



Office for Democratic Institutions and Human Rights

ROMANIA

PRESIDENTIAL ELECTION

10 and 24 November 2019

ODIHR Election Assessment Mission
Final Report



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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY.....	1
II. INTRODUCTION AND ACKNOWLEDGEMENTS	3
III. POLITICAL BACKGROUND	3
IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM.....	4
V. ELECTION ADMINISTRATION	6
VI. VOTER REGISTRATION	8
VII. CANDIDATE REGISTRATION	10
VIII. ELECTION CAMPAIGN	11
IX. CAMPAIGN FINANCE	13
X. MEDIA	15
A. MEDIA ENVIRONMENT	15
B. LEGAL FRAMEWORK	15
C. MEDIA COVERAGE OF THE ELECTIONS	17
XI. COMPLAINTS AND APPEALS.....	18
XII. CITIZEN AND INTERNATIONAL OBSERVATION.....	19
XIII. ELECTION DAYS.....	19
XIV. RECOMMENDATIONS.....	21
A. PRIORITY RECOMMENDATIONS	21
B. OTHER RECOMMENDATIONS	22
ANNEX I: FINAL RESULTS	24
ABOUT ODIHR	26

ROMANIA
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ODIHR Election Assessment Mission Final Report¹

I. EXECUTIVE SUMMARY

Following an invitation from the Government of Romania, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) to observe the 10 and 24 November 2019 presidential election. The ODIHR EAM assessed compliance of the electoral process with OSCE commitments and other international obligations and standards for democratic elections as well as with domestic legislation.

The presidential election was competitive, pluralistic, and offered voters a genuine choice from a broad spectrum of political alternatives. Campaigning took place in an open atmosphere with respect for fundamental freedoms. The media offered limited election coverage, reflecting the low-key campaign, but informed voters of the different political options. Though certain aspects of election related legislation could be improved, the election was effectively administered and generally enjoyed public confidence. Recent amendments to campaign finance legislation significantly increased public funding for parliamentary parties. Interim reporting of expenses is not required, and possible sanctioning tools are neither effective nor dissuasive.

The legal framework provides a sound basis for conducting democratic elections. Several changes were made to the election legislation, including in 2019, a number of which address previous ODIHR recommendations. The changes focused on out-of-country voting, election day, as well as allowing voters to support more than one nominee to register as a candidate. While the election legislation is comprehensive, it is divided among separate laws and provisions applicable to all elections can at times only be found in one set of laws.

The Permanent Electoral Authority (PEA) and three levels of temporary election bureaus conducted the election in an efficient manner, including an extensive polling exercise abroad. In general, the election administration bodies enjoyed public trust; however, contrary to good practice, sessions of election bureaus were not open to the public, reducing transparency. Some concern exists regarding potential overlapping responsibilities between the PEA and the Central Election Bureau (CEB).

Political parties are guaranteed representation on election bureaus; however, independent candidates are not provided representation. Training outside the election cycle is foreseen by the law but the responsible entity is not yet operational. Several ODIHR EAM interlocutors expressed concerns regarding the extent and methodology of training for those carrying out the elections.

Citizens over 18 years of age are eligible to vote, unless disenfranchised by a court decision on grounds of legal incapacity or a court decision. The voter registration system is passive and continuous. ODIHR EAM interlocutors did not raise serious concerns about the accuracy of the permanent electoral register. Active registration was provided for out-of-country voters who chose to vote by mail.

¹ The English version of this report is the only official document. An unofficial translation is available in Romanian.

Candidate registration was conducted in an inclusive manner, offering voters a genuine choice from a broad spectrum of political alternatives. Candidates can be nominated by political parties or groups of citizens and, in both cases, require at least 200,000 supporting signatures. This exceeds the maximum prescribed in international good practice. Given the number of supporting signatures required, the prescribed 48-hour period for the CEB to register the candidates is not sufficient to properly scrutinize the submitted documents, including the signatures. Of 21 candidate nominations, 7 were rejected by the CEB. Registration documents of eight candidates were submitted to the prosecutor general for further investigation as some of the signatures submitted presented obvious similarities.

The campaign was competitive and took place in a calm and open environment with respect for fundamental freedoms. During the official campaign period, campaign was low key, in part due to strict restrictions on the use of banners, posters and billboards. Conversely, the ODIHR EAM interlocutors noted that prior to the official campaign period, campaigning was very visible, including posters, banners and campaign volunteers seeking support for their candidates. The campaign allows for numerous public debate opportunities, however, the leading candidates avoided using them.

The campaign finance framework was recently amended resulting in large increases in the amount of subsidies granted to eligible parties that can now be used for campaigning. Conversely, independent candidates cannot receive subsidies. Political parties, political alliances and citizen organizations belonging to national minorities are eligible for reimbursement of campaign expenses if they received at least three per-cent of the vote. Some ODIHR EAM interlocutors shared concern that the increase in funding for parliamentary parties could skew the campaign playing field.

The PEA issued press releases containing the total amount of campaign income/expenses at that time. However, contrary to good practice, detailed information related to the amount of each contribution and expenditure for each candidate is not required. Noncompliance with campaign finance provisions can result in administrative sanctions, but they remain disproportionately low and are neither effective nor dissuasive.

The media offered limited election coverage, reflecting the low-key campaign for the presidential election, but informed voters of the different political options. The diverse media sector remains marked by political polarization. Broadcasters are subject to restrictive legal provisions, including rules set by the National Audiovisual Council, the media regulatory body charged with monitoring media compliance with regulations. A few instances of false narratives spread online between the two rounds were noted, but the media promptly debunked rumours thus countering disrupting disinformation.

The complaints and appeals system provides for two levels of redress with the CEB being the body of last resort. There is no procedure in the law to appeal CEB decisions to a court of law. Election results can be challenged in the Constitutional Court by political parties, alliances, candidates and representatives of national minorities within three days of the publication of results.

The electoral legislation provides for observation of voting and counting by citizen and international observers. Observation of other stages of the electoral process, including sessions of the election bodies, is not provided for in the law, reducing transparency of the process.

In line with the ODIHR's methodology, the ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner, but observers visited a limited number of polling stations. Overall, however, interlocutors characterized the process as calm, well organized and

noted a high level of trust in the process. In line with previous ODIHR recommendations, the final results protocols were to be posted in a visible manner in the premises of the polling station and results were uploaded to the CEB website, disaggregated by county and PS, enhancing transparency of the process.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Government of Romania to observe the 10 and 24 November 2019 presidential election and based on the recommendation of a Needs Assessment Mission conducted from 16 to 18 July 2019, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) from 28 October to 27 November.² The ODIHR EAM was led by Ambassador Christian Strohal and consisted of six experts from five OSCE participating States. The EAM was based in Bucharest.

The electoral process was assessed for compliance with OSCE commitments, other international obligations and standards for democratic elections, and with national legislation. In line with ODIHR's methodology for EAMs, the mission did not observe election day proceedings in a systematic or comprehensive manner, but visited a limited number of polling stations.

The ODIHR EAM wishes to thank the Ministry of Foreign Affairs and the Permanent Electoral Authority for their co-operation and assistance, as well as to express gratitude to representatives of other state institutions, courts, the ombudsperson, election bureaus, political parties, candidates, media, civil society, academia, the resident diplomatic community, and other interlocutors for sharing their views.

III. POLITICAL BACKGROUND

On 9 July 2019, in line with the Constitution, the government called a presidential election to be held on 10 November 2019. Romania has a semi-presidential political system, with executive powers shared by the president and a government headed by a prime minister. The president is the head of the state and, among other duties, appoints the government and the prime minister, with approval of the parliament. According to the Constitution, the president is the Supreme Commander of the Armed Forces, has competences in the country's foreign affairs, and is obliged to safeguard the Constitution and the proper functioning of the public authorities. The legislative powers are vested with the two-house parliament, comprising the Chamber of Deputies and the Senate.

The last presidential election was held in November 2014. The first round saw Victor Ponta, leader of the Social Democratic Party (PSD), with a commanding 40 per cent to 30 per cent lead over Klaus Iohannis. However, Mr. Iohannis was elected in the second round after sweeping protests over how the out-of-country voting process was organized.

