

2004 ROMANIAN ELECTIONS: TEST CASE FOR A TRUE ROMANIAN DEMOCRACY¹

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ABSTRACT

The article analysis the development and results of the November 2004 presidential and parliamentary elections in Romania. In the first part, it is argued that elections were free, but unfair, because of the control exercised by the party in government over state and media agencies, because of allegations of electoral frauds and because of an unfair electoral campaign. The second part of the article analyzes the outcome of the elections as a democratic exercise in alternation in power, and explains the mechanisms through which these outcomes were reached. The paper concludes with a few remarks on the quality of democracy in Romania and on the poor state of the rule of law demonstrated by recent political developments.

Key words: unfair elections, state capture, media dependency, alternation in power

¹ This paper is based on the 2004 political sections of Policy Warning Reports of the Romanian Academic Society, on Alina Mungiu-Pippidi's surveys and electoral analyses.

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Forward

Nobody expected anything spectacular from Romania's 2004 elections. Well advanced on its path to European integration, with three more years to go until the 2007 scheduled accession, Romania looked to be a done deal as far as democratic consolidation is concerned, at least compared to neighboring Ukraine. And all the more so since the previous 1992, 1996, and, especially, 2000 elections had been reasonably free and fair. Moreover, according to the European Commission Regular Reports, since 1997, Romania has been meeting the political ("Copenhagen") criteria regarding the stability of democracy, rule of law, human rights, and protection of minorities.² True, some warnings had been issued in the aftermath of the scandal surrounding the 2003 constitutional referendum, plagued by irregularities, while in 2004 there were strong signals that media freedom was under threat. Nobody expected, however, that the campaign and general elections would fall below previous standards in Romania, slipping back to those of the first 1990 ballot.

This paper aims to assess the quality of the November 2004 elections and the political developments that followed. The paper is structured in two parts: the first analyzes the freedom and fairness of the vote, and concludes that the elections were free, but unfair; the second part of the paper analyzes the outcome of the elections as a democratic exercise in alternation in power, and explains the mechanisms through which these outcomes were reached. The paper concludes with a few remarks on the quality of democracy in Romania and on the poor state of the rule of law demonstrated by recent political developments.

1. Free but unfair elections

In 2004, Romania held its fifth round of free elections³, both at the local (June 2004) and national (November 2004) level. Elections were free, but the electoral campaign and the overall political competition were far from fair.

This unfair character was due to several factors. First, the general structural imbalance of the Romanian political system, with a great concentration of

² In its 2002 Regular Report, the Commission found that "In its 1997 Opinion, the Commission concluded that Romania fulfilled the political criteria. Since then, the country has made progress in consolidating and deepening the stability of its institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. This has been confirmed over the past year. Romania continues to fulfil the Copenhagen political criteria." [2003 Regular Report on Romania's Progress towards Accession, European Commission.]

³ The first four rounds of elections were held in 1990 - immediately after the toppling of the Ceausescu communist regime, 1992, 1996 and 2000. All elections were reported to be free. [In its 1997 Opinion on Romania's application for EU membership, the Commission concluded: "Elections are free and fair; they led to a genuine change-over in November 1996."]

⁴ By post-communist parties we understand the successors to the Communist Party, which after many splits and realignments now reunite the conservative branch of the original National Salvation Front NSF (called initially Democratic NSF, then Romanian Party of Social Democracy), the Romanian Socialist Labor Party (initially chaired by Ilie Verdet, former Prime Minister of Nicolae Ceausescu) and the tiny non-communist prewar Romanian Social Democratic Party, formerly allied with anticommunists. Currently it goes under this latter name, PSD for short. The main fault line defining Romania's two groups of parties is the tackling of the communist legacy. Post-communists have fought against property restitution and opposed the legal prosecution of main Communist leaders, including the generals who executed Ceausescu's orders to shoot

resources in the hands of post-communist parties⁴ as compared to anticommunist parties, showed through more strongly in this electoral year than in previous ones. This imbalance was the effect of the tight control exerted by PSD over local and regional elites, the electronic media, and of the pressure put on the authorities responsible for regulating the electoral process. Incumbents were thus able to tilt the political field long before the campaign started. Second, elections were unfair because there was allegedly fraud at the ballots, which may have played a decisive role in influencing the results of the parliamentary round (the first), when the race was very close. And third, the electoral campaign itself was highly personalized and conducted unfairly, due to the use of negative campaigning methods.

Structural Imbalance of the Political System

The ruling Social Democrats relied mostly on state capture to assure their reelection, a strategy they pursued steadily during their four year mandate. This meant abusing the power to adjust legislation and control state agencies, to rule to the advantage of client groups, and making use of public goods, such as the media, to promote their party's image. The advantage of the post-communist bloc, PSD-allied with a minor party, the Humanistic Party, which has never passed the electoral threshold in legislative elections on its own, against the opposition alliance D.A.-had three major sources: control over local and regional elites, control over electronic media, and influence over authorities responsible for regulating elections.

a. Control over local and regional elites

This was the case especially in the least developed regions of Romania and it allowed for the manipulation of local resources, especially in rural areas. The reason why local elites backed the Social Democrats was that the latter's policies have always allowed them to control local resources. Loopholes in legislation and weak enforcement allowed the distribution of resources at the local level to depend largely on the central administration⁵. In many cases, the only way for a local mayor to have access to sizable public funds was to join the PSD group of 'predatory elites'. Therefore, political migration became a trend throughout the PSD mandate and especially in 2003, when a significant number of both MPs and local mayors changed sides and joined their ranks.

civilians on December 17th in Timisoara. Anticommunists-who oddly enough include another branch of NSF, the "reformed" branch, regrouped in the Democratic Party, together with the historical National Liberal Party-stand, on the contrary, for restituting property nationalized by Communists and prosecuting the authors of the violent repressions of the Romanian revolution. They ran as an electoral alliance, the Justice and Truth Alliance, or DA. For a short description of the main Romanian political actors see Annex 1 at the end of the article.

