

Romania – 9 December 2012 Parliamentary Elections Preliminary Post-Election Statement by the limited OSCE PA Observer Mission

A. Conclusions

Bucharest, December 10, 2012 - The December 9 parliamentary elections again demonstrated that Romania is a country with a pluralistic society and respect for fundamental rights, as well as an established democratic political process. All the necessary institutions for the conduct of free and fair elections are in place. Apart from weather-related late openings of a hundred polling stations, procedures on election day were carried out largely without incidents or a significant number of reported irregularities. However, the political atmosphere in recent months, including alleged pressure on state institutions and reciprocal accusations of illegal and anti-constitutional actions, contributed to undermining public confidence in the proper functioning of the authorities. A number of irregularities currently under investigation mainly from the July 29 referendum also cast a shadow over the process, and some technical aspects need to be addressed. On the other hand, swift reaction by judicial authorities to reports about irregularities, an intensive government campaign against vote buying and already enacted changes in the electoral legislation that will apply starting from 2013, as well as a vigorous ongoing public discussion about the incidents indicate that the country has a strong potential to overcome current challenges.

Voters turned out in modest numbers – slightly above the turnout at the last parliamentary elections - to elect their representatives for the lower house of the parliament, the Chamber of Deputies, and for the upper house, the Senate, for four-year terms by direct, universal suffrage. The campaign was generally peaceful and most of the time void of programmatic substance, negative in tone and to a large extent dull, without attracting citizens' engagement. On the other hand, the campaign was overshadowed by the persisting power struggle between the President of Romania and the Prime Minister. However, voters were given an opportunity to make an informed choice between a high number of candidates from political party alliances, individual parties, as well as some independent candidates. On Election Day, citizens cast their votes in a calm and orderly manner. Being a limited election observation mission, observers only visited some 120 samples of polling stations. The voting and vote counting OSCE PA observers observed was assessed positively, with some minor remarks regarding the organizational modalities. Observers have not received any significant number of reports about irregularities, although allegations of a general nature have been put forward.

B. Details

1. Legal system

Romania's constitution with its semi-presidential system leaves a number of legal issues unresolved. The current power struggle has the potential to continue and perhaps deepen after the election day, even in the case that one of the competing camps gains a strong majority. It has also resulted in the politicization of the constitutional court and other judicial bodies.

The election law (law no. 35/2008), which on several occasions, including during the election campaign, was amended by government emergency ordinances¹ and supported by last-minute government decisions, contains complex and detailed provisions impacting negatively on its applicability and creating a number of ambiguities. Amendments that would improve important procedural aspects, including the obligation to use special voting cards and a permanent voter register, will enter into force only after these elections.

The current electoral system creates inconsistencies, for instance allocating seats to second ranked candidates in some constituencies from bigger parties while first ranked candidates from smaller parties might not get them; complexities in seat allocation also make it difficult for voters to fully understand the effect of their vote. Attempts by both political camps earlier in 2012 to change the law were rejected by the constitutional court. Strong voices advocate a complete revision and codification of all legislation regarding elections.

The Government made repeated use of emergency ordinances in recent months, including on issues that have no apparent urgency and that could have an impact on the elections. A number of interlocutors expressed concerns following the Government's adoption of an emergency ordinance less than two weeks prior to the election. Among other provisions, the ordinance would limit the ability of the National Audio-Visual Council in charge of supervising campaign conduct of the media to punish infringements of the law in a timely manner. Prior to this summer's referendum, criticism was leveled regarding a series of controversial decisions adopted in a very short time period, including through the use of government emergency ordinances. The Prime Minister also replaced the Ombudsman, who has the authority to raise issues before the Constitutional Court. The Constitutional Court subsequently declared several ordinances unconstitutional.

2. Election Administration

The election administration system is as complex as the electoral law. Both national election entities – the Permanent Election Authority and the (ad hoc) Central Election Bureau appear to have functioned in a professional manner and cooperated well with the observers. The reliance on members of the judiciary for the conduct and control of most facets of the electoral process provides important safeguards and – together with the membership of competitors - ensures that electoral bodies generally work in a non-partisan manner. Complaints were brought forward regarding the appointment of polling station presidents who decide about the further processing of electoral complaints. However, concerns expressed regarding the absence of the possibility to appeal in court against decisions of lower levels of the election administration are unfounded. The core of the higher electoral bodies consists of professional judges, and the procedure by which the composition of these bodies is determined makes them quasi-judicial entities. Such special appeal procedures are adequate avenues for judicial recourse in election matters that require swift action.