Following the 2016 parliamentary elections, a majority government was formed by the PSD and the

² See all [previous ODIHR election-related reports on Romania](#).

Alliance of Liberals and Democrats (ALDE).³ This government was led by 3 different prime ministers, including Romania's first female prime minister Viorica Dăncilă, with a high turnover in government positions. Women are underrepresented in the parliament, with 20.7 per cent of the seats in the Chamber of Deputies and 14.7 per cent in the Senate. Since the 2016 elections, a number of reforms were introduced which weakened the judiciary's independence and anti-corruption tools, sparking numerous and large-scale anti-corruption protests between 2017 and 2019.⁴ Following these protests and repeated critical reactions to the proposed legislation by different national and international institutions, a consultative referendum on the matter took place on 26 May 2019. With over 85 per cent of the vote, the electorate supported the prohibition of amnesties and pardons for corruption offences and, separately, a motion to prohibit the government from passing emergency ordinances concerning the judiciary and to extend the right to appeal them to the Constitutional Court.

On 27 May, following several investigations by the National Anticorruption Directorate, a state agency mandated to conduct investigations and prosecutions on high and medium level public officials, Liviu Dragnea, the president of the PSD and member of the Chamber of Deputies at the time, was sentenced to a three and a half year prison term on corruption charges for abuse of office.⁵ Numerous ODIHR interlocutors stated that this caused significant turmoil in internal PSD plans for the presidential election.

On 26 August, the junior partner in government removed support from the Dăncilă government, though it continued to govern for another several weeks. On 10 October, the government fell after a motion to censure initiated by the PNL. This left Romania with a caretaker government for just under a month and framed the first round of the campaign which officially began two days later, on 12 October.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The president is directly elected for a five-year term by an absolute majority and may hold office for up to two consecutive terms. If no candidate receives an absolute majority of the total number of eligible voters, a second round between the two leading candidates is held two weeks later. The candidate who obtains the majority of votes in the second round is elected.

Presidential elections are primarily regulated by the 1991 Constitution (amended in 2003), the 2004 Law on the Election of the President of Romania (PEL), 2015 Law on the Election to the Chamber of Deputies and the Senate (Parliamentary Elections Law), 2006 Law on Financial Activity of Political Parties, Electoral Campaigns (Political Finance Law), 2015 Law on Postal Voting, as well as elements of the 2009 Criminal Code, 1992 Law on the Constitutional Court, and 2002 Law on Radio and Television Broadcasting (Broadcasting Law).

³ When elected, out of 136 seats in the Senate, PSD had 67 members and ALDE 9 members, and in the Chamber of Deputies, out of 328 seats, PSD had 154 members and ALDE 20 members. The parliamentary opposition was originally composed of the National Liberal Party (PNL), Save Romania Union (USR), the Democratic Alliance of Hungarians in Romania (UDMR), the People's Movement Party (PMP) and a number of citizens' organizations belonging to national minorities.

⁴ See [European Commission's report on developments in Romania under the Cooperation and Verification Mechanism](#).

⁵ Previously, in April 2016, Mr. Dragnea was sentenced to a two-year suspended sentence for election fraud which occurred during a 29 July 2012 referendum.

Most electoral laws were amended several times, including in 2018 and 2019. The 2019 amendment process was dealt with by a Joint Special Commission of the Chamber of Deputies and the Senate which enacted changes to the Presidential, Parliamentary, Political Financial and Law on Postal voting on 5 July.⁶ The changes, addressing some previous ODIHR recommendations, were related to out-of-country voting and procedures such as allowing people in queues to vote until midnight, as well as allowing voters to support more than one nominee to register as a candidate.⁷

The legal framework provides a sound basis for conducting democratic elections. Although comprehensive, it is interspersed across different instruments covering different elections. Some provisions applicable to all elections such as those for election administration, voter registration and observers' accreditation are included only in the Parliamentary Elections Law. Discussion regarding codification of the various election laws has been ongoing for years and efforts were undertaken by various national and international stakeholders.⁸ According to most ODIHR EAM interlocutors, a period after the 2020 parliamentary elections until the next presidential and European Parliament elections could constitute a good window of opportunity for the enactment of a unified election code.

As previously recommended, consideration should be given to enacting an election code applicable to all types of elections through an open and inclusive process following consultations with relevant stakeholders in order to eliminate inconsistencies generated by the concurrent application of several pieces of legislation.

Consistent with the requirements of the PEL, the government issued five decisions related to the date of presidential election, the election calendar, the approval of the election budget, and measures for the proper organization and conduct of elections and about postal vote.

The Constitution allows the government, in exceptional cases, to issue government emergency ordinances (GEOs) without delegation from the parliament. The GEOs enter into force after being submitted for debate in an emergency procedure to the competent chamber and after publication in the official gazette. GEOs must state the emergency being addressed and cannot affect electoral rights.⁹ If these ordinances are related to provisions of organic law, as is the case of some election provisions, they must be approved by a majority vote in both chambers of parliament.¹⁰ In the past, GEOs were often used to amend the law in lieu of a normal parliamentary procedure. This practice has been criticised in previous ODIHR reports and by other relevant actors.¹¹ Moreover, GEOs are

⁶ The amendment entered into force on 29 July. The Joint Special Commission then ceased activities.

⁷ The new out-of-country voting changes were prompted by repeated incidents with overcrowded polling stations abroad during previous elections and included extending voting from one to three days, further access to postal voting and the composition of electoral bureaus.

⁸ In 2011, the PEA formulated a draft code which remains posted on the [PEA website](#). Constitutional Court Decision 51 of 2012 stated “the need for the entire electoral legislation regarding the election of the Chamber of Deputies and the Senate, of the President of Romania, the elections for the European Parliament, as well as the election of the local public administration authorities, to be reviewed, to be concentrated in an electoral code, whose common and special provisions ensure, in accordance with constitutional principles, the organization of a democratic, fair and transparent ballot.”

⁹ With decision 1189/2008 the Constitutional Court interpreted the meaning of ‘affect electoral rights’ as not to harm the existence of a subjective right such as right to vote and right to stand.

¹⁰ According to Article 73 of the Constitution, provisions related to election system and organization and functions of the election administration are considered organic laws.

¹¹ See the [Venice Commission Opinion On Emergency Ordinances Amending the Laws of Justice](#), which called on the Romanian authorities to limit their use of emergency ordinances as “it affects the quality of the legislation, disturbs legal certainty, weakens external checks on the Government, and disregards the principle of the separation of powers”.

usually enacted close to election day, contrary to international best practices.¹² Positively, for this election only one GEO was issued.

The legislation expressly mandates the PEA to issue administrative acts such as resolutions, decisions and instructions. These acts are enacted for every presidential election and are posted on their website. Resolutions, having normative nature, are also published in the official gazette. The Central Election Bureau (CEB) can also issue decisions and resolutions for the uniform interpretation of the law, binding for all public authorities and institutions.¹³ Regrettably, the legislation does not clearly delineate the specific areas of competence between the two election bodies in issuing administrative acts, which could result in overlaps.¹⁴

Competence to issue administrative acts related to the election process could be vested with one single election administration institution instead of being divided between the election authorities. Alternatively, the legislation could clearly differentiate the respective areas of competence between the PEA and CEB in issuing administrative acts. All administrative acts published in the gazette could be consolidated for ease of reference in future elections.

V. ELECTION ADMINISTRATION

The election was managed by two administrative structures: the Permanent Electoral Authority (PEA) and a three-tiered structure of election bureaus which are established for each election, headed by the CEB.¹⁵ The mid-level comprised 41 County Election Bureaus, 6 election bureaus for the Municipality of Bucharest and one election bureau to process polling stations abroad. Voting was administered by 19,583 Election Bureaus for Polling Stations (BESVs), including 835 BESVs in polling stations in 98 countries abroad. Postal votes sent back to Romania were assigned to three other designated Election Bureaus for Postal Voting.¹⁶

The PEA, an independent election authority, is mandated to issue decisions and instructions to supplement election laws, draft proposals concerning electoral reform, maintain the permanent electoral register and database of polling staff, and oversee campaign finance. During the election period, the PEA ensures logistical arrangements and provides support personnel to the election

¹² Section II. 2.b. of the 2002 Venice Commission Code of Good Practice in Electoral Matters (Code of Good Practice) recommends that “the fundamental elements of electoral law.... should not be open to amendment less than one year before an election.”