⁵ For a closer look on this matter see SAR's Policy Warning Report No. 5/2004, www.sat.org.ro at 10.01.2005.

Fig 1. Political migration
(Evolution of mayors' number: Elections 2000 results - IPP 2001
monitoring - IPP 2003 monitoring)

	Party	2000 counts	2001 counts	2003 counts	2000 percent	2001 percent	2003 percent	Increase (%)
1	PSD	1050	1584	1947	35.5	53.6	65.4	29.9
2	PD	483	407	307	16.3	13.8	10.3	-6.0
3	PNL	251	262	206	8.5	8.9	6.9	-1.6
4	UDMR	148	149	159	5.0	5.0	5.3	0.3
5	Indep	159	90	115	5.4	3.0	3.9	-1.5
6	PUR	32	64	76	1.1	2.2	2.6	1.5
7	Others	275	121	71	9.3	4.1	2.4	-6.9
8	CDR	147	116	57	5.0	3.9	1.9	-3.1
9	PRM	66	53	37	2.2	1.8	1.2	-1.0
10	ApR	284	79	0	9.6	2.7	0.0	-9.6
11	PSDR	62	32	0	2.1	1.1	0.0	-2.1

Source: Institute for Public Policy Romania, Dynamics of Mayors' Political Affiliation: the Case of Romania - One Year Before the Local Elections in 2004, Bucharest, October 2003.

Welfare support and various subsidies, licenses to use public resources (such as wood, an indispensable heating resource at the countryside) and vouchers for agro works were thus strictly controlled by local 'gatekeeper' elites in Romania's rural areas. Since about 38% of Romanians live on agriculture, of which a large part is engaged in subsistence farming, the highest level among accession countries, this trend managed to assure the PSD full control over the most impoverished and underdeveloped rural areas, by maintaining the state dependency of the population in these areas. Opposition parties do not even have headquarters in such subsistence farming areas, while the PSD is typically hosted on local government premises and PSD mayors are often the same people who enjoyed power during the Communist regime.

By controlling a countrywide network of such local elites, the PSD managed to maintain significant parts of rural Romania as a captive electorate, to such an extent that whole villages voted unanimously in favor of the PSD, out of fear that if their true preference were found out, they would be excepted from distribution of these essential resources.

The negative effects of such practices were registered, however, in public opinion, which continued to see corruption as a major problem in Romanian politics, despite the government campaign to curb it. 88% of Romanians think

that politicians are above the law, while 42% of them express their disappointment with the parliament⁷. At the same time, only 12.2% claim to trust political parties, while 80.3% think Romania faces generalized corruption⁸. According to this view, people see politicians as being above the law and as the most corrupt and untrustworthy social category, which in turn affects their social trust, and especially their trust in democratic institutions, such as the parliament, political parties, and the rule of law.

b. Control over electronic media

Another method used by the former party in government to distort the will of the electorate was the infringement of the freedom of the media through agenda setting and control of independent opinion. This was particularly obvious with regard to the three main TV channels, but also with regard to the written press, and especially the local press.

The three main TV channels-TV R 1, Antena 1, and ProTV, with 60% of the national audience between them-were all under the influence of the PSD before and during the electoral campaign. TVR1, the public TV station, which is the only television broadcasting in rural areas, has a politically appointed board, and was thereby controlled by PSD. Moreover, after the June 2004 local elections-in which, the channel reversed its original representation of the results as a PSD victory, and, after several days of dissent by many journalists, eventually adopted a more balanced picture-the annual report on the board received a negative vote in the Media Parliament Committee, dominated by the ruling party. According to law, this should have resulted in the entire board being dismissed. However, the situation was left in suspension and the vote in the plenum postponed, so that TVR entered the national electoral campaign with this threat hanging over its management. The news presented by this channel during the 2004 electoral year, and especially during the general elections, was thus clearly biased in favor of the party in government, as several local and international media monitoring agencies have noted⁹.

The two private channels have also demonstrated structural biases in favor of the incumbents. The leverage of the governing party in these cases was again clientelist in nature. Antena 1 belongs to Dan Voiculescu, head of the Humanistic party, junior electoral partner of the PSD. ProTV, the third network, has massive debts to the state budget, and its general manager is godfather of the PSD candidate for prime minister.

Beyond their obvious links with the government party, ProTV and Antena 1 have continued their move towards infotainment, in a marked departure from

⁶ For a thorough look into the matter of corruption at the political level in Romania, see the forthcoming booklet on corruption edited by the Coalition for a Clean Parliament in spring 2005.

⁷ IBEU Gallup Survey conducted in 2003 within the European Union Fifth Framework Program IBEU - Integrating the Balkans in the European Union.

⁸ According to the Public Opinion Barometer, May 2004.

⁹ See the monitoring reports of the Media Monitoring Agency on Romanian electronic media and printed press conducted before elections and during the electoral campaign. www.mma.ro

their beginnings in 1996, when they won credibility by reporting serious in-depth news. Political talk shows disappeared entirely or were aired during late-night hours, despite their high ratings with the public. Political news was shortened and hidden at the end of news programs, being gradually transformed into tabloid-like segments. Consequently, the audience for news and current affairs, which was leading the ratings in the late nineties, has lately plunged. This was a deliberate attempt by TVs to cut their political costs, even by losing audience, so that they would not be as susceptible in the future to political blackmail.

As a consequence, the three TV channels favored the PSD by avoiding any discussion of corruption, the main electoral topic, refraining from any criticism of the governing party and closely screening independent opinion leaders so that only those favorable to PSD would be featured in their programs. A serious scandal started between the two rounds of presidential elections after several editors from the public TV and radio stations publicly denounced the censorship in their newsrooms¹⁰.

