

FOREGONE CONCLUSION FOR THE ROMANIAN ELECTIONS?

Policy Brief #62, December 2012



Romanians are expected to cast a ballot on December 9th so as to elect legislators for the two chambers of Parliament. Polls, as well as local elections held in June, predict a majority with over 50% of votes cast for the Socialist Liberal alliance SLU (already in government), while President Traian Basescu's own supporters are forecast with 20% of the vote. Turnout will be a maximum of 50% amidst high disappointment with politics. 30% of the monitored candidates have made their fortune on the basis of government contracts or enjoy other sorts of government rents. Tensions are extremely high as the President has repeatedly pledged himself to appoint another prime minister than the leader of the current majority, Victor Ponta. A cohabitation is problematic seeing SLU's last summer attempt to impeach Mr. Basescu, failed only due to his supporters' boycott and the resulting insufficient turnout in a popular consultation. If, as public opinion surveys predict, SLU will gain an absolute majority, Mr. Basescu will have to choose between a Georgian or a Lithuanian scenario. Between accepting defeat and a decrease of his powers, and attempting to stretch his constitutional powers once again to refuse nomination to the winners, what will he choose? The Lithuanian stand-off lasted for a month: in the end, the government was formed against the will of the President. SLU hopes to gain two thirds of the seats and change the Romanian Constitution so that semi-presidentialism is replaced with parliamentarism.

Background and contenders

Romania holds legislative elections on December 9, 2012, following a highly disputed political year, with a power contest which was settled on the streets and a new unsuccessful presidential impeachment. While the economic downturn is not particularly dramatic in Romania (a modest growth of 1% is forecast), a country sheltered from the crisis-related unemployment which hurts other European economies through its high underground economy and intense labour migration, the

rule of law and democracy came under great strain in 2012, confirming that Romania's 2007 EU accession had mostly been a political decision on the side of the EU. Since its EU accession, Romania mostly stagnated, its chronic political infighting and corrupt administration making it the worst performer when it comes to EU funds absorption (only 10% after six years in the EU). The center-right coalition which came to power in 2005 broke apart and, since 2007, each party governed in turn with the Social

Democrats attempted to capture as much of the center-right constituency by itself as possible. As President Traian Basescu strongly identifies with one of these parties (Liberal Democrat, DLP), the conflict configured the political system in a pro-presidential and an anti-presidential coalition, which stretched Romania's semi-presidential system nearly to the breakpoint. External actors (notably the State Department and the European Union) also intervened in an attempt to protect the institutional framework enshrined by the Constitution and Romania's external engagements. Their intervention was widely perceived to support Mr. Basescu.

The pro-presidential coalition is currently forecast by polls at around 15-20%. This is what is left of the Democratic Liberal Party of Mr. Basescu, which, ahead of the coming elections, was hastily wrapped up with two mainly nominal parties, Christian Democrats (one of the many splinters of a one famous pre-war party) and a new party (Civic Force) acquired by former Prime Minister Mihai Razvan Ungureanu due to lack of time to start his own. A third Christian party never made it through the Romanian bureaucracy, so its members simply run on DLP tickets. This mix is presented to the voters as the **Alliance for a Just Romania (AJR)**.

The other side is no less strange. In late 2010, the long standing Social Democratic Alliance with the Conservative party (owned by a media tycoon with ties in Ceausescu's secret service) split. In January 2011, the

National Liberal Party (NPL) and the Conservative Party (PC) formed the Centre Right Alliance (ACD). In February 2011, ACD together with the Social Democratic Party (SDP) formed the **Social Liberal Union (SLU)**. They also allow people from other parties to run on their ticket – the most famous being “Steaua” soccer club owner Gigi Becali, famous for his lack of civility, sexism and racism. It also accommodated members of the UNPR, the party which was created from their own defectors to support Mr. Basescu after his reelection in 2009, and who now returned for safer bids. SLU is forecast at 57-62%. The third party coming up fast from behind is the **Party of the People – Dan Diaconescu (PP-DD)**, a second party which had its roots in a successful TV station. Mr. Diaconescu is charged in several files for tax evasion and using his TV for blackmail purposes, but until he receives a final ruling, he is allowed to run. He has scored well in local elections and is presently forecast at 10-15%. Finally, the **Democratic Alliance of Hungarians in Romania (DAHR)**, which has been part of many government coalitions in the last sixteen years has to compete against a more nationalist Laszlo Tokes, vicepresident of the European Parliament, and his **Transylvanian People's Party**.