¹³ Article 12 (5) Parliamentary Elections Law.

¹⁴ There is no rational division of competence in issuing decisions. In this election, the CEB issued a total of 21 acts, including 5 resolutions on interpretation of certain articles of the PEL; 17 decisions related to the implementation of GEO 64/2019; documents required for candidacy application from political parties; tabulation and verification of results; measures for the use of mobile ballot boxes, and appointment/replacement of out-of-country election bureau members, among others. As of 21 November, the PEA had issued a total of 23 acts, including 20 resolutions defining the location of the PSs abroad and irregularities signalled by the Information System for Monitoring Turnout and Preventing Illegal Voting (SIMPV); two decisions on the list of tablet operators for PSs and handover of electoral materials to PS electoral bureaus; one instruction regarding the electoral operations and handover of electoral materials to the election bureaus at county and the municipality of Bucharest level, among others.

¹⁵ Technical, administrative or logistical support to the election administration bodies is provided by the Ministry of Foreign Affairs, the Ministry of Interior, the National Institute for Statistics, the Special Telecommunications Service as well as offices of prefectures and municipalities.

¹⁶ Those registered could either send their ballots to the assigned in-country election bureau or either send or deliver in-person to the diplomatic or consular office in their respective country of residence.

bureaus.¹⁷ Having its own specialised technical apparatus staffed with non-partisan civil servants, the PEA is led by a president, appointed by a joint session of parliament, and supported by two vice-presidents.¹⁸ The current president was appointed in February 2019.

The main responsibilities of the CEB were to oversee the electoral process, ensure the homogenous application of the election law, register presidential candidates, adjudicate appeals from lower-level bureaus, and tally the election results. The CEB was composed of five judges randomly selected from among the judges of the High Court of Cassation and Justice, the president and two vice-presidents of the PEA, and ten members nominated by political parties represented in the parliament and political alliances which nominated candidates. Seven members of the CEB were women, including the president. The current rules for composition of the CEB prioritize nominees from parliamentary parties, limiting access for non-parliamentary political alliances which nominated candidates. Independent candidates cannot put forward representatives for any level of the election administration.

Political parties and independent candidates should have equal opportunity for representation on election bodies. Preferential rules that put parliamentary parties at an advantage should be reconsidered.

The lower level election bureaus (EBs) were composed of non-partisan professionals assigned to the executive positions and representatives of political parties and party alliances participating in the election as regular members.¹⁹ A 2019 CEB decision allowed contesting political parties that were not represented in the BESVs to nominate proxies to observe in the polling stations. However, this decision did not apply to independent candidates. Nominees could be replaced until the day before election day and, according to the mid-level EBs, it was a common practice. This could have affected the performance of the election bureaus.

In order to enhance stability of the election administration, deadlines for the replacements of election bureau members should be shortened.

The election administration bodies conducted the elections in an efficient and impartial manner, including an extensive polling exercise abroad. The PEA, the CEB as well as mid-level EBs held regular sessions and completed the technical preparations within the required deadlines. Contrary to good practice, sessions of the higher-level election bureaus are not open to the public, reducing transparency.²⁰ Session agendas, decisions and daily reports of received complaints and petitions were published on the official website of the CEB. However, there was no uniform means of publicizing decisions from mid-level bureaus.

In general, the election administration bodies enjoyed public trust; however, some ODIHR EAM interlocutors voiced concerns with regard to the lack of transparency in the election administration

¹⁷ In its work, the PEA is supported by a network of regional and county offices.

¹⁸ All three are appointed for an eight-year term and cannot be party affiliated. One vice-president is appointed by the president of Romania and the other by the prime minister.

¹⁹ The mid-level election bureaus comprise three judges appointed from local courts, one representative of the PEA and up to seven representatives of the political parties that nominated candidates. The BESVs are composed of a president and deputy, appointed by the PEA from among professionals registered in the Body of Electoral Experts, and up to seven members nominated by political parties contesting in the election.

²⁰ Section II.3.1.81 of the 2002 Code of Good Practice states that “[t]he meetings of the central electoral commission should be open to everyone, including the media [...]. Any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection.”

concerning the use of information technology for verifying voters' identity and election data processing.

In order to increase transparency, sessions of the election administration bodies should be open to the public. Decisions and minutes of their sessions should be published in a timely and consistent manner.

In line with previous ODIHR recommendations, a roster of electoral experts was established in 2016 as a pool of qualified and trained professionals who could serve as BESV presidents and deputies.²¹ Legislation foresees the establishment of an Electoral Expert Centre to provide training outside the election cycle. This entity is not operational yet. Executive BESV members are trained by the mid-level EBs for each election. The politically nominated BESV members are to be trained by their nominating party.²² Several ODIHR EAM interlocutors expressed concern regarding the training methodology, specifically pointing to the limited scope of training sessions held in large groups over a short period of time.

To enhance the professional capacity of polling personnel, the Electoral Expert Centre should be instituted. Consideration should be given to including the politically nominated BESV members into official training sessions.

The PEA conducts voter information activities. For this election, the information campaign focused on the new arrangements for out-of-country and postal voting. Despite these efforts, over eight per cent of postal votes were invalidated in each round for not being submitted in accordance with the required procedures.

VI. VOTER REGISTRATION

Citizens over 18 years of age are eligible to vote, with the exception of those disenfranchised by a court decision on grounds of legal incapacity or judicial sentence.²³ The denial of voting rights on the basis of intellectual or psychosocial disability is contrary to international standards.²⁴ Further, the legislation specifies some types of offences to trigger the automatic deprivation of voting rights, leaving the decision on other types of offences to the discretion of the courts on a case-by-case basis.

In line with international obligations, restrictions on the suffrage rights of persons with intellectual or psychosocial disabilities should be removed. Authorities should introduce provisions to ensure that the deprivation of the right to vote for people with a judicial sentence are based on clear criteria respecting proportionality.

²¹ The database for the presidential election contained 58,829 registered persons, out of which 70 per cent were women.

²² Guideline II 3.1 (g) of the 2002 Code of Good Practice states that members of electoral commissions must receive standard training.

²³ According to information published by the PEA, 19,125 voters in the first round and 19,186 in the second round were disenfranchised on this ground.

²⁴ See Articles 12 and 29 of the [2006 UN Convention on the Rights of Persons with Disabilities](#) (CRPD). See also paragraph 9.4 of the [2013 CRPD Committee's Communication No. 4/2011](#), which states that "Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention".

The voter registration system is passive and continuous. The PEA has overall responsibility for management of the permanent and centralized electoral register, which is based on a compilation of data from various state authorities.²⁵ Citizens may verify their data in the electoral register in person or online and can request changes throughout the year. Active registration was provided for voters who opted for postal voting. During the runoff, provisions were in place to update the electoral register to reflect changes in civil registration data, albeit not stipulated by the law. While general provisions and responsibilities for data management are outlined in the legislation, some competencies of the institutions involved overlap and the law lacks clarity in respect to certain deadlines for data exchange.²⁶

Authorities should further detail individual responsibilities of each institution involved in the management of the permanent electoral register and establish clear deadlines for data management and exchange.

Based on residency records, voters are included into permanent voter lists and assigned to a polling station (PS). Supplementary voter lists can be compiled in the PSs for citizens voting outside their place of registered residence.²⁷ The law provides for the use of a mobile ballot box for homebound voters and voters in inpatient and detention facilities. However, despite a previous ODIHR recommendation, applications for mobile voting are limited to a two-hour period the day before election day, effectively limiting the scope for the use of this option. Voters are required to present valid identity documents in the PSs to vote. Voters could renew IDs in an expedited manner on election day and the day before.²⁸ To prevent multiple voting and transmit preliminary election data, the Information System for Monitoring Turnout and Preventing Illegal Voting (SIMPV) was effectively used in all PSs. In out-of-country PSs, the system was also used to compile supplementary voter lists.

As previously recommended, consideration could be given to extending the period for submitting applications for mobile voting.