Another frequent phenomenon preventing information from reaching readers during these elections was the hijacking of newspaper copies. Whole issues of the dailies *Romania Libera* and *Evenimentul Zilei*, with the famous PSD meeting transcripts, and of the investigation weekly *Academia Catavencu*, when they published a supplement containing the black lists of candidates to Parliament deemed morally unfit by the *Coalition for a Clean Parliament*, either vanished from the market, or reached subscribers without the essential pages. [MMA and RSF Press Release, December 8 2004]

Besides such direct interventions, the freedom of the press in this period was also infringed upon by the self-censorship of editors, due to economic pressures, as reported in a press conference held by Reporters sans Frontiers (RSF) at the end of their fact-finding mission in Romania in 2004. Moreover, according to both domestic and foreign media watchdogs, violent threats and violence against journalists have not decreased in 2004, as compared to previous years [MMA Report on the Freedom of the Press 2004], while several scandals generated by attempts to control the media through their private owners, especially in the cases of the two most important political broadsheets, *Evenimentul Zilei* and *Romania Libera*, broke out at the end of 2004.

c. Pressure over authorities responsible for regulating elections.

A third dimension of the state capture organized by the PSD for the purpose of distorting the elections consisted in the informal control over the judiciary and the electoral bodies. As elections were getting closer and polls showed results were still uncertain, such cases became more and more obvious.

¹⁰ Daily newspaper Romania Libera, "Televiziunea publica recunoaste ca a fost in caruta PSD!" (Public Television admits it has played the game for PSD), January 6, 2005.

The PSD used its clientelist networks and abused its governmental powers in order to have authorities such as the Electoral Central Bureau or the General Prosecutor's Office on its side.

One of the first such moves was the unconstitutional amendment to the electoral law introduced in 2004. Since President Ion Iliescu, after three mandates, was still the most popular post-communist politician, the electoral legislation was amended in 2004 so that he could run on the electoral list of PSD "as an independent" (law 373/2004 art 5 par 6). Article 84 of the Romanian Constitution states, nonetheless, that "during his term of office, the president of Romania may not be a member of any political party, nor may he perform any public or private office," but the Romanian Constitutional Court did not sanction this. This showed once more that the Romanian judiciary is still far from being independent, as the European Commission itself found in its reports on Romania.

At the same time, the National Anti-Corruption Prosecutor's Office reopened a case involving Bucharest Mayor Traian Basescu, the main challenger of PSD Prime-Minister Adrian Nastase in the presidential elections. This constituted clear interference of the governing party in the justice system, as the case had already been closed eight years earlier, when Traian Basescu, by then Member of Parliament, gave up his parliamentary immunity so that the case could be resolved. In addition, declarations by former Minister of Justice, Rodica Stanoiu, in the transcripts of the PSD Central Committee meetings made public by several daily newspapers just two days before elections, was clearly intended to influence the courts¹¹.

The publishing of these transcripts triggered other biased reactions by public authorities. They showed clear evidence of a conspiracy to manipulate the mass media before and during elections, to protect corrupt PSD members, to put pressure on magistrates to skew their investigations, and to manipulate electoral legislation to the advantage of PSD. However, the Chief Anticorruption Prosecutor, whose brother ran on the PSD ballot as a candidate, failed to ask the PSD to turn in the originals of these verbatim transcripts, taking at face value Prime-Minister Adrian Nastase's explanation that the transcripts were fakes. Moreover, the General Prosecutor, traditionally appointed by the President at the recommendation of the government, showed the same restraint in reacting to this case. Meanwhile important government members recognized the transcripts as accurate. The General Prosecutor kept quiet and abstained from even answering the requests filed by representatives of civil society to look into the matter. He did not answer either to the official complaints filed by the Coalition for a Clean Parliament¹² regarding the forgery of the Coalition's corruption flyers, although the complaints indicated clearly which printing presses of the PSD were printing fake flyers. The General

¹¹ Four days prior to the elections transcripts were leaked to the press (daily newspapers *Ziua* and *Evenimentul Zilei* November 23, 2004) of regular Monday meetings of Social Democrats leaders. They were meanwhile published in a three-volume book. [SECRETELE PSD. *Stenogramele guvernării social-democrate (PSD Secrets: The transcripts of the social-democratic government, 2004, 3 Vol, Bucharest: Ziua)*

¹² See Annex 2 for a brief description of the activity of the Coalition for a Clean Parliament.

Prosecutor also refused to open investigations regarding alleged electoral fraud before elections were over. Despite complaints filed by electoral observers and civil society representatives, and despite the fact that, if proved true, fraud could have significantly distorted election results, since the difference of votes between the two main political forces was so small, the General Prosecutor Ilie Botos declared on December 1 that all investigations would be started only *after* the elections.

The Central Electoral Bureau was another public authority in charge of organizing the elections that was accused of bending the rules so as to favor the PSD. Both the president and vice-president of this body had been involved in a corruption scandal in which a colleague, a judge, was finally sentenced for letting a criminal walk. However, the two judges were appointed to the Central Electoral Bureau and were not dismissed even after a public scandal broke out. What's more, both made political statements against the opposition, although under Romanian law, it is forbidden for judges to engage in partisan politics¹³. [*Evenimentul Zilei*, December 1, 2004] The ruling party went even further and requested this body to restrict freedom of expression by banning the publication of anti-corruption flyers by the Coalition for a Clean Parliament. However, the Central Electoral Bureau declined responsibility in this case.

In addition to all these pressures, there are reasons to believe that the Constitutional Court itself, which is responsible for validating presidential elections, was also under the influence of the governing party. Out of the nine judges in this body, three are former PSD ministers (A. Gaspar, P. Ninosu, I. Predescu), one is the husband of former PSD Minister of Justice Rodica Stanoiu (S.V. Stanoiu), and one is a former General Prosecutor appointed by the PSD government (N. Cochinescu). This makes five judges who owe their political appointments to the PSD and are supposed to now be impartial judges, responsible for giving final interpretations of law. Without even mentioning the less formal ties of other judges with the PSD, this means that the PSD has a majority in the Court no matter what.