Mr. Diaconescu and Tokes had to fight hAJR in Courts to register their parties. Likewise, former PM Ungureanu simply negotiated to take control over an older party which was extinct but with a valid legal name. To register a new party under the very restrictive Romanian law

(14/2003, Official Gazette 25, 17.01.2003), one has to show proof of already existing 25 000 founding members residing in at least 18 different counties and no less than 700 in one location. Independents are equally mistreated since they have to produce signatures from 4% of voters and pay a big security deposit to be allowed to run.

Legal framework and fraud allegations

2012 saw numerous attempts of parties in power to manipulate electoral legislation in their favor. On January 25th, 2012, the Constitutional Court ruled against electoral legislation put forward by the Liberal Democratic government (DLP) that would have delayed the June local elections to schedule them with parliamentary elections the forthcoming winter, thus postponing the encounter of his unpopular government with the voters. Thus began a process of negotiating a new electoral law, when the majority in the Parliament changed. The SLU majority then unilaterally passed a new electoral bill, introducing a first-past-the-post voting system. It was the turn of DLP to present a motion against this law at the Constitutional Court, which again ruled against it on various procedural grounds. That meant that the 2012 general elections were in the end held on the basis of previous legislation. The 2008 electoral system that had abandoned closed proportional lists in favor of single unit constituencies (but with a national redistribution of votes correction) has

since been the object of constant criticism, as in some constituencies second ranked candidates got seats while first ranked from smaller parties did not.

The best predictor of a score is the local elections result. Local elections on June 10th were won by a landslide by SLU at a turnout of 56.39% . Of a total of 3180 mayors, 1964 were won by either SLU Coalition candidates or separate SDP (Social Democrats) or NPL (Liberals), resulting in 61.64% of the vote. At county level, the turnout was 57.46%. 36 of the total 41 County Council President mandates also went to the SLU, whilst the County Counselor mandates were split – 49.8% for SLU, 15.28% for DLP and 8.96% for the new party PP-DD. The referendum for dismissing president Basescu in July had a lower turnout of 46.2%. 7.4 million voters who did show up voted in favor of the impeachment and 943 375 (0,94 million) against.

President Basescu and his supporters claimed the turnout at the referendum was fraudulently increased by electoral bribing and has repeatedly stated – despite massive evidence of real collapse of his party and himself in the voters' sympathy – that his opponents are also likely to cheat on the general elections. The secretary general of the Social Democratic Party (Liviu Dragnea¹) was

¹ National Anticorruption Directorate (DNA), <http://www.pna.ro/faces/comunicat.xhtml?id=3522>

accused by the Prosecutor's Office of setting up a "national system of influence for illegally influencing the referendum results" – a charge which has not been proven until present. Massive fraud seems rather implausible, as 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 DLP. Nevertheless, within the surveys' margin of error of 3%, some cheating is certain to have taken place. This includes ferrying voters to polls by parties (legal), multiple voting and vote-buying, which are illegal. To give an example of the "usual" fraud within the margin of error, local elections are a useful proxy. In contrast to the local elections of 2008, the situation in 2012 was relatively better². The incidents in 2012 mainly referred to buying votes in return for material goods, verbal and physical violence directed against candidates and/or electoral committee members, missing ballots, handing out already stamped ballots, continuing the electoral campaign on the polling day, obstructing the work of independent observers, handing out more ballots than necessary, allowing the voting process to continue after the deadline and faulty

² Ministry of Administration and Interior, "Declaratie de presa sustinuta de purtatorul de cuvnt al Centrului de Comunicare al MAI" [Press conference by the MAI's Communication Centre spokesperson], June 11, 2012, http://www.comunicare.mai.gov.ro/stiri.php?subaction=showfull&id=1339406275&archive=1340350590&start_from=&ucat=2&

legal statements³. 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. The result was 262 criminal records and 320 criminal investigations by the Ministry of Internal Affairs⁴. The distribution of such incidents was relatively equal between the rural (49%) and urban (50%) settings⁵. In 2008 fewer cases were pursued. The total,

