suspended President Băsescu for a month and initiated a recall referendum. The referendum results supported the president.

Following the November 2008 parliamentary elections, the government was formed by the centre-right Democratic Liberal Party (PD-L,⁸ 115 seats), the centre-left Social Democratic Party (PSD,⁹ 110 seats), and the Conservative Party (PC,¹⁰ 3 seats). The PNL (65 seats) is currently the main opposition party. The Democratic Union of Hungarians in Romania (UDMR¹¹) has 22 seats in the parliament. The remaining deputies in the 334-member Chamber of Deputies include 18 representatives of various national minorities and one independent. The Senate has 137 members.

On 1 October, part of the government resigned. This followed the dismissal of the PSD interior minister by the PD-L prime minister. In response, all remaining PSD ministers resigned. Until a new government is formed, the remaining ministers will carry the additional portfolios. In the event of a vote of no confidence, a caretaker government would continue until new elections are held. Article 89.3 of the Constitution stipulates that parliament cannot be dissolved during the last six months of a president’s term.

⁵ Parliamentary elections were held in 2008.

⁶ *Partidul Național Liberal.*

⁷ *Partidul Democrat.* Known as the “Alliance D.A. PNL-PD”; D.A. is the abbreviation in Romanian for “Justice and Truth”. This is the name of the coalition formed for the 2004 elections by the PNL and the PD. Following later splits in the PD, it was renamed the PD-L, becoming the largest government party.

⁸ *Partidul Democrat-Liberal.*

⁹ *Partidul Social Democrat.*

¹⁰ *Partidul Conservator.*

¹¹ *Uniunea Democrată Maghiară din România.*

While no candidates had been officially registered at the time of the OSCE/ODIHR NAM, the media have reported that some 14 individuals have announced their intention to run.¹²

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

After announcing the date of the election, the government adopted an emergency ordinance that entered into force on 3 September 2009. This ordinance amended the 2004 Law on Presidential Elections with the view to consolidate the previous law by removing the existing cross-references to the 2004 parliamentary election law. According to interlocutors, additional safeguards were also introduced (see Section D on Voter Registration). At the time of writing this report, OSCE/ODIHR had not received the English translation of the ordinance and could not thoroughly review the nature and scope of the amendments. However, late amendment of the election legislation is not in line with electoral good practices.

Updating election legislation for each national election through emergency ordinances has become a frequent feature in Romania. The Constitutional Court (CC) informed the OSCE/ODIHR NAM that past decisions underscored that the use of emergency ordinances in general should be more limited. Nevertheless, all OSCE/ODIHR NAM interlocutors supported the adoption of the emergency ordinance for this election, arguing that there was insufficient time to pass a new legislation. Some, nonetheless, opined that efforts to amend the legal framework should have started earlier. While in principle the parliament has the authority to review all such emergency ordinances and to annul them, it is expected that this ordinance will be discussed by the parliament only after the presidential election.

The frequent use of emergency ordinances to amend the election legislation for national elections remains an unusual electoral feature and OSCE/ODIHR has, in the past, recommended that this practice be reconsidered.

Other key legislation with relevance to the presidential election is the Constitution, the Law on Political Parties, the Law on Financing of the Activities of Political Parties and of the Electoral Campaigns, and the Law on Radio and Television Broadcasting.

C. ELECTION ADMINISTRATION

Romania had no permanent election administration body until 2004, when the Permanent Election Authority (AEP)¹³ was created. Its main task is to implement election-related projects between elections and to make recommendations to the parliament on how to improve the electoral process. It also oversees the updating of voter lists and the production of various election materials.

In addition to the AEP, a three-tiered election administration is established for each election. It is headed by a Central Electoral Bureau (BEC) and comprises 43 County

¹² See <http://alegeri.ziare.com/alegeri-prezidentiale-2009>. Ziare.com is an independent website, which primarily posts internet links to other news sources.

¹³ *Autoritatea Electorală Permanentă*.

Election Bureaus (BEJs),¹⁴ some 18,000 Polling Stations Bureaus (BESVs) and some 3,500 BESVs for special polling stations.

The BEC is composed of five judges from the High Court of Cassation and Justice, and the AEP president and two vice-presidents. Representatives of registered presidential candidates can also serve as full members. The BEC is responsible for registering presidential candidates. Candidates may be nominated by political parties, electoral alliances or individuals. 200,000 support signatures are required to register. The BEC verifies all supporting documentation of the candidates, including the checking of support signatures, decides on registered candidates and publicizes its decision within 48 hours.

The principles used for the formation of the BEC also apply to the formation of the BEJs. At the time of its visit, the OSCE/ODIHR NAM was informed that some judges were on strike, putting the formation of the BEC and the BEJs at risk, but the judges agreed to resume their normal duties at the end of September.