The attempts by the ruling party to control public authorities were not confined to the judiciary, however, but also extended to other areas. The National Council of Audiovisual (CNA), the broadcast regulatory body, was used to gain full control over agenda setting during elections. The CNA is politically appointed-i.e. parliamentary parties select its members according to their percentage of representation in Parliament-so the PSD had the largest share of the vote in these body. The PSD used CNA to turn the electoral debate into a boring exercise in individual CV presentation, trying to maintain its advantage from pre-election times, when it freely dominated the TV screens and managed to consolidate its image [MMA Report on Freedom of the Media 2004]. Therefore, the Council interpreted the electoral legislation to the effect that the two main presidential candidates could not meet once in a face to face

¹³ When confronted with very serious allegations of fraud raised by the PD-PNL Alliance, and during the time when he was still exercising his official duties, he chose to make a political statement claiming that Traian Basescu, the Alliance's presidential candidate, was annoyed that he had not won in the first round. The President of the Central Electoral Bureau consequently violated both his responsibility to political impartiality and his duty to take the Alliance's allegations seriously.

debate before the first round of legislative elections. Instead of having a debate between the two main presidential contenders, each placed by the polls at around 35-40%, voters had to watch over ten minor candidates making statements in turn. The reason put forward by CNA's head, Ralu Filip, to support this unprecedented decision, was the European legislation, namely the directive Television without borders. In fact, this directive deals with the liberalization of broadcasting over the borders of EU member states and has nothing to do with elections whatsoever. On one hand, CNA heavily fined the TV and radio stations which broke even minimally the abundant and often redundant regulations surrounding elections, so no TV producer dared to defy them to offer the public real debates. On the other hand, the same CNA did not react in any way at the biased news broadcast by the national TV channel immediately after the elections, although its main responsibility was to guarantee the impartiality and fairness of information offered to the public by these very TV stations. Even after media watchdogs denounced the poor quality of this news coverage and several journalists from the national TV station made public the censorship practiced in their institution, CNA still did not react. Not surprisingly, it was only after the opposition's victory was officially declared that the CNA suddenly made an u-turn and admitted that there were indeed reasons for concern regarding the quality of news at the national TV broadcasting channel. [Romania Libera, January 6, 2005]

Electoral Frauds

By the beginning of 2004 there were clear signs that the ruling party was very determined to win elections, even if this meant abusing public office. However, there were apparently no serious concerns about outright electoral fraud. This was due especially to the fact that TV networks and PSD friendly pollsters claimed repeatedly that the PSD was scoring over 50%, which managed to create the impression that they would definitely carry the day. Local elections showed, however, that the PSD was losing ground to the emerging opposition alliance D.A. [Mungiu-Pippidi, 2004(b)] and opinion polls closer to the general elections started to show similar scores for the two major political blocs. Therefore, results were unpredictable until the very last moment, which might have driven PSD towards the desperate measures and fraud attempts.

Romanian electoral laws provided a favorable environment for such attempts, because it was (and still is) poor by design and full of loopholes, despite the work done on it by a multi-party committee. After one year of efforts they only managed to add some minor amendments to the old legislation. The law and its interpretation had two major problems, which together allowed multiple voting to take place. First, it permitted those absent from their home area to vote in any other location on the basis of an identity card, with their names recorded on "supplementary lists." With such supplementary lists in every polling station and no computers available to cross-

check identities in real time, it was de facto impossible to confirm voter identities. Second, people voted on the basis of their laminated plastic, general-purpose identity cards, and separate voting cards were not used. Once an elector had voted, a stick-down stamp (like a postage stamp) was applied to his or her plastic identity card. Peeling off these stamps was extremely easy, making this means of control almost useless. Once the stamps had been removed, the elector could go to another electoral district and cast a second vote on a "supplementary list," potentially repeating the process ad infinitum. Journalists proved how easy this was in the referendum on the Constitution in October 2003. It was much simpler now than in the 1990s, precisely because of the new computerized plastic identity cards. The old IDs were small booklets, and in these an ink stamp was applied on one of the pages (just like a border control stamp in a passport) after voting, which could not be obliterated. The system might have been controlled by the use of separate voting cards, and indeed the government introduced these a few years ago, at considerable cost to the state budget. Yet for this year's elections, the government inexplicably suspended the use of voting cards. A number of NGOs and individuals had drawn attention to these problems both in the period after the referendum on the Constitution in October 2003, and more recently in the run up to the November 28 elections, but their warnings were ignored.

Regrettably, there was very strong evidence that these fears were well grounded and multiple voting took place on a major scale in the November 28 elections. There were a number of credible reports of voters being shuttled in buses from one polling station to another. These seemed to be confirmed by the turnout figures, which in some areas were suspiciously high. For example, in Ilfov County, where there were numerous reports of voters being bused around to vote several times [*BBC News Online*, November 28, 2004], the turnout was 72.66% compared with 57% in the country as a whole and 47.24% in the same county in the 2000 Presidential and Parliamentary elections. The numbers of voters on supplementary lists in the Ilfov County was higher than 10% in some polling stations. The explanations offered by local officials, that these were people who had not recorded their official residence, or who were voting in their place of work, were unconvincing, particularly bearing in mind that the ballot took place on a Sunday.

Official figures¹⁴ showed that more than 10% of those who voted on 28 November did so on supplementary lists, either by claiming they were residents but not included in the permanent list (supplementary list type 1) or by claiming to be in transit (supplementary list type 2). There were almost 11,000,000 voters in total, out of which 1,200,000 were on supplementary lists (500,000 on type 1 lists and 700,000 on type 2 lists). The problem is, the difference between the two main contending lists - PSD+PUR Union and D.A. Alliance - was only 548,806 votes for the lower chamber and 547,944 votes for the Senate. This shows that, if proven, electoral fraud could have been decisive in tilting the balance towards

¹⁴ All official figures are based on the final official documents regarding final results of November 28 elections of the Central Electoral Bureau.

PSD+PUR Union. Besides, the number of invalid votes was also very high and again larger than the difference in votes cast for the two major competing actors¹⁵.