The permanent electoral register included 18,286,865 voters for the first round and 18,287,119 for the runoff. The total number of voters registered in the permanent electoral lists for voters abroad was 715,752 in the first round and 715,064 in the second round.²⁹ A total of 35,917 citizens were registered for postal voting.³⁰ ODIHR EAM interlocutors did not raise serious concerns about the accuracy of the permanent electoral register.³¹

²⁵ Data is collected from sources including the Directorate of Persons Record and Databases Management (DEPABD), the General Directorate for Passports, National Authority for Citizenship and municipal authorities.

²⁶ These include clear deadlines for communication of data by DEPABD for the initial registration of citizens who turned 18 or those with newly obtained citizenship.

²⁷ These include eligible voters whose data were omitted from the voter list, voters with domicile outside the respective administration unit, voters with domicile abroad voting in the country or abroad in a different PS than the assigned one, voters with reduced mobility voting in a different PS than the one assigned, and PS and security personnel on duty in the PS.

²⁸ For the first round, on 9 and 10 November, the DEPABD issued 30,462 new national identity cards. In the second round, 28,764 new IDs were issued.

²⁹ Some 32,000 voters used the opportunity to pre-register for out-of-country voting.

³⁰ Out of the total of 41,003 applications for postal voting, 5,086 were either cancelled by voters before registration or rejected due to invalid identity documents or incomplete data provided by the voters.

³¹ Some interlocutors noted concerns with the number of deceased citizens who died abroad as it is difficult to remove them from voter lists unless relevant documents are presented to the authorities.

VII. CANDIDATE REGISTRATION

According to the Constitution, citizens over 35 years of age, with the right to vote and domicile in Romania are eligible to stand for election. One may not stand as a candidate if serving in some civil sector positions and must step down from their position in order to stand.³²

Candidates can be nominated by political parties or groups of citizens and, in both cases, require at least 200,000 supporting signatures. This requirement does not meet international good practice.³³ Recent amendments extended the period for submitting nominations to the CEB from 40 to 50 days before election day. In line with previous ODIHR recommendations, another recent amendment allows voters to support more than one nominee. On 25 October 2019, the Ombudsperson filed a petition to the Constitutional Court to invalidate the provision requiring 200,000 signatures for nominations, claiming it affects the principle of proportionality which underpins the constitutional right to be elected.³⁴ The petition also challenges the provision allowing citizens to support more than one candidate.

The required number of signatures to support a candidature should be reconsidered to meet good practice.

Given the number of supporting signatures required, the prescribed 48-hour period for the CEB to register a candidate does not provide sufficient time to properly scrutinize the submitted documents, including supporting signatures. Further, the PEL is silent on a precise procedure for verification thereof.³⁵

Consideration should be given to develop specific procedures for verifying supporting signatures which should be made public sufficiently ahead of the signature collection process. Consideration could also be given to extending the period for verifying nomination documents.

Candidate registration was conducted in an inclusive manner, offering voters a genuine choice from among a broad spectrum of political alternatives. Out of 21 nominees, of whom 3 were women, 7 were rejected, including one woman, due to an insufficient number of support signatures or other requirements. Consequently, the CEB registered 14 candidates, two of which were women. In the case of candidate Viorel Cataramă, the CEB rejected his application for candidature as some of the signatures submitted presented obvious similarities; therefore, their total number was below the requirement. The Constitutional Court rejected the CEB's decision stating that the CEB had not

³² According to Art. 40 (3) of the Constitution, this category includes judges of the Constitutional Court, advocates of the people (ombudsperson), magistrates, active members of the Armed Forces, policemen and other categories of civil servants. The latter category is particularized in Art. 389 of the Administrative Code, comprising secretaries general and deputy secretaries general of public authorities and institutions of the central public administration, prefects and vice-prefect, as well as government inspector.

³³ See paragraph 17 of the UN Human Rights Committee General Comment No. 25: "... If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy." Section I.1.3.ii of the Code of Good Practice states that "The law should not require collection of the signatures of more than 1 per cent of voters in the constituency concerned".

³⁴ The Ombudsperson also contested the definition of a parliamentary party with regard to the establishment of electoral administration.

³⁵ Sections I.1.3.iii and I.1.3.iv of the Code of Good Practice state that "Checking of signatures must be governed by clear rules, particularly concerning deadlines;" and "The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked".

presented any proof of forgery and the rejection had been based on mere similarities in appearance which did not constitute evidence of forgery. Although registered, documents of Mr. Cataramă and seven other candidates were submitted for further investigation on these grounds. In total, the CEB dealt with 59 complaints against candidates.

VIII. ELECTION CAMPAIGN

The election campaign officially began on 12 October 2019, with campaign silence periods starting 24 hours before the opening of polls for each round.³⁶ Campaigning took place in an open atmosphere with respect for fundamental freedoms, including freedoms of expression, assembly and association. The campaign was conducted in a calm environment, without major incidents.

During the official campaign period, the campaign was low key, in part due to strict restrictions on the use of banners, posters and billboards and according to some political parties due to campaign finance regulations that go into effect with the start of the campaign.³⁷ Several ODIHR EAM interlocutors criticized the restrictions on posters and billboards as overly restrictive. Each candidate had a webpage that included their events and platforms and social media posts and advertisements were used extensively.³⁸ Other primary campaign methods included leafleting as well as small-scale regional gatherings around the country.

Unlike the official campaign period, many ODIHR EAM interlocutors noted that the campaign prior to the official campaign period was very visible, with posters and banners, as well as campaign volunteers seeking support for their candidates. This juxtaposition illustrates a need to rebalance legislation. Parties and candidates should have greater access to reach voters during the official campaign than prior to it.

Authorities should consider amending legislation to limit party campaigning prior to the official campaign period and reduce campaign restrictions during the official campaign period.

The field of contestants offered voters a diverse choice. President Iohannis clearly led in fairly consistent polling through the campaign, with Ms. Dăncilă favoured for the second spot.³⁹ However, the first round was considered a race for second place, with Dan Barna and Mircea Diaconu being the two other candidates with an outside chance of succeeding. A number of interlocutors noted that given limited funding and visibility, candidates lacking the support of a parliamentary party were unlikely to advance.

Much of the attention during the first round was consumed by a focus on a no-confidence vote in parliament that felled the Dăncilă government two days prior to the start of the election campaign. The focus continued onto the establishment of a new minority government on 4 November, led by Ludovic Orban, the head of the PNL, the former opposition party. Given their affiliation to the

³⁶ Some party officials shared concern about the silence period with respect to out-of-country voting that extends for three days. They feared possible sanctions if an electoral body or court interpreted campaigning during out-of-country voting as breaking the silence period, though article 35(1) states the campaign “ends on the Saturday morning preceding the election date”.

³⁷ Article 41 provides that mayors of localities are to provide special boards for candidate posters. In practice, there are very few such boards. The use of billboards is prohibited during the election campaign period.

³⁸ Facebook is the primary social media venue used in Romania, followed by Instagram.

³⁹ These two candidates were supported by the two largest political parties and have far greater access to resources and finances as well as a regional infrastructure to rely on.

main parties involved, this kept the spotlight on the main actors in this process, President Iohannis and former Prime Minister Dăncilă.

While candidates published campaign platforms, little discussion of these surfaced during the campaign. When candidates spoke to substantive issues, they included policies within presidential authority such as foreign affairs, defence policies and rule of law, but also often spread into subjects outside the presidents' purview, including issues such as austerity, migration, deforestation.

The campaign allows for numerous public debate opportunities, however, the leading candidates avoided using such opportunities. President Iohannis refused all debates and Ms. Dăncilă would not debate unless the incumbent president took part. Minor candidates took part in several debates.⁴⁰ Greater attendance by leading candidates at organized debates would have been beneficial to strengthen a voters' opportunity to make an informed choice.

The election campaign for the second round officially started after the Constitutional Court validated the results of the first round and Ms. Dăncilă became the first woman to enter into the second round for a presidential election in Romania.