Polling stations are administered by BESVs, which are headed by a president and a vice-president. They, as a rule, should have a legal background. Given the modest remuneration, however, it has proven difficult to find trained people willing to serve in these positions. In case of shortage, other qualified and reputable individuals may be appointed.

Out-of-country voting in presidential elections is permitted at diplomatic missions. Similarly to voting at special polling stations, a valid identity document is sufficient to vote and there is no need to register with the diplomatic mission beforehand. From past experience, only some 50,000 Romanian voters tend to vote abroad.

D. VOTER REGISTRATION

There are some 18 million voters in Romania; 3 million of these are believed to live abroad. The regular voter list is updated by mayors' offices, based on residency records. In addition, supplementary lists of voters who are voting at 'special polling stations' are drawn up on election day, created to allow voters away from home on election day to cast their vote. About 3,500 such special polling stations will be added to the some 18,000 ordinary polling stations. Special polling stations can be established at train/bus stations and airports, but only in urban areas. In practice, voters can vote at special polling stations without giving specific reasons.

Certain political parties met by the OSCE/ODIHR NAM expressed concern about the accuracy of the voter lists in general, and the risk of irregularities connected with special polling stations. In particular, they mentioned the possibility of multiple voting during the forthcoming election. Stickers, which are attached to voters' ID cards at the time of voting to mark that the voter in question has already voted, are not considered to be a sufficient safeguard against multiple voting. Some interlocutors argued that the potential for multiple voting is increased by the possibility of voting at special polling stations.

¹⁴ *Biroul Electoral Județean*. This includes one for each of the 41 counties, one for the Municipality of Bucharest, and one for out-of-country voting.

The AEP informed the OSCE/ODIHR NAM about additional safeguards that have been introduced with the 3 September emergency ordinance. For instance, the number of special polling stations was limited to 3,500¹⁵ and video cameras will be installed at their entrances. As was the case during the 2009 elections to the European Parliament, voters will have to sign a declaration at special polling stations, formally stating that they will vote only once. The hand-written names and ID card numbers from the supplementary voter lists will be entered into the electronic data base after the election, and the regular and supplementary voter lists will be cross-checked to identify any double entries. There will also be a campaign to inform voters about the relevant rules for voting.

E. THE ELECTION CAMPAIGN AND FINANCING OF POLITICAL PARTIES

According to the presidential election law, the official campaign period starts 30 days prior to election day and ends at 07:00 on the day before election, i.e. on 21 November. In practice, however, political parties tend to start campaigning earlier.

Both campaign contributions and spending are regulated by the 2006 Law on the Financing of the Activities of Political Parties and of the Electoral Campaigns,¹⁶ which links contributions and spending limits to the Romanian minimum wage. The ceiling for campaign spending in presidential elections is 25,000 times the minimum gross salary on 1 January of the specific electoral year.

F. THE MEDIA

Romania has a wide and diverse range of media. In addition to Public Television and Radio, many privately-owned print and broadcast media outlets operate. The number, variety and range of these outlets provide voters with plentiful and diverse information about politics and elections through news, campaign advertising and election debates.

One recent innovation in the 2009 election legislation concerning media is that candidates are to be provided with free airtime not only on public TV, but also on private TV channels. Private broadcast media are not obliged to accept campaign spots, but if they do, they must provide them to all contestants free of charge.¹⁷ The same applies to campaign news coverage; if private TV chooses to cover campaigning in the news it must give all candidates equal access. At least one political party reported that one private TV station demanded reimbursement of “production costs” from their party to place campaign spots for the European Parliament election. The OSCE/ODIHR NAM also heard other allegations of demands by private media for ‘payments’ in order to accept campaign spots.

The broadcast media are supervised by the National Audiovisual Council (CNA)¹⁸, an autonomous body responsible to the parliament. It conducts daily media monitoring. Private broadcast media must inform the CNA of whether they intend to cover the campaign so that the CNA can organize monitoring of the coverage. CNA inspectors

¹⁵ The number of special polling stations was also limited in the second round of the 2004 presidential election.

¹⁶ Law no. 334, dated 17 July.

¹⁷ There appears to be no provision for privately paid broadcast media advertising.

¹⁸ *Consiliul Național al Audiovizualului*.

control that there is no campaign coverage by private broadcast media, which has not been previously announced to the CNA. If necessary, the CNA can impose sanctions on outlets that violate the law or CNA regulations.

The CNA is legally obliged to issue precise media rules for the campaign period. For the presidential election, the rules must be issued ten days after the government decision announcing the presidential election comes into force, i.e. by 8 October. In preparation, the CNA holds consultations with representatives of media, political parties and civil society. There was a proposal to extend the validity of the media rules beyond the official campaign period, but following one such consultative meeting on 24 September, the proposal was dropped. In its meeting with the OSCE/ODIHR NAM, the CNA expressed a desire for greater legislative stability with regard to elections.