These facts were aggravated again by loopholes in the legislation. The electoral law did not empower any institution to investigate electoral fraud. [Electoral Law 67; 370 and 373/2004] According to the law, no institution has a clear mandate to investigate possible fraud, which must be proven fully by claimants, and no institution has the power to declare elections invalid except one constituency at a time (there are 42 in total). Moreover, although many Romanian watchdogs organizations had demanded it, the electoral law did not allow access to voters' lists. It was impossible for observers and opposition parties to check these lists, though in many Western democracies this is public information and pollsters use electoral lists currently. The result was a paradox: on the one hand, those who suspect electoral fraud must provide clear evidence to the authorities for an official investigation to be launched; while on the other hand, the claimant has no access to the lists needed to produce the evidence and prove multiple voting.

What's more, not only was the law poor, but public authorities have also interpreted it in bad faith and refused to react to signs of fraud. Arguing that the law did not allow them to investigate, the Central Electoral Bureau did not call for prosecutors to look into these matters. The busing of civil servants from Ilfov to other counties "on holidays," the creation of special "migrants" lists for village dwellers to vote on, while Electoral Commission members duplicated the villagers votes by signing them falsely on the permanent lists, all these needed preparation and financing. No citizen can investigate such things by himself, especially in not-so-transparent Romania. The Central Electoral Bureau tried to argue that the law did not allow them to intervene. The OSCE recommendation that "any such alleged problems should be fully dealt with through the appropriate administrative and judicial processes" was clearly not followed [OSCE/ODIHR Press Release, Bucharest, November 29, 2004], as the Bureau claimed they do not have the legal entitlement to do any investigation and did not call on prosecutors to react.

According to this interpretation, it follows that no fraud can ever be investigated by a state agency in Romania under the current legislation. After 48 hours, the bureau granted the right to opposition parties to compare electoral lists with permanent lists. Nevertheless, on the evening of December 4, when the Bureau was ready to submit the results for validation, most of the lists were still not handed over to the opposition. In other words, at the end of the 48 hour interval allowed for contestation, the opposition had the legal obligation to prove its case but had no means to do so. Most of the lists were not made available even one week after the elections. Mass media and the opposition parties did find very many multiple voters on the lists they did manage to consult in the few hours they had to do so. The fifteen most reputed NGOs in Romania asked, on December 2, that the electoral process be suspended until

¹⁶ See Annex 3 for the final results of the 2004 general elections.

all lists were handed over, multiple voters traced, and votes on special lists recounted. [Press Release of several Romanian NGOs, December 3, 2004] The Bureau did not even answer. All these allegations could have been checked and trust restored had this recommendation been followed.

Electoral Campaigning

The unbalanced competitive environment created by the ruling party and the serious irregularities that occurred during the elections were accompanied by an unfair and low-quality political campaign. Electoral advertising showed a clear imbalance between the financial capacity of the major opposition party, the alliance D.A., and that of the party in government, the PSD. The latter obviously mobilized far more substantial financial resources than any of its political opponents, although there are clear laws limiting how much a political party may spend during the campaign. This imbalance had been already visible in the local elections, when a domestic watchdog compared the advertising costs of each political competitor and concluded that the PSD had spent, in some cases, as much as five times the amount allowed by law for political advertising, constituting clear evidence of unfair competition. [ApD Report, 2004] However, there was no reaction from public authorities at that time, and as a result the problem resurfaced in the general elections.

This carpet bombing of official adds was accompanied by a lot of negative campaigning against the opposition alliance and its presidential candidate, with thousands of flyers containing insidious and slanderous information regarding main figures of the opposition alliance distributed to voters. The high-quality graphics and paper of these printed flyers were evidence that this was a well organized and well financed action, the perpetrators of which could have been easily tracked down by public authorities, had they chosen to respond to the complaints filed by the Alliance D.A.

The negative campaign directed towards the Alliance also took the form of faking the flyers of the Romanian Coalition for a Clean Parliament. This was a coalition made up of twelve of the most important Romanian civil society organizations, which documented more than 200 cases of candidates to Parliament from the ranks of every important political party who, in one form or another, have been in situations of conflict of interest; or amassed fortunes clearly out of the line with their own asset declarations; or changed repeatedly their party affiliation in order to keep or obtain some privilege; or were connected with Ceausescu's Securitate. The information gathered on these criteria were published in so-called 'corruption bulletins' in each constituency and distributed to voters nationwide, so that they might cast a more informed vote in favor of one party or another. Out of the 222 black-listed candidates, 143 were candidates running on the list of the PSD+PUR Union, 46 were members of the extremist-nationalist Great Romania Party (PRM), 30 were candidates of the opposition Alliance D.A., and 3 were representing the ethnic party of the Hungarian minority (UDMR).

Not long after the printing of the first series of such bulletins by the Coalition for a Clean Parliament, faked flyers started being distributed in large numbers in several parts of the country. These were perfect copies of the originals, only with altered content: slanderous information on innocent candidates, mainly from the opposition alliance. The signatures of the twelve civic organizations were kept to legitimize the information presented. The members of the Coalition filed a complaint against this forgery with the General Prosecutor's Office, indicating in a number of cases even where the fakes were printed and who distributed them, but again there was no official reaction. Moreover, a local civic organization reported that in Buzau County the police themselves supervised the distribution of fake flyers.

In general the apathy of the public authorities responsible for organizing and monitoring elections favored PSD and led to the creation of an unfair environment for political competition.

2. Alternation in power

Despite the severe problems that cast serious doubts on the fair character of the November elections, the results were validated, the new parliament and the new president were sworn in, and political parties started negotiations for installing a new cabinet for the next four years. After a close race¹⁶ Traian Basescu won the presidential campaign and became the new President of Romania, while the opposition Alliance managed to secure, at least for the time being, a parliamentary majority and to form the new government. In the end, the alternation in power took place relatively smoothly. If one looks at the short history of the new Romanian democracy, alternation of power functioned fairly well during these 14 years, with the exception of the 1990 elections. The post-communist party ruled between 1992 and 1996, it was replaced by the opposition anti-communist coalition CDR until 2000, it came back to power in 2000, and was again removed from office in the 2004 elections. In this respect, Romania may look like a consolidated democracy, where two major political parties compete for office and win elections alternately. However, the nature of these parties and their evolution in time, as well as the close results registered in these elections, require a more thorough analysis of how these results were achieved and to what these results might lead in the long run. The rest of this paper will therefore deal with explaining electoral outcomes and analyzing possible future developments in Romanian politics.