³ Gandul Daily Newspaper, "Probleme la alegerile locale 2012: BEC anunta repetarea alegerilor la Mangalia si Curcani, atat pentru primar, cat si pentru CL" [Problems with the local elections 2012: The Central Electoral Bureau announces that the elections for mayor and local council will be repeated], June 13, 2012, <http://www.gandul.info/news/probleme-la-alegerile-locale-2012-bec-anunta-repetarea-alegerilor-la-mangalia-si-curcani-atat-pentru-primar-cat-si-pentru-cl-9744361;> RTV.net, "Incidente electorale. Batati, impuscaturi, retineri pentru mita electorala, fraude electorale" [Electoral incidents. Fights, gun shots, electoral bribe arrests, electoral frauds], June 10, 2012, [http://www.rtv.net/incidente-electorale-batai-impuscaturi-retineri-pentru-mita-electorala-fraude-electorale-31783.html;](http://www.rtv.net/incidente-electorale-batai-impuscaturi-retineri-pentru-mita-electorala-fraude-electorale-31783.html) ProDemocracy Association, "Alegerile locale 2012: un test pentru capacitatea democratiei locale de a se adapta cerintelor societatii sau un vot sanctiune?" [2012 local elections: a test for the capacity of local democracy to adapt to society's requests or a punishment vote?], June 11, 2012, <http://www.apd.ro/comunicat.php?id=304>

⁴ Gandul Daily Newspaper, "Alegeri locale 2012. MAI: Peste 1200 de incidente electorale au fost sesizate" [2012 local elections. MAI: Over 1200 electoral incidents have been reported], June 11, 2012, <http://www.gandul.info/news/alegeri-locale-2012-m-a-i-pest-1-200-de-incidente-electorale-au-fost-sesizate-9733191>

⁵ Ministry of Administration and Interior, "Declaratie de presa sustinuta de purtatorul de cuvnt al Centrului de Comunicare al MAI" [Press conference by the MAI's Communication Centre spokesperson], June 11, 2012.

however, did not significantly affect results. Mr. Basescu's opponents claim that Mr. Dragnea is a victim of a political witchhunt.

On the first day of the electoral campaign the National Integrity Agency (NIA) accused three ministers of Mr. Ponta's government of various incompatibilities. The charges were mistimed to say the least – two of the alleged incompatibilities had been resolved (for instance, a person who became a minister in May needed a few weeks to erase his name from the management of his former company in all official documents). Therefore, accusations were made again as to the political use of anti-corruption mechanisms – a charge which has always laid at Mr. Basescu's door, but has never rang true before. An OSCE mission will be observing the elections, together with many civil society groups.

The parties' programme essentials

The two main coalitions pledged to continue to respect the memorandum with the IMF and seek a new agreement in 2013. Consequently, there is not much policy distance regarding the essential issues.

Concerning the **privatisation of public companies**, the SLU promises to continue the privatization of companies in the energy field by increasing their social capital, while the AJR aims to sell minority shares owned by the state to the private

sector, meaning that the state keeps its status as main shareholder. DAHR does not tackle this issue, but PP-DD proposes an increase in state control by establishing an umbrella company to administer all public companies. However, Mr. Diaconescu was seriously discredited during the procedure to privatize Oltchim Ramnicu Valcea factory, Romania's largest chemical producer, early in the fall. After winning the bid and buying 54,3 % of the shares, he was unable to show that he disposed of the financial means he had promised during the auction. However, he broadcast a few well seasoned speeches on how he tried to save the country both from a corrupt state and foreign investors and it is unclear if he lost or gained from an electoral point of view.