A primary focus of the second round became whether the candidates would debate one another, with President Iohannis rejecting any notion of debating Ms. Dăncilă. There was widespread dissatisfaction with this decision and interlocutors felt a debate should be required, many of them stressing that this decision may have negatively impacted the ability of the voters to make a fully informed choice. Mr. Iohannis eventually created an event he referred to as a debate, though he self-moderated it with select journalists, students and a political scientist.⁴¹ Ms. Dăncilă countered by organizing her own event for any journalist interested in asking her questions, scheduling her event one hour prior to Mr. Iohannis' and continuing well into his events time. Ratings for both events were quite high, showing public appetite to hear from the candidates.⁴²

During the second round, the two candidates and the parties supporting them engaged in increasingly antagonistic commentary toward one other.⁴³ At least two prominent PSD public figures insinuated comparisons between President Iohannis and the Nazi regime, which is particular concern compounded by Mr. Iohannis's German cultural background.⁴⁴

⁴⁰ In one case, higher polling candidates took part in a debate organized by *Europa FM* on the last day of the first-round campaign. Dan Barna (USR-PLUS Alliance), Hunor Kelemen (UDMR) and Theodor Paleologu (independent supported by PMP) took part.

⁴¹ Several journalists voiced concern regarding the restrictive format of the incumbent president's event.

⁴² Television ratings by the Romanian Association for Audience Measurement (ARMA) show that Mr. Iohannis's Ms. Dăncilă's events reached some 2.1 million and 1.7 million viewers, respectively.

⁴³ In his statement on 16 November, President Iohannis stated "I am not in an electoral contest with the PSD, I am at war with the PSD."

⁴⁴ On 16 and 17 November, two senior PSD figures made inflammatory comments about Mr. Iohannis including that he "has little more than to put the yellow star on the chest of citizens who do not agree with him" And that the president saw himself as the "head of concentration camp" where social democrats would be imprisoned for re-education. While she apologized for the statement the next day, the National Council for Combating Discrimination stated they would be looking into the comments.

IX. CAMPAIGN FINANCE

The financing of presidential campaigns is regulated by the 2006 Political Finance Law, most recently amended in 2018 and 2019. These changes are related among other things to the calculation of state subsidies, how they may be used for campaigning and the oversight power shared between the PEA and the Court of Auditors.⁴⁵

Parliamentary political parties receive subsidies from the state budget which are allocated in proportion to the number of votes obtained in the latest elections, with additional funds provided according to the number of mandates received by women.⁴⁶ The latest amendments have significantly increased the yearly amount allocated from the state budget which is now ranging from 0.01 percent to 0.04 percent of the national GDP.⁴⁷ Independent candidates cannot receive subsidies.⁴⁸ The 2019 amendment also extended the right for parties to use these subsidies for campaigning provided they open a separate bank account. According to ODIHR EAM interlocutors, this increase could potentially affect the level playing field at the expense of newly established parties and independent candidates. The law also provides for the reimbursement of the campaign expenses if the candidate wins at least three per cent of the vote (with the exception of amounts drawn from the subsidies). Reimbursement is to be requested to the PEA within 90 days of the elections.

Presidential campaigns can also be financed by contributions from party members, individual donations, candidates' personal incomes and loans from individuals or credit institutions. In-kind donations must be declared at market value. Contributions from certain categories of donors, such as foreign sources, labour unions and state institutions and enterprises, are prohibited. The overall ceiling for private campaign contributions and expenses is 20,000 times the minimum gross salary, amounting to some RON 42.5 million for these elections (approximately EUR 8.9 million).⁴⁹ These donations must be declared within three days from receipt and must be deposited in a separate bank account. The funds can be used only after they have been duly declared. During this election the PEA issued two press releases containing the electoral contestants' total amount of income/expenses to that time.⁵⁰ However, contrary to good practice, detailed information related to the amount of each contribution and expenditure for each candidate is not required.

While the recent amendments introduced some positive provisions, they did not provide further measures regulating third party financing. Though the law forbids the production and payment of campaign material by third parties, it leaves out whether other forms of campaign support are

⁴⁵ The Council of Europe's Group of States Against Corruption (GRECO) in its 2017 [Addendum to the Second Compliance Report of Romania of the Third Evaluation Round](#), acknowledged the adoption of changes introduced in 2016 by Government Ordinance No. 10/2016 to the political finance law. However, GRECO also reported that the level of compliance with their recommendation was 'globally unsatisfactory'.

⁴⁶ For the political parties that promote women on the electoral lists, on eligible places, the amount allocated from the state budget is increased in double proportion to the number of mandates obtained in elections by women candidates,

⁴⁷ In 2018, the parties received some EUR 35 million as subsidies and for 2019 the estimation was around EUR 57 million.

⁴⁸ Guideline 130 of the ODIHR and Venice Commission Guideline on Political Party Regulation states that "where registered political parties are provided state support...there should be a system of support for independent candidates to ensure they are awarded equitable treatment in the allocation of state resources".

⁴⁹ At the time of this election, 1 EUR equaled approximately RON 4.8.

⁵⁰ In the first round, the top [declared expenses](#) were: PNL (RON 18 million), followed by PSD (RON 16.538 million), USR (RON 179,708) and ALDE (RON 300,000). In the second round the [declarations](#) were: PSD (RON 1.566 million) and PNL (RON 400,000).

allowed, and does not include a clear definition of what a third party is, nor the relative registration process.⁵¹

Consideration should be given to introducing provisions into the Political Finance Law that would add a clear definition of what constitutes a third party and the related registration mechanism.

Within 15 days after election day, parties and candidates must submit a detailed report of their campaign expenditure to the PEA which must be examined within 30 days. The report must be published online and in the official gazette within 60 days from the publication of results. No interim report is required.⁵²

In order to enhance the accountability of political parties and the overall transparency of the election process, consideration could be given to require periodic reporting on campaign expenditure during the campaign and before election day.

The PEA is entrusted with oversight functions and can initiate investigations and issue fines. The PEA has 30 days to check the party and candidate campaign expenditure reports. The review is, however, limited to verifying whether the declared expenditures match the donations and no thorough auditing and investigation of expenditures is undertaken, as would be advisable. Controls over the state subsidies and reimbursements are also completed by the Court of Auditors. The 2019 amendment sought to further clarify the shared competence between the PEA and the Court of Auditors in controlling the use of state funding by requiring the Court of Auditors to verify reimbursement amounts within 30 days of when the PEA completes its audit.

Noncompliance with campaign finance provisions are considered misdemeanours that result in administrative sanctions. If these violations meet the legal requirements to be qualified as criminal offences, they are punished according to criminal law. The PEA can impose monetary sanctions in its decisions, which can be challenged to the courts.⁵³ These sanctions, although revised by the 2015 amendments, still remain disproportionately low and are neither effective nor dissuasive.⁵⁴

Consideration should be given to revise the sanctions for campaign finance violations in order to render them effective, proportionate and dissuasive.

⁵¹ According to the Political Finance Law, the total financial contribution of third parties cannot exceed, during one year, an amount equal to 0.006% of the income established in the state budget for that year.

⁵² Political Parties are required to submit a detailed report regarding their income and expenses undertaken in the previous year no later than 30 April 2019 to the PEA which should publish it on the website within 5 days. See Paragraph 198 of the 2010 ODIHR and Venice Commission Guidelines on Political Party Regulation which recommends that “reports on campaign financing should be turned in to the proper authorities within a period of no more than 30 days after the elections.”

⁵³ By law, monetary fines range from RON 10,000 (EUR 2,094) to RON 25,000 (EUR 5,237) in cases, among others, of failure to submit the campaign expenditure report after the election. From RON 15,000 (EUR 3,142) to RON 50,000 (EUR 10,474) in cases, among others, of misuse of state subsidies and if the contributions exceed the limits set forth in the law; from RON 100,000 (EUR 20,949) to RON 200,000 (EUR 41,896) in cases, among others, of violation of provision related to the use of the donation money earmarked for headquarters of political parties.

⁵⁴ See also the [2017 Addendum to the Second Compliance Report on Romania](#) by GRECO.

X. MEDIA

A. MEDIA ENVIRONMENT

The media sector is diverse with many outlets operating in the country offering a plurality of views, but is also politically polarized. The National Audiovisual Council (CNA), the media regulatory body, licensed 1,654 broadcasters.⁵⁵ The public broadcaster, directly funded from the state budget since licensing fees were abolished in 2016, operates *Romanian Television (TVR)* and *Radio Romania (SRR)*. *TVR* runs six nationwide television channels and five local stations; however, it faces financial problems and has limited audience ratings.⁵⁶ Concern regarding *TVR*'s lack of independence from government influence has been raised by several ODIHR EAM interlocutors. The *SRR* runs the nationwide news channel *Radio Romania Actualitati*, which enjoys high audience penetration.