A first look at the Romanian political system and the last four elections reveals a political environment on its way towards normalization, in which political forces converge around two main poles: the post-communist one represented by FSN-PDSR-PSD, and the center-right one, in the form of different coalitions (CDR, CDR 2000) and alliances (Alliance D.A.). Moreover, if one takes electoral volatility as an indicator of the stability of a political system, in terms of electoral competition, calculated on the basis of the fluctuation of votes obtained by each political party in consecutive elections, Romania seems to enjoy a rather stable political system. Electoral volatility

calculated using the formula advanced by Scott Mainwaring [1998] for the lower-chamber in the 1996 and 2000 elections is over 20, which places it well below the mean value of 35.3 found by Mainwaring for four former communist countries - the Czech Republic, Slovakia, Poland and Russia. Such a relatively low level of volatility indicates that the Romanian party system tends to be rather institutionalized. The electoral results are fairly predictable, large parties are stable while access for newcomers on the political scene is somewhat restricted by various administrative thresholds. These characteristics correspond to a high degree to the Romanian political reality.

Nevertheless, the Romanian political system has always been less competitive compared with other accession countries. Romania had the most belated political transformation in the region, as late as 1996, and it is the only country in the accession process to have had three post-communist governments out of four full terms after 1989. This figure says more about the competitiveness of the political system-the difference in skills and resources between post-communists and anticommunists-rather than about voters.

After a stint as a minority government, the post-communist PSD managed, by recruiting about 15% of the MPs and making an informal arrangement with the extremist PRM, to achieve full control of the Parliament. It also recruited aggressively among politicians from the opposition parties, mostly mayors. Political migration reached levels unprecedented in Central and Eastern Europe, not to mention the older Western democracies. Romanian parties grow in government and shrink after losing office by orders of magnitude. As MPs are elected on party lists, where constituencies vote for the party rather than the individual (the figure of voters who cannot name their local representatives is very high), this practice is doubly problematic. First, because every politician becomes a potential client, which corrupts politics completely; and, second, because it violates the results of elections, depriving vertical accountability of any meaning.

Under these circumstances, the creation of an alliance between the two main opposition parties, the Democrats (PD, led by Traian Basescu) and the Liberals (PNL, led by Teodor Stolojan), in September 2003, was seen as a step towards the cohesion of the center-right and a more balanced political spectrum. The alliance increased the center-right potential to unseat the PRM, the radical populist party of Corneliu Vadim Tudor, from its position as second largest party in the Romanian Parliament. Between 2000 and 2004 the parliamentary opposition was weak or nonexistent due to Vadim's party, which nominally occupied the seats of the opposition even while constantly voting with the government on all important issues.

The newly formed Alliance emerged as the main winner in the local elections in June 2004, managing to maximize its performance both compared to the individual performance of the two parties in the 2000 elections and as an alliance of the opposition.¹⁷ The PD has grown from 10% to more than 15% and the PNL went from 7% up to 18% (if we split the votes of the Alliance

17 For more on 2004 local elections, see Mungiu-Pippidi 2004(b)

equally and round them down). When we add this to their crushing victory in Bucharest, Cluj and some traditional PSD strongholds in Moldova, plus the squeezing of the PRM in its corner, we may say that the Alliance has scored quite impressively. The success they had with joint lists in Bucharest, where they won much more votes than if they had run separately, showed that the best electoral strategy of the Alliance was its unity. The PNL has managed to win back most of the PNTCD's (Christian Democrats) disappointed electorate. The PD succeeded in taking away votes from the PRM, the extreme right. The Alliance won back the urban areas by taking away votes from both the PSD and the PRM.

The success in local elections was a first sign that the center-right opposition had finally succeeded in pulling itself together again and act as a serious opponent of the post-communist ruling party, the PSD. This trend was also apparent in pre-electoral opinion polls, as voters were starting to look for a political alternative to the ruling party, perceived to be excessively corrupt. In a March 2004 opinion poll, voting intentions showed that, although the PSD was enjoying a comfortable lead with 41.5% in voters' preferences, compared to 30.2% for the Alliance D.A., people were already dissatisfied with the Social Democrats. 72% of Romanian voters declared that they would like to see a political change in 2004, although only¹⁸ 42% saw a real alternative to the PSD government. More important, 45% of those saying they would vote for the PSD declared they also wanted a change and a quarter of the total number of PSD voters believed there was already a viable alternative to the governing party. These figures indicated that Romanians were discontented with the performance of the ruling PSD party and that almost half of the PSD voters were ready to change sides, provided a credible political alternative emerged before the elections.

The results of the general elections showed that this analysis of trends done by SAR in March 2004 was correct. Although not a clear winner in numbers, the opposition Alliance D.A. came very close to the PSD+PUR Union, by getting 31.77% of the votes for the Senate - compared to 37.13% for PSD+PUR; 31.33% of the votes for the Chamber of Deputies - as compared to 36.61% for PSD+PUR; and by winning the presidency in the second round with 51.23% for the former Bucharest Mayor Traian Basescu to 48.77% for former PSD Prime-Minister Adrian Nastase. This close result, and the fact that it had won the presidency, allowed the Alliance D.A. to form a majority with other parliamentary parties. During the first stage of negotiations, D.A. secured a coalition minority government together with the Hungarian minority party, UDMR, and minority groups, thus controlling 45% of the votes in Parliament. Under the pressure of anticipated elections, the small catchall party PUR defected from its union with the PSD, and after a spectacular u-turn joined the

¹⁸ The survey was conducted between March 3-10, 2004, by the Bucharest-based institute Center of Urban and Regional Sociology (CURS). The pre-standardized questionnaire was designed by the Romanian Academic Society on a probabilistic, bi-stadium sample stratified in the first phase and random in the second. The size of the sample was 1098 persons having the right to vote. The margin of error is +/- 2.95% with a probability of error of 5%. The interviews were conducted at the subjects' residences.

camp of DA Alliance to form a majority government. From this point of view, and provided the new coalition government proves stable enough to avoid elections, the opposition Alliance D.A. appears to be the winner of the November elections.