The positions of the parties towards **educational policies** are shaped by the parties' previous support – or lack thereof – for the 2011 Education Bill. DLP, the main party within the AJR, who pushed the bill avoiding a parliamentary debate on it while it was in government, desires its full implementation. The emphasis is placed on performance and performance appraisal of schools and universities, tying performance with budgets and introducing transferable vouchers for students, a comprehensive curriculum reform and the maintenance of research and education standards compatible with those at the European level. It also stresses the decentralization of pre-university education. Former education minister, Daniel Funeriu, a very vocal

proponent of reforms and now an adviser to President Basescu, introduced the very controversial reform of obliging high-schools invest in video-cameras to supervise exam cheating, which directly led to a majority of students failing the national graduation exam. There was little debate or policy adaptation surrounding the fact that perhaps the system is to blame for such a major failure – Romanian students do very badly in PISA tests as well, where they do not cheat. Many schools forced to buy cameras have never even had an Internet connection.

SLU does not clearly state what their position towards the new law is, but the alliance has already amended it by government ordinances and it is likely they will continue to bring substantial changes to it in the future. If the AJR program seems inspired from very economically advanced countries, with its stress on performance incentives, the SLU program is more of a modernization program, taking into account that nearly half the Romanian population lives in rural areas, where economic conditions are very poor, dropout rates high and decreased literacy. Therefore, the SLU focuses on IT equipment, Internet, support for rural schools and poor students (school infrastructure, campus, meals, and textbooks subsidies). A system of incentives is proposed for research institutes.

PP-DD proposes a return to Communist times, with grants for students and central

job allocation for university graduates. They also plan to support innovation outside the academic framework, but fail to give the concrete steps to achieve their goals.

DAHR supports the implementation of the law they also supported as part of government coalition with DLP. Their stress is on expanding the use of minority languages and autonomy for schools. They also suggest that the private sector can be attracted into the creation of vocational schools.

All parties pledge to improve the connection between education and labor market, but the mechanisms are not entirely clear.

On the **role of the state in the economy**, all parties are in favour of a more pronounced presence, yet DAHR considers that there should also be a transfer of competences in this respect to the sub-national level. However, co-financing of European funded projects should remain a part of the central budget, according to DAHR. SLU proposes the establishment of a Development and Economic Forecast Council (DEFC), in addition to state guarantees and fiscal breaks for investments in important areas⁶, financial incentives for exports, subsidies for agriculture, and a Risky Investments Fund for supporting public projects in strategic

⁶ Infrastructure, research and development, human capital, generable energy, IT, ecologic agriculture, etc.

domains. AJR proposes the maximum usage of state-aid schemes, the establishment of the National Fund for Financial Stability (NFFS), fuelled by financial contributions of businesses with a registered office in Romania (especially commercial banks) and the creation of a Public Bank for Investments (PBI), either state-owned or with a majority of state capital.

Even though all the political contenders aim to reduce taxes and contributions, there are differences. Both SLU and DAHR want to keep the flat tax at 16%, while SLU pledges to introduce a differentiated income tax on the individual revenue and fiscal deductibility, i.e. 8%, 12% and 16% corresponding to different revenue categories, and a reduction by half of all parafiscal taxes. AJR also aims to reduce the flat tax on both corporate profit and personal income from 16% to 12%, starting from 01.01.2013 and to reduce the total number of taxes. The DAHR's vision is that the income tax, profit tax and all the paid contributions should constitute income at local level. All parties advocate the reduction of the VAT at 19% (SLU and DAHR) or 10% (PP-DD), unlike the AJR which would maintain its value at 24%.

All contenders emphasize the need to develop SMEs through state intervention. In this regard, they promise state-aid schemes, financial incentives, risk funds, the simplification and decrease of bureaucratic costs (SLU, AJR), and either

the payment or compensation of existing state-debts to firms (SLU). While the DAHR's preferences resemble those of the other political formations, it adds "The SMEs Test", following the European model, meaning the obligation to produce impact studies for any new legislative, economic, fiscal or budgetary measure. PP-DD puts forward populist measures of granting huge amounts of money and full tax exemptions for 3 years for investors coming from the Diaspora.

Concerning **fiscal management**, both SLU and AJR guarantee that the fiscal and budgetary policies will be designed and implemented with responsibility, meaning that the loans and the budgetary deficits will only be used for investments. Regarding the extension of e-administration within the fiscal domain, DAHR is the only one to propose this particular initiative, whereas AJR points out the development of e-government services in general. The transparency of the state's arrears was discussed only by AJR, which proposes their full transfer in electronic format, and PP-DD, which demands their immediate payment to private economic agents.