In order to foster independence of the public broadcaster, a funding mechanism through license fees could be considered as it is less susceptible to direct or indirect government interference over the public service broadcaster compared to relying on the state budget as the primary source of funding.

Television has the largest share of the media advertising market and remains the most important source of news, while online media has overtaken print media. Private broadcasters *ProTV* and *Antena 1*, followed by *Kanal D*, *Antena 3*, *Romania TV*, *Digi TV* and *B1 TV*, have the highest television audience rates respectively. Despite a generally pluralistic environment, there are no rules on preventing conflict of interest regarding media ownership. This results in media controlled by politicians or businessmen with political interests, as well as media coverage that is often politically biased. In addition, approximately ten media owners are currently under criminal investigation.⁵⁷ The Internet provides a free and open sphere for public discourse and social network sites (SNS) offer a variety of news and information sources. Facebook is the leading platform in the social media market. In spite of the urban-rural and age digital divide, Internet and SNS are key sources of information in Romania.⁵⁸

B. LEGAL FRAMEWORK

The legislation provides a sound framework for freedom of the media. The Constitution guarantees freedom of expression, and censorship and defamation were decriminalized in 2006. Incitement to hatred or discrimination is prohibited. Broadcasters are mainly regulated by the Broadcasting Law and overseen by the CNA, the body responsible for issuing licenses, monitoring the media and

⁵⁵ According to [official statistics from the CNA](#), as of 1st November 2019, there were 593 terrestrial radio stations, 10 terrestrial radio networks, 27 satellite radio stations, 12 terrestrial television stations, 101 satellite television stations, 236 cable television stations, and 675 cable retransmissions.

⁵⁶ In October 2019, according to data by the [ARMA](#) the public television channel *TVR1* reached less than 2 per cent audience share, and its news bulletins did not appear in the list of the 20 most watched news programmes in Romania.

⁵⁷ See the [2019 World Press Freedom Index by Reporters Without Borders](#).

⁵⁸ [Internet World Stats country statistics](#) states that as of 2018 Romania has 73.8 per cent Internet use penetration and 45.7 per cent Facebook penetration. A [July 2019 study by the National Authority on Communications](#) states that 70 per cent of respondents declared they have fixed Internet in their homes. According to a [CISR-Opinion Way public opinion poll](#) from May-June 2018, 48 per cent of respondents considered television the dominant source of social and political news, 22 per cent online media, 5 per cent radio, and 4 per cent print media.

promoting media literacy and market fairness.⁵⁹ The eleven members of the managing board are appointed by parliament for a six-year term and are legally obliged to be politically independent. Parliament may, however, dismiss the CNA president by rejecting the annual activity report.

The PEL constitutes a comprehensive legal basis for the media coverage of the elections. It stipulates rules for electoral promotion (paid and free airtime), electoral debates and informative programmes. The provisions apply to all broadcast media during the official campaign periods. Public and private radio and television stations are obliged to ensure equitable, balanced and fair coverage of the election campaign and provide contenders with free and equal airtime. The publication of opinion polls is prohibited 48 hours before election day and a silence period begins at 07:00 the day before election day. Paid political advertising is allowed on equal conditions and should be clearly marked. Provisions for private broadcasters, which include constraints on news coverage, appear overly restrictive and impinge upon the editorial freedom of the media. On the other hand, print and online media are unregulated.

To prevent undue limitations on the editorial freedom of the media in news and informative programmes, consideration should be given to amending the legal provision that requires private broadcasters to provide candidates with airtime proportional to what is allotted by the public broadcasters.

On 3 September 2019, in accordance with the PEL, the CNA issued detailed rules for the broadcast coverage of the election campaign.⁶⁰ Broadcasters had to inform the CNA of their intention to cover the election campaign and submit their schedules for electoral programmes by the deadline of 11 October. Of the accepted broadcasters, one third of them failed to meet this legal deadline; nevertheless, the CNA accepted all of them. Controversially, the CNA rejected an application to organize a televised debate filed by *ProTV* after the deadline, which points to an inconsistent approach in dealing with broadcasters.

Although, the reports from the CNA's media monitoring department provided a sound basis to monitor media compliance with required regulations, the CNA in its sessions only noted inaccuracies in the weekly reports prepared and submitted by broadcasters regarding their election coverage. This weakened the effective oversight for ensuring balanced coverage. Airtime compensation was never enforced.

The CNA media monitoring oversight mandate could expand to include a quantitative component, as the reporting requirements for broadcasters imposed an excessive burden on the media and in practice appeared ineffective.

A media report during the campaign alleged a CNA member was involved in the election campaign, at odds with the Broadcasting Law. The political engagement of CNA members prior to their nomination challenges the perception of independence required for the regulatory body, eroding public confidence in the authority. Many interlocutors met by the ODIHR EAM expressed general concern with the impartiality and effectiveness of the CNA. However, during the election

⁵⁹ Other laws governing the media are the Law on Free Access to Public Information and the Law on the Public Radio and Television.

⁶⁰ Additional relevant election provisions are included in CNA Decision no. 220/2011 with regards to political advertising, protection of human dignity, right to reply, and an obligation to ensure correct information and pluralism. The latter, for instance, mandates broadcasters to ensure clear distinction between facts and opinions, impartiality and balance in news programmes and debates.

period, the CNA worked transparently, holding regular public sessions, appeared to generally act professionally and collegially on election related matters.

In order to enhance the autonomy and independence of the regulatory body, consideration could be given to revise legislation to ensure CNA members are selected on the basis of objective criteria and proven expertise in the field of media. Furthermore, legal provisions that allow parliament to dismiss the CNA president by rejecting the annual report should be amended, as early dismissals should only occur in extreme circumstances.

During the election campaign, the CNA analysed 33 media-related complaints and 98 reports prepared by the internal media monitoring department on alleged violations. It issued 13 public warnings against seven broadcasters, one warning letter, and imposed two fines.⁶¹

C. MEDIA COVERAGE OF THE ELECTIONS

The media reflected the low-key campaign for the presidential election, nonetheless informing voters of the different political views. Most online media failed to respect the campaign silence period by publicizing results of exit polls before polls closed, at odds with the PEL. Statements made by candidates on election day included exit poll results and election campaign slogans, appearing to contradict election silence provisions.

The public television *TVR1* granted all contestants with free airtime slots for electoral promotion, scheduled one-on-one interviews with all 14 candidates or their representatives, seven debates before the first round and one between the rounds. Private broadcasters also offered debate opportunities to candidates.⁶² However, despite a distinct public interest, the major candidates refused to participate in debates and the incumbent president repeatedly rejected debate requests from his opponents.

Candidates engaged on social media, mainly Facebook, through posts on campaign events and purchasing ads on the platform. USR and PNL were the biggest investors according to data from the Facebook Ad Library.⁶³ The Facebook page of a local ALDE branch was temporarily blocked after user reports to Facebook.⁶⁴

The election process was not tarnished by widespread instances of deliberate disinformation within social media. However, a few instances of false narratives were spread between the two rounds, also in some cases by political party officials, but they were not long serving.⁶⁵ On 15 November, the USR leader announced they lodged a criminal complaint regarding an alleged online disinformation campaign orchestrated by PSD. Positively, the media promptly debunked rumours,

⁶¹ The CNA issued public warnings to *Antena 3* (3), *BI TV* (2), *Digi 24 TV* (2), *Europa FM* (1), *Realitatea Plus* (2), *Realitatea TV* (1), and *Romania TV* (2) and imposed limited fines of 5.000 RON to *TVR1* for an episode of biased coverage and of 10.000 RON to *BITV* for use of offensive language.

⁶² The Europa FM stream of a debate on 7 November with three candidates reached almost one million views.

⁶³ The ODIHR EAM reviewed all political advertisements made available at the [Facebook Ad Library for Romania](#).

⁶⁴ On 1 November, the local ALDE branch in Sibiu sued Facebook for damaging their candidates election campaign by blocking its official page, allegedly without clarification. The page, which was temporarily blocked on 28 October due to reports received by users, was swiftly restored.