G. COMPLAINTS AND APPEALS

Most election-related complaints are adjudicated by the different levels of the election administration, which may refer cases to the judiciary if electoral fraud has been detected. The Constitutional Court (CC), which in general ensures that the election legislation is respected, has the competency to deal with complaints from parties and candidates regarding alleged electoral fraud that could have affected the outcome of the election.

Candidates, political parties, alliances, and citizens may contest the registration or non-registration of candidacies. Appeals are submitted to the BEC, which sends them to the CC within 24 hours. The CC must adjudicate in 48 hours. Its decisions are final and are published in the Official Gazette. The CC also establishes the two candidates who qualify for the second round. Furthermore, it determines and officially announces the election results, which are forwarded by the BEC.

H. ELECTION OBSERVATION

The election legislation provides for election observation by both domestic and international organizations active in the field of human rights or election observation. The OSCE/ODIHR has yet to receive the invitation to observe this election.

The Pro-Democracy Association, one of the largest domestic NGOs involved in election observation, plans to field some 800 observers for the presidential election. Its representatives, however, expressed concern about a legal provision according to which the president of a polling station may designate a particular area within which observers should stay. They felt that it may not provide an adequate view of the voting and counting procedures. The AEP told the OSCE/ODIHR NAM that, in practice, observers are allowed to move freely inside polling stations, as long as they do not interfere with voting procedures.

A domestic Media Monitoring NGO will undertake media monitoring of the 4-6 main TV stations during the election period.

IV. CONCLUSIONS AND RECOMMENDATIONS

While interlocutors expressed general confidence in the process, some raised concerns regarding proceedings in special polling stations and the possibility for double voting despite increased safeguards. Almost all interlocutors welcomed the possibility of an OSCE/ODIHR election observation activity and felt that the presence of observers could be beneficial. In this context and based on the findings of this report, the OSCE/ODIHR recommends the deployment of a Limited Election Observation Mission that will include a media monitoring element to *inter alia* monitor the application of the new media provisions on free airtime.

In addition to the deployment of a core team of experts, the OSCE/ODIHR will request OSCE participating States to second 20 long-term observers (LTOs) to be deployed throughout Romania by the end of October. They will focus on reviewing the newly amended legal framework for elections, the formation of election commissions, the quality of the voter lists, and the participation of national minorities in the elections. The OSCE/ODIHR LEOM will not undertake a systematic and comprehensive election day observation but will visit a limited number of polling stations on election day and will pay particular attention to special polling stations.

ANNEX: LIST OF MEETINGS

State and Election Authorities

Ministry of Foreign Affairs

Mr. Petru Dumitriu, General Director
Mr. Răzvan Rotundu, Head of Human Rights and Council of Europe Division
Ms Diana-Larisa Cindea, Second Secretary, Human Rights and Council of Europe Division

Constitutional Court

Ms Ruxandra Săbăreanu, Secretary General

Permanent Election Authority

Mr. Octavian Oprea, President
Ms. Ana Maria Pătru, Vice-President
Mr. Tiberiu Csaba Kovacs, Secretary General
Mr. Cristian Leahu, Director, Office for Legislation
Ambassador Vasile Jirjea, Head of Foreign Affairs Office
Mr. Dan Diaconescu, counselor, Foreign Affairs Office

Political Parties

Democratic Union of Hungarians in Romania

Mr. Borbely Laszlo, Foreign Policy Committee Chairperson, Chamber of Deputies

National Liberal Party

Mr. Marian Petrache, Chairperson of the Ilfov party branch
Ms. Teodora Bertzi, Co-ordinator of the election campaign

Social Democratic Party

Mr. Valeriu Zgonea, Deputy Secretary General; Secretary of the Chamber of Deputies

Media

National Audiovisual Council

Mr. Ioan Onisei, Vice-president of the National Audiovisual Council
Mr. Serban Pretor, Director, Legal and Regulatory Directorate, National Audiovisual Council
Ms. Gabriela Stoica, Director, Office for Communication

Civil Society

Mr. Mircea Toma, President, Active Watch Media Monitoring Agency
Ms. Nicoleta Fotiade, Programme Manager, Active Watch Media Monitoring Agency
Ms. Liana Ganea, Co-ordination Department, Active Watch Media Monitoring Agency
Ms. Ioana Avădani, President of the Centre for Independent Journalism
Mr. Cristian Pârvulescu, President, Pro-Democracy Association

Diplomatic Community

Embassy of Greece to Romania

Ambassador Georgios Poukamissas