Regarding **public expenditure and public investments**, all political parties promise a more rational, efficient and transparent public spending practice. SLU and DAHR propose the introduction of a multiannual budgetary programming system in order to improve predictability and (cost)efficiency, while AJR supports the

establishment of the Governmental Council for the Programming of Public Investments (CGPIP). At the same time, they consider improving the correctness of public procurement procedures by extending the SEAP (Electronic System of Public Procurements) at all levels of state administration (SLU) or by creating dedicated legal structures within the National Anticorruption Directorate (AJR). SLU promises the highest number of public investments, followed by AJR and DAHR, the common focal point being the improvement and development of national infrastructure and regional development.

On the **reduction of labour taxes and social services contributions**, SLU proposes a differentiated threshold 5% for the employer for 4 years and the possibility of not paying it for 1 year in exchange for the creation of new jobs. On the other hand, AJR aims to reduce the fiscal burden with 5% starting from the 1st of January 2013, and DAHR proposes a two-step decrease without mentioning a specific calendar.

Concerning **youth unemployment**, both AJR and SLU support financial incentives or exemptions from social security taxes for employers. SLU proposes a similar measure for those above 45. AJR and DAHR propose the implementation of flexicurity and a more extensive use of part-time employment.

All parties except DAHR promise to increase the minimal wage, but both the

degree and pace differ. SLU promises a progressive growth to a threshold of 1200 lei by 2016, while AJR promises an increase to 850 lei (from 01.01.2013) and to 1000 lei (from 01.01.2015).

On the **management of European Funds, centralization of the management structure** is strong option for SLU, who intends to subordinate all authorities to a single ministry, emulating the Polish model, with a change in legislation. AJR offers a more toned down option by creating a coordinating structure for the management authorities in a re-baptised Ministry of Integration and European Affairs (MIAE). At present, each operational program involved in allocating funds is coordinated by its respective ministry. The Ministry of European Affairs and the Ministry of Finance have important, yet limited competencies in the decisions concerning the allocations of funds, their management and control.

The **decentralization of the management structure of EU funds** is the main option for the DAHR option, because “the primary cause of Romania’s failure to attract and efficiently use resources is the system based on an inefficient regional structure”⁷. Consequently, the option favoured by DAHR is to increase the role of regions in planning, prioritizing, managing and evaluating European funded investments at a local and regional

⁷ DAHR, *Electoral Programme 2012-2016*, p. 23.

level⁸. Although both AJR and SLU propose some sort of a **regionalization**, the actual mechanism through which this will improve the absorption of funds is unclear, as well as how it would be correlated with centralized planning. Victor Ponta called for an adoption of the Polish administrative model: a centralized management, while at the same time granting the regions competencies and resources necessary for an effective absorption and implementation of EU-funded projects at local level⁹. An interesting aspect which is worth mentioning is that although the SLU programme contains provisions with regard to the start of a regionalization process, **it will only be implemented after**

⁸ The DAHR representative, Istvan Csutak, in response to SAR's questionnaire on the political parties' electoral platforms, underlined the fact that the initial planning of the NUTS 2 development regions "lacked seriousness" and was done "without rigorously respecting the Commission's methodology", with unrealistic objectives and chaotic allocations of funds for which "nobody claims professional or political responsibility". Furthermore, the Management Authorities are guilty of changing the rules of the game during the game, on certain occasions with the aim of granting advantages to the clientele of a political party.

⁹ "For 2014-2020, all management authorities are under a single authority, first under a Minister and afterwAJRs under the regions, when these will be formed [...]. For 2014-2020 a single hat, a single coordination and a single responsible entity. Not six responsible entities because it does not work". Source: Liviu Dadacus, "Ponta: Management Authorities will function under one authority in 2014-2020", *Mediafax*, December 3rd, <http://www.mediafax.ro/economic/ponta-autoritatile-de-management-vor-trece-sub-o-singura-autoritate-in-2014-2020-10363286>

its approval through a nation-wide referendum¹⁰.