3. Party registration

Although there is a high number of competing political parties, as well as independent candidates, legislation is quite restrictive with regard to registering a new party. A new party has to prove

¹ Government Emergency Ordinance no. 66/2008; Government Emergency Ordinance no. 97/2008; Law no. 323/2009; Constitutional Court Decision no. 503/2010; nos. 67 and 70 Law 76/2012 (of 30 May 2012 in force as of Feb 1, 2013); Government Emergency Ordinance no. 46/2012. Government Emergency Ordinance no. 46/2012, which was issued on 1 September 2012, sets the rules that will apply from 2016 parliamentary elections.

25 000 founding members residing in at least 18 different counties and no less than 700 in one location. Independents have to produce signatures from 4 percent of the voters and pay a high security deposit.

4. Electoral Campaign

With only four weeks the campaign period was relatively short and seen by some as insufficient to present candidates. The Political Finance Law establishes strict campaign expenditure ceilings². The Political Finance Law sets deadlines for submitting regular and campaign-related reports on income received by political parties. Additionally, political parties have to submit a declaration of adherence to the stipulated ceilings of campaign expenditures to the Permanent Election Authority prior to the validation of mandates of elected deputies and senators.

Although observers received a few allegations of irregularities, according to most interlocutors, there were less incidents than in the past. Some hate speech against national minorities has been reported. The only reported incident sufficiently substantiated to the observers took place in Arad, where complaints have been filed with the police that a candidate's family member was attacked by a team of her opponent.

The campaign was – however – overshadowed by the fallout from the referendum and the power struggle between President and Prime Minister. In November 2012, at the beginning of the electoral campaign, the Agency for National Integrity (ANI) opened investigations against three Government Ministers and the Government's Deputy Secretary General for alleged incompatibilities, conflict of interest or for possessing wealth that could not be accounted for. According to researchers from the Romanian Academic Society, two of the alleged incompatibilities³ had already been resolved at that time. Politicians affiliated with the Government have subsequently accused the ANI of trying to interfere with the elections and of making politicized decisions serving the interests of the President, whereas this anti-corruption agency complained that it was under political pressure.

The Prosecutor's Office started investigations against the Secretary General of the Social Democratic Party for allegedly having set up a "national system of influence for illegally influencing the referendum results". According to the researchers from the Romanian Academic Society, while there was individual wrongdoing, massive fraud seems rather implausible. According to the researchers, in the immediate aftermath of the referendum the figures of turnout and approval were nearly similar across exit polls and after a parallel count organized by opposition parties.

5. Media Environment

The media overall provided the necessary information for voters to inform themselves about the campaign, although many interlocutors judge the quality of the information as insufficient. Contestants are entitled to free air time on public channels and equal tariffs on private channels. Access to the media and campaign reporting are strictly regulated during the campaign period; however regulations restricting coverage of campaign activities in news programs may have inhibited journalistic work related to the campaign.

While Romania benefits from a free and pluralistic media, the media landscape is as polarized as is the political one, with a tendency to confrontational and often partisan coverage of the campaign, including defamatory direct attacks on candidates. Some political parties and candidates are closely linked to media outlets. Plans of the Government to change procurement rules were criticized in the media as leading to less transparency in what was perceived as indirect campaign financing. Even though open threats to journalists do not occur frequently, some negative episodes

² Currently RON 245,000 for each candidate for the Chamber of Deputies and RON 350,000 for the Senate. In addition, each political party can spend up to RON 35,000 per each candidate it fields.

³ For instance one minister who took office in May needed a few weeks to erase his name from the management of his former company in all official documents

occurred during the earlier part of 2012 attracting the attention of the OSCE Representative on Freedom of the Media.

6. Voter Register

In particular after the debate that took place following the referendum held during the summer, stakeholders have also expressed concerns about the accuracy of the voter register. Some interlocutors allege that the voter register did not reflect the actual situation and/or that the changes following the referendum achieved by purging of voter lists impacted negatively on its accuracy. However, this issue did not seem to impact on the overall integrity of this election and did not play a role as important as during the referendum. Concerns were also voiced about a possible disenfranchisement of voters living abroad. Apparently, the Romanian MFA has significantly reduced the number of polling stations abroad compared to the 2009 presidential elections (reduced by 80 percent in Italy and Spain). In light of that, the Federation of Romanian Associations in Europe (Fader) threatened to sue the government. If the current electoral system that obliges voters to physically cast their ballots in the constituency they belong to on election day is maintained, voting by mail or forms of early voting could be a possible remedy for this and other problems that result from the current system, for instance the de facto-inability of many polling station board members to cast their own vote.