⁶⁵ For example, on 13 November a misleading story about the PNL candidate allegedly using an earbud during a press conference went viral, yet only for few hours. They were shared by some PSD members, including the current mayor of Bucharest, Gabriela Firea, who subsequently removed it from her Facebook timeline.

raising awareness and effectively countered disinformation. This significantly reduced the life cycle of fabricated narratives and protected voters from their extensive dissemination.

XI. COMPLAINTS AND APPEALS

The complaints and appeal system is handled by both the election administration and the judicial authorities. Complaints about the decisions and inactions of election administration bodies are submitted at the superior level of election bureaus and appealed according to the hierarchy of the election bureaus.⁶⁶

Although not clearly stated in the legislation, CEB decisions are considered final. The election legislation does not include any special procedures to appeal CEB decisions to the court system. This is contrary to international standards which require a judicial review against administrative decisions.⁶⁷

Consideration should be given to introduce the possibility of a judicial review of CEB decisions by a court of law with adjudication timeframe within the electoral period.

For these elections, the CEB published 95 decisions settling complaints and appeals. They generally related to campaign violations, including allegations of uneven distribution and improper display of election posters; inappropriate use of materials or vehicles, including during the campaign silence; illicit propaganda, use of online and printed defamatory materials; violation of people's right to opinion.⁶⁸

The prosecutor general reported that some 561 cases were submitted, which resulted in 119 criminal cases being prosecuted. Most cases were related to attempts to vote twice, the consumption of alcohol in PSs and vote buying.

Election results can be challenged before the Constitutional Court. Petitions can be submitted by political parties, alliances, candidates and representatives of national minorities within three days of the publication of results. Adjudication must occur prior to the deadline for the publication of election results. The Constitutional Court has issued 77 decisions, of which 67 related to CEB decisions on candidate registration and 10 related to the annulment of the elections which were all rejected on procedural grounds for being submitted too late or lacking the required formalities.

The Constitutional Court has the constitutional competence to oversee compliance with the proceedings of the presidential elections. With a recent resolution, the Constitutional Court

⁶⁶ At the county level, complaints must be solved within 3 days but there is no timeline for submission. They can be appealed to CEB within 48 hours from the decision and must be solved within 3 days.

⁶⁷ Para 5.10 of the [1990 OSCE Copenhagen Document](#) states "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity. Code of Good Practice, Section II.3.3.a. "There should be some form of judicial supervision in place, making the higher commission the first appeal level and the competent court the second. [Council of Europe's Recommendation Rec\(2004\)20](#), note 21 paragraph B.1.a "All administrative acts should be subject to judicial review"

⁶⁸ Challenges on the composition of election bureaus can be filed directly with the High Court of Cassation and Justice within two days from their establishment and must be solved within two days. Complaints concerning the hindrance to conduct the electoral campaign according to the law must be solved by the Constitutional Court, with the majority vote of the judges, within 48 hours from filing. The Constitutional Court is also competent to adjudicate complaints related to candidate registration (See Candidate Registration section).

interpreted this competence as not being limited only to the specific provisions of the legislation but having an implicit competence as a court of last resort whenever a complainant has no other way to appeal any alleged non-compliance with the PEL.⁶⁹

XII. CITIZEN AND INTERNATIONAL OBSERVATION

The electoral legislation provides for observation of the voting and counting process by citizen and international observers, as well as representatives of the media. To be accredited, citizen observers must be non-partisan and nominated by non-governmental organizations active in the field of protection of democracy and human rights which have been registered at least six months before election day. Observation of other stages of the electoral process or the activities higher level bodies is not stipulated by the law. Access to information and the right to observe is further limited by the non-public nature of election administration sessions and non-uniform procedures for disseminating information.

In order to enhance transparency, rights and obligations of observers should be defined in the election legislation, ensuring full access of domestic and international observers to observe all stages of the electoral process.

In an inclusive process, the PEA accredited a number of civil society organizations, international organizations, foreign election management bodies, and diplomatic missions.⁷⁰ One accredited citizen organization, Association for Implementation of Democracy (*Asociația pentru Implementarea Democrației*), was led by an independent candidate, Alexandru Cumpănașu, mixing a political entity into non-partisan activities. The largest citizen observation exercise was conducted by FiecareVot, a well-established coalition of citizen observer organizations, which carried out long- and short-term observation and voter information activities. For both rounds of the election, FiecareVot fielded more than 750 observers in the country as well as in many countries abroad.

XIII. ELECTION DAYS

In accordance with standard ODIHR's methodology, the EAM did not conduct a comprehensive and systematic observation of election day proceedings, however, visited a limited number of PSs in the municipality of Bucharest and Ilfov and Guirgiu counties on both election days. Overall, interlocutors characterized the process as calm, well organized and noted a high level of trust in the process.

On both election days, the voting process at PSs visited by ODIHR EAM was well organized and unfolded in a generally calm and orderly manner. The PSs were mostly equipped properly; nonetheless, cardboard ballot boxes used in some PSs did not ensure adequate security of the ballots cast and several PSs lacked proper signage to direct voters. Positively, a recent amendment

⁶⁹ With Constitutional Court Resolution 66/2019 the Court upheld the argument of the appellant stating that “in the event that there is no specific mechanism of redress against a decision of the Central Electoral Bureau before a court of law... the ruling on the appeal can only be attributed to the Constitutional Court, in its capacity of overseeing the whole proceedings of the election of the President of Romania”, according to art. 146 (f) of the Constitution.

⁷⁰ The PEA certified 27 civil society organizations and accredited 18 international organizations, foreign election management bodies, and diplomatic missions for the first round. In the second round, 28 citizen and 21 international observation groups observed the polls.

allows for voting to be extended for voters in queues at the time of closing; however, only until the midnight.

Despite recent efforts made by the PEA to improve accessibility of the PSs for voters with disabilities, a number of the PSs visited by the ODIHR EAM did not provide for full unassisted access, contrary to the national legislation and international standards.⁷¹ Voters with reduced mobility were able to request to vote using a mobile ballot box or at one of the barrier-free PSs.

The EAM noted that in a number of cases the voter's choice on the ballot could be identified due to the quality of the paper used for ballots in combination with the method for marking it by stamping, which may show through irrespective of folding the paper.⁷²

In order to ensure protection of secrecy of the vote, authorities should adopt appropriate measures to ensure that voter's choice on the ballot cannot be revealed.

Voters abroad had the right to vote by post for the first time in a presidential election.⁷³ While it constitutes a positive step in facilitating the voting for citizens abroad, a number of shortcomings exist.

While the total number of invalid votes cast in the first round was some 1.5 per cent and 1.8 per cent in the second one, the percentage of invalid postal votes was approximately 8.5 per cent and 10.6 per cent respectively. The prime factor for invalidations was the omission of, or incorrectly placed, voter certificates or the incorrect use of seals. Voter certificates were introduced as a safeguard to verify the voters' identity; however, the certificates only require the voters' signature which cannot be effectively verified. Further, the Post Office received postal votes for weeks after the official deadline. Even if these votes were sent well ahead of the deadline, they were still invalidated.

Up to 10,000 voters are assigned to each election bureau for postal voting. Given the high number of steps required while processing postal votes the number of voters assigned to each appears to be detrimental to the effectiveness of the process.

Consideration should be given to revising and simplifying the current arrangements of the postal voting in order to reduce the number of invalidate votes due to procedural errors and to avoid de facto disenfranchisements of voters due to delivery problems.

In line with previous ODIHR recommendations, the final results protocols are to be posted in a visible manner in the premises of the PS and both BESV members and observers can request copies of the protocol. The CEB decided that the BESV members nominated by the political alliances could make copies of the supplementary voter list which raised public concern about the protection of voter data.

⁷¹ See article 29(a)i of the CRPD: "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:... Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;"

⁷² See ICCPR, Article 25: "Every citizen shall have the right and the opportunity... to vote and to be elected at genuine periodic elections which... shall be held by secret ballot, guaranteeing the free expression of the will of the electors." Paragraph 7.4 of the OSCE Copenhagen Document requires that the OSCE participating States "ensure that the votes are cast by secret ballot or by equivalent free voting procedure".