Administrative improvements are present in all programs. The restructuring of development agencies is clearly preferred by AJR. A more efficient use of the Technical Assistance programme is supported by DAHR. An **improvement in the co-financing of EU-funded projects** by assuring that resources are available through a national guarantee fund is an alternative proposed by both DAHR and SLU. A **transfer to the private sector of a part of the implementation and management services** is an option expressed by AJR. Better information, learning from good practices (also mentioned by SLU) and even the reallocation of funds to the most efficient spender are the options of DAHR.

As **anti-fraud strategies**, AJR proposes a specialized approach, through the creation of bureaus within the National Anticorruption Directorate (NAD) whose goal would be to investigate and discover cases of fraud with European Union funds or public procurement irregularities. The SLU proposes to generalize the SEAP system (Public Acquisitions Electronic System) for all central and local procurements. At the local level, the solution offered by the DAHR until 2013 consists in better prepared authorities through intensive training and adequate information. For the 2014-2020 financial

¹⁰ SLU, *Governing Programme 2013-2016*, p. 33.

perspective, the same strategy is proposed: improving the professionalization and accountability of local authorities.

The **offer in the field of health policy is one of the most important**. The trigger of the Boc government's downfall in winter 2012 was a new health bill which proposed to scrap the highly appreciated emergency system run by Dr. Raed Arafat, the only naturalized foreigner in Romania enjoying a public position and very high popularity. The rally in favour of Dr. Arafat and the ill-advised reform was replicated after his city, Tirgu-Mureş, initiated it, with many others following after President Traian Basescu called in a live talk-show to threaten him and demand he stop criticizing the bill. This turned Dr. Arafat in an instant hero. The SLU offered him the position of Health Minister in their own government, but he announced that he will step down after the elections to head only his national emergency service (SMURD).

One would expect, seeing this high stake that a lively discussion existed in the electoral campaign on the issue of reforming the health system. The reform is driven by the IMF and targets the many arrears between the main state insurer, the National Insurance House, and the hospitals and pharmacies. **The problem is that a considerable discrepancy exists between what the national insurance system claims to cover and what it can actually afford**. This incongruity is not

clearly addressed in the party programs, though another draft bill proposed by the Health Ministry suggests further reductions of services and creation of alternative insurers so as to take away a part of the fiscal burden. It is unclear, however, how these insurers will fund themselves, as the state keeps its monopoly on raising contributions to the health budget. Previous cuts of the contribution rate misbalanced the system and attempts to increase the number of payers in 2011 (for instance by making pensioners and self-employed contribute) did not manage to fill in whole gap.

Meanwhile, Romania has developed an alternative private system with over two million subscribers, but the problem remains for the rural poor and the pensioners who cannot afford it. Private contribution to health expenditure is high and health indicators continue to be at the level of developing and not developed countries with high rates of tuberculosis, infantile mortality and mental health problems.

AJR keeps in its program the essential thesis of the DLP government in 2010-2011: a superior organization of resources is enough to ensure better financing, although it no longer proposes hospital closures and privatization of the medical state system, which proved highly unpopular. Instead it suggests private-public partnerships. Co-payments were introduced in 2012, with Mr. Dan

Diaconescu promising to remove it if elected.

All parties pledge to raise income of doctors and nurses, who cannot survive without gifts from patients at current wage levels and who have started to migrate massively to other EU member states, but the source of supplementary funding is not specified. However, DAHR suggests that 12% of the total health expenditure should be reallocated to family doctors, who are in short supply. SLU proposes that the national insurer support pensioners with earnings under

Lousy offer of candidates

The profile of candidates has been a prevalent theme in Romania, ever since a coalition of civil society organizations significantly impacted the projected result of the 2004 parliamentary elections through a campaign for political integrity. After that point, the topic was monopolized by Traian Basescu who has, however, lost much credibility in the recent past. An ethics committee of his own party, led by Monica Macovei, a former Minister of Justice who built her reputation as a key anti-corruption figure during the 2005-2006 reforms, failed dramatically to filter the candidates. Ms. Macovei voted on integrity criteria against 96 AJR candidates – one was even arrested by the National Anti-Corruption Directorate (NAD) at the beginning of the electoral campaign.