The main loser of the elections in terms of numbers is by far **the extreme right party PRM**. Compared to its impressive success in 2000, when it had gained around 25% of the seats in parliament and sent its leader, Vadim Tudor, to the second round of presidential elections, the PRM shrank in 2004 to only 14.46% of the seats in the Chamber of Deputies and 12.92% of the seats in the House of Senate, while Vadim Tudor scored only 12.57% in the first round of presidential elections. Its electoral pool was reduced by almost half. The unclear message sent by Vadim Tudor, in trying to shed his old extremist image and become a more respectable mainstream politician, disappointed his constituency, who decided to look elsewhere. Somehow, surprisingly, the voters defecting from the PRM did not migrate in large numbers to the PSD, but rather towards the Alliance D.A., although some studies [Mungiu-Pippidi, 2001] show that this party has the most uneducated and uninformed voters, with an average income below that of PSD voters, while the center-right pole traditionally attracts urban and suburban strata with superior education and income. However, exit polls taken by CURS¹⁹ immediately after the elections showed that only 51% of Vadim's 2000 voters voted him again in 2004, while 31% of them cast their vote for Traian Basescu, and only 11% of them for the PSD candidate, Adrian Nastase. Moreover, almost 70% of those voting for Vadim in the first round chose Traian Basescu in the second round. This unexpected boost for Traian Basescu was probably due to his radical anti-corruption discourse, which resembled the rhetoric of Vadim Tudor in 2000. This should not come as a surprise, since 68% of Romanians considered that corruption had increased throughout 2003, while another 28% of them believed the level of corruption stagnated during the same period.²⁰

Therefore, the significant electoral loss for the PRM had several causes: first and foremost, Vadim Tudor's lack of credibility, since he was gradually expelled from public debate by all other political forces and the mass media because of his ultranationalist rhetoric; second, as Romania's EU accession comes closer, politicians seem more and more reluctant to negotiate with an extremist party which is an absolute pariah in Brussels; third, the PRM has serious internal problems, such as an authoritarian structure imposed by its leader, which prevents the emergence of new public figures and slowly leads to the ageing of its pool of faithful cadres.

Another loser of the November elections - this time in symbolic terms - was, without doubt, the **former ruling party, the PSD**. Despite all its efforts to get ahead in these elections, the PSD did not even manage to maintain its 2000 level of electoral support, when it was coming in full force from the opposition, losing around 10% of its electorate. As the March pre-election opinion poll showed, the voters sanctioned the PSD for its poor performance

¹⁹ CURS exit polls November 28 and December 12, 2004.

²⁰ Opinion Poll CURS March 2004

in implementing economic reforms and addressing poverty, but most of all for its image of a highly corrupt organization, geared first and foremost towards enriching its leaders.²¹ The most stable PSD constituency, as reported by the CURS exit poll, remained the rural population, largely dependent on state subsidies and welfare. 50% of the people having less than eight years of education declared having voted for the PSD, while only 23% of those with some university education did so. At the other end of the spectrum 56% of the people with some university education voted with the Alliance D.A., while only 26% of those with less than eight years of education did so. The Alliance scored 42% in urban areas and 54% in Bucharest. Although not as convincingly as in 1996, therefore, the electorate cast a negative vote against the incumbents, forcing them into opposition, where it has to modernize itself in order to remain a relevant actor on the political stage.

The **Hungarian minority party UDMR** passed the 5% electoral threshold, though before the elections there were serious concerns that it might fall below it, ruining the carefully-crafted consociational model of parliamentary power-sharing between the majority and the 7% Hungarian minority living in Romania. The Hungarian electorate proved very disciplined, as always, and 70% of them voted for the PSD candidate Adrian Nastase in the second round of presidential elections because their leaders instructed them to do so. Only 15% of Hungarians crossed the line and voted for the Alliance candidate Traian Basescu in the first round of presidential elections.

The **minor PSD political ally, PUR**, managed to survive the 2004 elections and made it into the parliament, thanks to assiduous political bargaining and balancing between the post-communist and the anti-communist poles. No other minor party stood any chance of passing the 5% electoral threshold to the Parliament.

3. Conclusions

The Romanian 2004 elections were free but unfair. Corruption and state capture on behalf of the former post-communist ruling party were the main instruments through which the former government tried to assure electoral victory. Securing control of local and regional elites, of the electronic media, and the authorities responsible for regulating elections created an unfair environment for the political competition. Furthermore, electoral fraud and a negative and low quality electoral campaign distorted the proper unfolding of the electoral process.

The abdication of the law and order agencies from their constitutional obligations, due to the severe politicization of key judicial institutions, endangered the rule of law and the further fulfillment by Romania of the 1993 Copenhagen political criteria. The apathy of these institutions in cases where they should have defended the integrity of the electoral process, as well as their

²¹ See in the PolSci Texts section of this issue: "Romania's Own Watergate: A Case Study in (Failing) Rule of Law in Romania" written by Sorin Ionita.

biased rulings in favor of the ruling party, showed that the independence of judiciary remains a distant goal for the Romanian democracy, which is still very much a work in progress.

Moreover, the leaked transcripts of ruling party meetings and the electoral frauds of the November 28 round showed that direct political intervention, not institutional underdevelopment, is to blame for the sorry state of rule of law in Romania. Such political intervention had become semi-official government policy under the old-style post-communist party, the PSD, which at home continued to act as the party-state, while abroad was trying to sport a democratic face.