7. Measures against electoral fraud and procedural issues

Interlocutors also voiced concerns about alleged instances of electoral fraud, mainly through vote buying. Electoral fraud during the referendum included multiple voting and vote-buying, missing ballots, handing out already stamped ballots, handing out more ballots than necessary, allowing the voting process to continue after the deadline and faulty legal statements. According to official reports, there were over 1200 electoral fraud complaints out of which 472 were confirmed – most of these (120) referred to cases of vote buying. However state authorities have reacted swiftly and the number of actual incidents in these elections was limited. According to the Central Election Bureau, it was reduced to 25 percent of the incidents reported during the municipal elections held earlier this year.

Vote buying (electoral bribery) is a criminal offence, and the legislation defines as a bribe any gift given to a voter that exceeds a value of 10 RON (app. 2,2 Euros). After the incidents during the referendum, the perpetrators were prosecuted and the Government started an intensive public campaign against vote buying. Voter education was conducted and respective posters put on display at every polling station, as well as reminders that the use of recording devices or cameras inside the polling booths is prohibited. As a consequence, stakeholders doubt that during this election there was a significant number of incidents of vote buying, although allegations about buying of votes from vulnerable minorities persist, as well as bribing by organized crime that some candidates are allegedly affiliated with.

Since voter cards will be introduced only after these elections, as a measure to prevent possible multiple voting, adhesive stamps have again been applied to voters' plastic identification cards, or their paper identification documents have been stamped. Some interlocutors voiced concerns that this might not effectively prevent multiple voting, whereas others argue that multiple voting is a marginal phenomenon, because it is punishable and entails a high risk of being discovered and prosecuted. Observers also noted that the stamps/stickers expose voters who have decided not to cast a ballot.

In line with Romanian legislation, access to polling stations is regulated by police officers, leading to the presence of a high number of uniformed police officers inside the building where the polling stations are located.

Observers also noted that the practice of putting the names of citizens not eligible to vote publicly on display, most often on blackboards in the polling stations, challenges the right to privacy.

The fact that the ballot papers for the Senate and the Chamber of Deputies are of the same color has led to errors that could be avoided by using ballot papers of different color. Due to the size of the ballot papers, it was noted that during the counting board members frequently did not check the remainder of the document, once they had located where the voter had put his/her stamp.

8. National Minorities

Representatives of national minorities can stand for election nationwide and be elected on the basis of a lower threshold. Organizations representing minorities can nominate members to lower-level election commissions. Concerns of minority populations did not feature significantly in the platforms of the principal campaigns. Minority representatives complain that the current situation favors incumbent minority representatives at the expense of new candidates.

9. Observers

The Election Law explicitly provides for observation of voting and counting by international observers, domestic civil society organizations (given that they have been registered for at least six months prior to the elections), and the media. A significant number of NGOs are registered to participate in election observation, with 62 organizations granted permission by the Permanent Electoral Authority to observe. OSCE PA Observers have seen several observers from different observer organizations a large majority of the polling stations visited.

C. Mission information

The Parliamentary Assembly of the OSCE (OSCE PA) is the parliamentary institution of the Organization for Security and Co-operation in Europe, whose 57 participating States span the geographical area from Vancouver to Vladivostok.

In line with the commitments undertaken by Romania in the Copenhagen Document, the country invited the OSCE Parliamentary Assembly and the ODIHR, as well as OSCE participating States who may wish to do so to observe the 2012 general elections. Due to a shortage of funds, the ODIHR, which had observed previous elections and had requested participating States to support a limited election observation mission, only sent a team of eight experts. The OSCE PA decided to deploy a limited election observation mission led by PA Vice President Wolfgang Grossruck (Austria).

The OSCE Parliamentary Assembly assessed whether the elections of the members of the Chamber of Deputies and the Senate were in conformity with the OSCE commitments as stated in the 1990 Copenhagen Document, to which Romania has subscribed. Because of the limited nature of this mission the OSCE PA did not undertake a systematic coverage of the election in the polling stations, nor was it possible – at this stage – to fully assess tabulation and the complaints process.

The OSCE PA started its election observation by establishing an office in Bucharest on November 26, 2012. On November 27 and 28 Vice President Grossruck came to Bucharest for a pre-assessment visit. On election day, 17 observers visited 120 polling stations in Bucharest, towns and villages in the Constanta and Teleorman counties, as well as a constituency polling board. The OSCE PA would like to thank the Romanian authorities for the invitation, as well as their hospitality and cooperation.

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