250 Euro with 90% of their total pharmaceutical expenditures.

None of the parties take a clear position versus the health bill draft proposed by former minister Vasile Cepoi in the Summer. Mr. Cepoi, a technocrat with a Communist background who managed to survive under both Leftist and Rightist governments, had to step down after being accused of personally benefiting from European funds that were under his jurisdiction. EU funds are seen as a solution to finance the development of health infrastructure in poorer regions by SLU.

Nevertheless, the committee over which she presided, cleared 58 of these 96 and the party leadership gave the green light for almost all the others. None of the notoriously corrupt members of the former government were affected. **The other parties were less hypocritical and did not even claim they attempted to screen their candidates**¹¹. Therefore two of these

¹¹ On November 25th, the Romanian Academic Society (RAS) and the Alliance for Clean Romania (ACR) launched a new database containing all the relevant information about the integrity of candidates for the upcoming parliamentary elections. Every citizen voter can consult it and rate one's candidate according to the following 12 monitoring criteria: collaboration with the secret police of the former regime ("the *Securitate*"); positions held in the Communist apparatus, prior to '89; political and administrative positions held since '89; migration from one political party to another; nepotism: the degree of kinship between the candidate and other members of the same political party; the wealth of the candidate; business and contracts with state; the debt of the

candidates will participate in the upcoming election **from their prison cell**: one of them is an independent candidate who has been sentenced for corruption by the Court of Last Appeal and is currently serving time in jail, while the second is being held in custody following a court decision in a similar case. Four other candidates have also been sentenced to jail by a Court of First Instance, and four more were held in custody. 23% of the 700 eligible candidates which have been monitored have switched political parties at least once. A total of 35 eligible candidates are already at their third party. The newly established People's Party - Dan Diaconescu (PP-DD) which is a self-proclaimed anti-system party, has the highest number of "migrant" members. 45% of its candidates for the current elections were previously members of at least one other political party. The law does not allow local elected officials to swap parties, but legislators are allowed and migrate frequently to the party doing better in polls or havinh more resources to share. Twenty-four eligible candidates have been officially proven to have incompatibility problems, and are being investigated by the National Integrity Agency (NIA).

80% of the candidates have made their fortune on the basis of government contracts or enjoy other sorts of

candidate's firms to state; conflicts of interest and incompatibilities; whether she/he has been arrested or convicted; sponsorship to political parties; racist and discriminatory public statements.

government rents)like subsidized luxury housing). The value of these public works contracts were estimated at hundreds of millions of euros. A notable case has been identified in Bihor County where the firms owned by three candidates holding public offices, or their family members, were awarded state contracts worth 125 500 000 euros for undertaking construction works contracted by themselves. Some notorious political party sponsors throughout these elections entered politics quite recently, after being active in business and amassing fortunes on behalf of public contracts.

Moreover, 12 candidates are the sons or daughters of local politicians, with Prahova (3) and Constanta (2) the champions. Seven candidates are the wives of politicians/officials and eight other are also relatives of other politicians. Finally, 18 candidates are related to each other.

The data collected by ACR indicates that **Romanian politics continues to be dominated by nepotism and clientelism, with public resources being the main source of spoils and fuel of politics, recycled through private businesses to political parties.** Women are present in insignificant numbers, and seem to have access only through other (male) politicians, regardless of their political competence. Ten monitored candidates have also made recent discriminatory statements. Many of these statements have been publicly condemned by civil society organizations and some of them (the case of former External Affairs

Minister, Teodor Baconschi) have also been condemned officially by the National Council for Combating Discrimination (NCCD). ***Parties do not have any code of conduct and seem to respect no quality criteria whatsoever. Romania did not succeed in passing lustration, and the legal costs of racist or sexist behaviour are low to inexistent in public life.***

After elections

The process of forming a new government after the upcoming elections can result in a new constitutional crisis if SLU wins an absolute majority in Parliament and if the President refuses to name as Prime Minister the candidate supported by the coalition.