However, this trend seems to have been overturned by the change in power, which occurred in spite of intensive efforts by the PSD to remain in office. The anticommunist, center-right opposition managed to coalesce under the newly created Alliance Justice and Truth (D.A.) and emerge as the victor after a long period of organizational disarray. Moreover, thanks to its anti-corruption rhetoric, it has managed to capture almost half of the electorate of the extremist party PRM, which halved in size in the 2004 elections.

At this point, these political developments indicate the chance for a normalization of the Romanian political scene and offers hope of real progress in light of Romania's accession into the EU, scheduled for 2007. Provided the center-right alliance succeeds in staying in power, and avoids the traps of political clientelism and corruption, the 2004 elections might be seen as a real turning point in Romania's road towards democratization. At the same time, the PSD is faced with the task of reforming itself while in opposition, in order to become a modern social-democratic party. The PRM, the extremist nationalist party, is in decline and will probably continue to lose electoral support, due to the highly authoritarian structure of the party, which does not allow for internal modernization and democratization. The Hungarian minority alliance, UDMR, will continue to participate in government and thus function as the guarantor of a balanced relation between Romanians and the Hungarian minority. As for the PUR, the former junior ally of the PSD and currently partner in the governing coalition, it will probably vanish from the scene sometime during this mandate, since its opportunistic balancing between one pole and the other has baffled its tiny electorate.

The principal tasks ahead are those facing the center-right Alliance, which has to demonstrate its commitment to pursuing real reforms in important areas, such as the judiciary and public administration, to strengthening the rule of law, and to fixing the electoral system, so that future elections will not be threatened by the kinds of practices witnessed throughout the November 2004 elections.

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*ANNEX 1:***THE MAIN ROMANIAN POLITICAL ACTORS**

PSD (Social Democrat Party) - has its origin in the FSN (National Salvation Front), an umbrella movement led by Ion Iliescu which took over the state administration immediately after the December 1989 revolution; it was dominated by former Communist Party cadres who had been sidelined under Ceausescu, but also included many other younger political entrepreneurs. The FSN became the FDSN, and later the PDSR, as the mainstream FSN of president Iliescu after Roman's split. In June 2001, after the merger of the PDSR and the PSDR (a small historic social-democrat party), the post-communist party was named as PSD. His current leader is Adrian Nastase, prime-minister of Romania.

PD (Democratic Party) - the younger, reformist wing of the FSN, headed by former Prime Minister Petre Roman; they left office after Roman and Iliescu broke up in 1991 and the conservatives around the president blocked the reforms initiated by the government. After the 2000 general elections, most of the old leaders of this party were removed from their positions. The current president of PD is Traian Basescu, mayor of Bucharest.

PNL (National Liberal Party) - historic party created in the 19th century, banned during the communist regime and resurrected in December 1989; it has seen many splits between 1992 and 1996 before it managed to bring most of its dissidents back; it has been the (restive) junior partner of the PNTCD in the CDR; before the 2000 local elections, it finally quit CDR. Theodor Stolojan is its current president.

Alliance D.A. (Justice and Truth) was formed in November 2003 as an alliance between the PD and the PNL. In local elections, they ran on separate lists, except for Bucharest and Cluj, while in general elections they ran on a common list and were the main contenders of the PSD government party.

PNTCD (National Peasant Party-Christian Democrat) - historic party created in 1926, banned during the communist regime, and resurrected in December 1989; it has been the backbone of the anti-communist opposition and the dominant member of the CDR.

CDR umbrella alliance of PNTCD, PNL and various other minor parties and civic movements set up in 1992 in order to defeat PDSR in elections; in 2000, re-baptized as the CDR 2000, it scored well below the electoral threshold for an alliance.

UDMR (Democratic Alliance of Hungarians from Romania) - the political

outlet of the Hungarian minority set up in 1990, a reliable pro-reform member of the former ruling coalition, it has been dominated most of the time by its moderate wing.

PRM (Greater Romania Party) - a xenophobic and populist movement led by the maverick writer CV Tudor; actually an electoral vehicle for its leader, it continues the national-communist ideology of the Ceausescu regime.

PUR (Humanist Party) - created in 1991, presently led by Dan Voiculescu, owner of Antena 1 TV station; former ally of the PSD after 2000 elections; they proposed their own candidates for 2004 local elections, but ran on common lists with the PSD in the general elections.

ANNEX 2:

The Coalition for a Clean Parliament

In late October, a group of twelve of the most active Romanian civic organizations, known as the Coalition for a Clean Parliament, released several lists of candidates considered "morally unfit" to hold public office, and asked their respective parties to remove them from contention. The documents included more than 200 members of political parties who failed to meet the Coalition's criteria by having a criminal record or conducting illegal activities. The group collected information about specific candidates from local communities and media outlets.

In the end, the ruling PSD and the PUR kept 95 of the parliamentary candidates listed by the Coalition, followed by the PRM with 46, the DA alliance with nine, and the UDMR with three.

The lists of candidates considered "morally unfit" who were kept by their parties on electoral lists were published in so-called "corruption bulletins" or flyers for each county and distributed to the households of the electorate in that area, so that they would be better informed on their future representatives.

*ANNEX 3:***ELECTIONS FINAL RESULTS**

Parties	House of Senate		Chamber of Deputies		Presidential Elections	
	No of seats	%	No of seats	%	1st round	2nd round
PSD + PUR	57 (PSD 46) (PUR 11)	37.13	132 (PSD 113) (PUR 19)	36.61	40.94	48.77
D.A.	49	31.77	113	31.33	33.92	51.23
PRM	21	13.63	48	12.92	12.57	
UDMR	10	6.23	21	6.17	5.10	
Total	137	*	332	*		

* the rest of the votes up to 100% was redistributed to the parties that made the electoral thresholds, according to the Romanian electoral system

Electoral turnout in general elections (November 28, 2004): **56.52%**

URBAN 54.41%

RURAL 60.84%