⁷³ Introduced by the July 2019 amendments to the election legislation.

Turnout information was published in real time during both election days, based on data from the SIMPV. Upon completion of counting, the results from each PS, along with electronic copies of the results protocol and photos of the originals were uploaded to the CEB website, disaggregated by county and PS, enhancing transparency of the process. The CEB announced partial results during the day after each election. The CEB announced first round final results on 14 November, with a total turnout of 51.2 per cent. In the first round, the CEB was required to adjust results for out-of-country voting after issues with SIMPV settings for establishing the total number of voters by post and invalid postal votes. The final runoff results were published on 28 November, with a turnout of 54.9 per cent. Nearly one million citizens out-of-country cast a ballot in the second round, with few concerns raised. As required by the Constitution, the Constitutional Court validated the second-round final results on 28 November.

XIV. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in Romania and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with prior ODIHR recommendations, which remain to be addressed.⁷⁴ ODIHR stands ready to assist the authorities of Romania to further improve the electoral process and to address the recommendations contained in this and previous reports.

A. PRIORITY RECOMMENDATIONS

1. As previously recommended, consideration should be given to enacting an election code applicable to all types of elections through an inclusive process following consultations with relevant stakeholders in order to eliminate inconsistencies generated by the concurrent application of several pieces of legislation.
2. In line with international obligations, restrictions on the suffrage rights of persons with mental disabilities should be removed. Authorities should introduce provisions to ensure that the deprivation of the right to vote for people with a judicial sentence are based on clear criteria respecting proportionality.
3. Consideration should be given to develop specific procedures for verifying support signatures which should be made public sufficiently ahead of the signature collection process. Consideration could also be given to extending the period for verifying nomination documents.

⁷⁴ In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of prior recommendations is assessed by the ODIHR EAM as follows: 4, 8, 9, 15, 21 and 26 from the final report on the 2012 parliamentary elections and 5, 6, 18, 20, 21 and 22 from the final report on the 2009 presidential election are fully implemented. The recommendations 5, 7 and 25 from the final report on the 2012 parliamentary elections and 16 and 26 from the final report on the 2009 presidential election are mostly implemented. The recommendations 12 and 13 from the final report on the 2012 parliamentary elections and 7, 8, 10, 12, 14 and 23 from the final report on the 2009 presidential election are partially implemented.

4. In order to increase transparency, sessions of the election administration bodies should be open to the public. Decisions and minutes of their sessions should be published in a timely and consistent manner.
5. Consideration should be given to introduce the possibility of a judicial review of CEB decisions by a court of law with adjudication timeframe within the electoral period.
6. Consideration should be given to revise the sanctions for campaign finance violations in order to render them effective, proportionate and dissuasive.
7. To prevent undue limitations on the editorial freedom of the media in news and informative programmes, consideration should be given to amending the provision of Article 40.2 of the PEL that requires private broadcasters to provide candidates with airtime proportional to what is allotted by the public broadcasters.
8. In order to enhance transparency, rights and obligations of observers should be defined in the election legislation, ensuring full access of domestic and international observers to observe all stages of the electoral process.

B. OTHER RECOMMENDATIONS

Legal Framework

9. Competence to issue administrative acts related to the election process could be vested with one single election administration institution instead of being divided between the election authorities. Alternatively, the legislation could differentiate the respective areas of competence between the PEA and CEB in issuing administrative acts. All administrative acts published in the gazette could be consolidated for ease of reference in future elections.

Election Administration

10. Political parties and independent candidates should have equal opportunity for representation on election bodies. Preferential rules that put parliamentary parties at an advantage should be reconsidered.
11. In order to enhance stability of the election administration, deadlines for the replacements of election bureau members should be extended.
12. To enhance the professional capacity of polling personnel, the Electoral Expert Centre should be instituted. Consideration should be given to including the politically nominated BESV members into official training sessions.

Voter Registration

13. Authorities should further detail individual responsibilities of each institution involved in management of the permanent electoral register and establish clear deadlines for data management and exchange.
14. As previously recommended, consideration could be given to extending the period for submitting applications for mobile voting.

Candidate Registration

15. The required number of signatures to support a candidature should be reconsidered to meet good practice.

Campaign

16. Authorities should consider amending legislation to limit party campaigning prior to the official campaign period and reduce campaign restrictions during the official campaign period.

Campaign Finance

17. Consideration should be given to introducing provisions into the Political Finance Law that would add a clear definition of what constitutes a third party and the relative registration mechanism.
18. In order to enhance the accountability of political parties and the overall transparency of the election process, consideration could be given to require periodic reporting on campaign expenditure during the campaign and before election day.

Media

19. In order to foster independence of the public broadcaster, a funding mechanism through license fees could be considered as it is less susceptible to direct or indirect government interference over the public service broadcaster compared to relying on the state budget as the primary source of funding.
20. The CNA media monitoring oversight mandate could expand to include a quantitative component, as the reporting requirements for broadcasters imposed an excessive burden on the media and in practice appeared ineffective.
21. In order to enhance the autonomy and independence of the regulatory body, consideration could be given to revise legislation to ensure CNA members are selected on the basis of objective criteria and proven expertise in the field of media. Furthermore, legal provisions that allow parliament to dismiss the CNA president by rejecting the annual report should be amended, as early dismissals should only occur in extreme circumstances.

Election Day

22. In order to ensure protection of secrecy of the vote, authorities should adopt appropriate measures to ensure that voter's choice on the ballot cannot be revealed.
23. Consideration should be given to revising and simplifying the current arrangements of the postal voting in order to reduce the number of invalidate votes due to procedural errors and to avoid de facto disenfranchisements of voters due to delivery problems.

ANNEX I: FINAL RESULTS⁷⁵

<i>Data regarding the voting process</i>	<i>First round</i>	<i>Second round</i>
Total number of voters in the permanent electoral register	18,286,865	18,287,119
Number of voters (in-country permanent electoral register)	18,217,156	18,217,411
Number of voters in the permanent electoral register abroad	715,752	715,064
Number of voters registered for out-of-country voting in 2019	33,802	33,802
Number of voters registered for postal voting	35,917	35,917

<i>FIRST ROUND</i>		
Total number of voters who turned out to vote	9,359,673	51.18%
Number of voters who voted by post	25,319	0.27 / 70.49%
Number of voters who turned out to vote abroad	650,159	6.95%
Number of voters on supplementary voter lists	1,722,210	18.40%
Total number of valid votes	9,216,515	98.47%
Total number of invalid votes	142,961	1.53%
Number of invalid postal votes	2,142	8.46%
<i>Candidate</i>	<i>Number of votes</i>	<i>Percentage</i>
Klaus-Werner Iohannis	3,485,292	37.82%
Theodor Paleologu	527,098	5.72%
Ilie-Dan Barna	1,384,450	15.02%
Hunor Kelemen	357,014	3.87%
Vasilica-Viorica Dăncilă	2,051,725	22.26%
Cătălin-Sorin Ivan	32,787	0.36%
Ninel Peia	30,884	0.34%
Sebastian-Constantin Popescu	30,850	0.34%
John-Ion Banu	27,769	0.30%

⁷⁵ According to the [CEB results protocols](#) from 14 and 28 November.

Mircea Diaconu	815,201	8.85%
Bogdan-Dragos-Aureliu Marian-Stanoevici	39,192	0.43%
Ramona-Ioana Bruynseels	244,275	2.65%
Viorel Cataramă	48,662	0.53%
Alexandru Cumpănașu	141,316	1.53%

SECOND ROUND		
Total number of voters who turned out to vote	10,031,762	54.86%
Number of voters who voted by post	17,503	0.17 / 48.73%
Number of out-of-country voters	926,574	9.24%
Number of voters on supplementary voter lists	2,096,754	20.90%
Total number of valid votes	9,849,057	98.18%
Total number of invalid votes	182,648	1.82%
Number of invalid postal votes	1,856	10.60%
<i>Candidate</i>	<i>Number of votes</i>	<i>Percentage</i>
Klaus-Werner Iohannis	6,509,135	66.09%
Vasilica-Viorica Dăncilă	3,339,922	33.91%

ABOUT 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 Summit Document). This is referred to as the OSCE human dimension.

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 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

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.

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).