The ambiguous Romanian Constitution fails to offer a mechanism of dispute resolution if the directly elected President chooses another Prime Minister than the leader of the winning political entity. The President stated only that the mandate to form a government should be offered if a *party* obtains an absolute majority in Parliament (Art. 103–1). Nonetheless, analogies can be drawn, which indicate that this choice is not a purely discretionary one when a clear and stable majority results from the elections. There are, for example, references in constitutional jurisprudence as to the constitutional relevance of “majorities resulting from elections” (see, for instance, the two 2005 Constitutional Court decisions holding that the sacking of the Speakers of the Chambers of Parliament cannot be purely political but has to reflect “the political configuration resulting from the elections”).

Moreover, the Political Parties Law 14/2003 treats the subject of *political alliances* (Chapter V, The Association of Political Parties) in connection with a legislatively (and constitutionally) protected purpose, that of ensuring a degree of political and thus governmental stability. Political alliances, albeit the parties composing them preserve their separate legal personalities and structures, are subject to relatively restrictive procedural and substantive requirements, partly analogous to those provided for in the case of parties. These legislative conditions are set forth in order to ensure the cohesiveness of these electoral-political blocks, a cohesiveness which, in the case of obtaining an absolute majority in the elections, will facilitate the formation of a stable government. One can compare in this respect the legal regime of political alliances with that of simple post-electoral *coalitions* (Art. 36). The latter are, to wit, subject to no formal registration conditions and scant legal demands as to the content of their constituting protocol, which must contain “solely provisions on ensuring of governance and the provision of support in Parliament”.

However, Mr. Basescu has the majority in the Constitutional Court, which granted him, for instance, the right to represent Romania in the European Council, although most other European states are represented by Prime Ministers. Also, in 2009, Mr. Basescu succeeded – after the fall of a government he favoured- to refuse appointing a candidate (Klaus Iohannis, mayor of Sibiu) who had a majority, only in the end to have his own favourite sworn in

again. The Constitution does give him the right to dissolve the chambers and call elections again if two rounds of voting do not succeed in imposing a Prime Minister. SLU has adopted the decision that Mr. Ponta, the leader of the biggest of the two parties, will be their Prime Minister, and Mr. Basescu has already announced he will not nominate him. However, he recanted on this threat before, when he appointed him in April.

Mr. Basescu claims SLU will not respect the rule of law and will seek the control of anticorruption agencies. He can certainly point to the poor SLU voting record in the Parliament since it voted against many anti-corruption bills, and its dismissal of the Ombudsman in the Summer, which it planned to replace with a Social Democrat politician despite pledges to Brussels to look for an independent. SLU claims in its turn that Mr. Basescu controls these agencies already, and quote as proof the fact that the head of the National Revenue Agency ANAF was only indicted after the DLP fell from power in the spring. While many in Mr. Basescu's party were also pursued by

National Anticorruption Prosecutor, his close associates were indeed untouched. His favourite, Elena Udrea, is only now investigated for misuse of European funds during her tenure as development minister.

Are SLU's sins a sufficient reason for Mr. Basescu, who has less than two million supporters left (against nearly eight million or more), to deny it the possibility of forming the government of their own choice, when this seems to be the overwhelming preference of the voters (the ratio between the two coalitions preference is greater than three to one)? Would any of the counter-candidates he could muster be able to gather a majority under the threat of early elections? Mr. Basescu, a close friend of Presidents of both Lithuania and Georgia has two clear choices: to fight to the bitter end (in Lithuania this took a month) or resign himself, the Georgian way. He might be the last powerful President, because, as in Georgia, the SLU pledged to change the Constitution so as to make him the last directly elected Romanian President.

CONTRIBUTORS:

ELECTORAL: Simona Popescu, Ioana Lupea, Razvan Orasanu (Kennedy School), Andreea Wagner (Carleton U), Romanian Academic Society; **PROGRAMMES:** Valentina Dimulescu, Adriana Iordache and Raluca Pop, Romanian Academic Society; **CONSTITUTIONAL ISSUES:** Dr. Bogdan Iancu (Lecturer, University of Bucharest); Research Project Director, Romanian Academic Society; **EDITOR:** ALINA MUNGIU-PIPPIDI.

61 Mihai Eminescu, Bucharest 2, Romania RO- 020071

E-mail: office@sar.org.ro | Website:

www.sar.org.ro