



Nations in Transit 2008
Romania

Nations in Transit Ratings and Combined Scores

	1999	2001	2002	2003	2004	2005	2006	2007	2008
Electoral Process	2.75	3.00	3.00	2.75	2.75	2.75	2.75	2.75	2.75
Civil Society	3.00	3.00	3.00	2.75	2.50	2.25	2.25	2.25	2.25
Independent Media	3.50	3.50	3.50	3.75	3.75	4.00	4.00	3.75	3.75
Governance	3.50	3.75	3.75	3.75	3.75	n/a	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	3.50	3.50	3.50	3.75
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	3.00	3.00	3.00	3.00
Judicial Framework and Independence	4.25	4.25	4.25	4.25	4.25	4.00	4.00	3.75	4.00
Corruption	4.25	4.50	4.75	4.50	4.50	4.25	4.25	4.00	4.00
Democracy Score	3.54	3.67	3.71	3.63	3.58	3.39	3.39	3.29	3.36

EXECUTIVE SUMMARY

Romania joined the European Union (EU) on January 1, 2007, having come a long way from Nicolae Ceaușescu’s dictatorship. Its evolution is all the more remarkable considering it was the only Eastern European country with a bloody revolution (1,000 dead in still unclear circumstances) and a transition dominated by former Communists. Ion Iliescu, a reformed apparatchik with authoritarian tendencies, enjoyed three out of the first four presidential mandates. As there was no organized opposition under Ceaușescu’s harsh regime, the challenger elite has had significant difficulty providing a viable political alternative.

In 2007, Romania had barely entered the EU when its political class started to undo the commitments undertaken to allow the country’s accession. As anticorruption has gone so far as to make two deputy prime ministers resign over one year, most of the political class mobilized to change the legislation in order to decrease the power of prosecutors. The government even attempted to close down the National Anticorruption Directorate, Romania’s independent anticorruption agency. A vicious fight erupted between the president and the Parliament, culminating in an attempt to impeach President Traian Băsescu. A real split between representatives and voters emerged when two-thirds of Parliament voted to have Băsescu deposed and two-thirds of the voters reinstated him in a referendum on May 19.

National Democratic Governance. In Romania, 2007 was a year of political instability, as the Parliament tried to impeach the president, despite a negative *avis* from the Constitutional Court. Voters later reinstated him in a referendum. The government continued to legislate by using emergency ordinances even after EU accession, when urgent need could no longer be pleaded. Other bad practices returned to the Romanian central government, from discretionary allocation

of funds to special destination bills. *For these reasons, Romania's national democratic governance rating worsens from 3.50 to 3.75.*

Electoral Process. Romania held its first European Parliament elections in 2007 and two referendums, one for the impeachment of the president and another for the change of the voting system. All ballots were surrounded by important legal battles for influence, but once the rules of the game had been settled by the Constitutional Court, which played a major referee role in 2007, no irregularities were reported on voting days. *However, chronic problems with the potential to generate irregularities persist and were not properly addressed by Romania's authorities (for instance, incomplete distribution of voter cards and unfinished correction of electoral lists); therefore, Romania's electoral process rating remains at 2.75.*

Civil Society. Romanian civil society showed signs of vulnerability both financially and politically in 2007. Attempts by politicians to corrupt or intimidate civil society were on the rise. *Despite real vibrancy in some sectors, and continuous potential to generate new coalitions on various topics, the influence of economic and political pressures on civil society continues to be significant; thus, the civil society rating remains at 2.25.*

Independent Media. The trend toward concentration of media ownership continued in 2007, with content still corrupted by blackmail and defamation campaigns of every kind. The Romanian public television's news department again came under political attack with the change of the government coalition. On the positive side, Romania recorded for the first time the resignation of a reputed journalist owing to such practices, as well as some prosecutions of journalists for corruption. *By and large, there were no significant developments compared with the previous year, so the rating for independent media remains at 3.75.*

Local Democratic Governance. Decentralization made little progress in 2007 in Romania, despite the existence of new legislation. A new electoral law provides for county council heads to be elected directly, opening the door to increased legitimacy for regional government. Despite an increase in the discretionary allocation of funds from the central government, Romanian local governments remain the most trusted and effective tier of government in public perception. *As there were no substantial developments compared with the previous year, the rating for local democratic governance remains at 3.00.*

Judicial Framework and Independence. The year marked a step back in the reform of the Romanian judiciary. After the February 2007 dismissal of Justice Minister Monica Macovei, trusted by both the public and the European Commission, her successor attempted without success to fire an anticorruption prosecutor and to close down the National Anticorruption Directorate. The prosecutors, however, continued to indict top politicians, with nine ministers of the government investigated by autumn 2007, and they were protected by the magistrates' self-governing bodies. *Despite the good show of will by magistrates, repeated attempts of the government and some members of Parliament to subordinate the judiciary and terminate anticorruption investigations against politicians were a constant threat to the independence of the judiciary; thus, the rating for judicial framework and independence deteriorates from 3.75 to 4.00.*

Corruption. Romania's anticorruption activity remained high throughout 2007, with central and

regional offices of the National Anticorruption Directorate indicting many key figures in Romania's political and business community. This activity, however, only exposed the weaknesses of the central government and its lack of will to continue anticorruption efforts after the departure of Minister Macovei. Ministers were recorded accepting bribes, but they had to resign once exposed. Courts are hesitant to decide in major corruption cases and prefer procedurally motivated postponements. The media have continued to play a positive role in exposing corruption cases, and the public is well aware of the problem. Despite the strong counter offensive of politicians to aggressive anticorruption campaigns, prosecutors backed by President Traian Băsescu seem intent on continuing Minister Macovei's work. *As these two divergent tendencies are quite balanced currently, the rating for corruption remains at 4.00.*

Outlook for 2008. In 2008, Romania will hold local and legislative elections that will include several firsts. Heads of county councils will be elected directly for the first time, which will strengthen the local tier of political parties and empower local politicians. Second, legislative and presidential elections for the first time will not run simultaneously, following a 2003 constitutional modification that lengthened the mandate of the president from four to five years. As the Romanian Constitution demands that a president be politically neutral, this de-synchronization is expected to boost the importance of party platform over leaders. However, the third positive step is that legislators will be elected in single-unit constituencies on the basis of a mixed electoral system, which will fragment the electoral campaign and craft party messages for local constituencies. Great expectations exist that these reforms will curb political corruption. What is more likely is that political parties will be further fragmented and undisciplined, with huge competition over public funds. The Liberal Democratic Party (*Partidul Liberal Democrat*, PLD), the president's party, is expected to win the elections, but not the absolute majority. As PLD's coalition potential is rather limited, Băsescu, who has the constitutional right to appoint the prime minister, will have to prove a strong political broker to hold together a majority government.

MAIN REPORT

National Democratic Governance

Romania became a full member of the European Union (EU) on January 1, 2007. The accession treaty made clear that if there were serious shortcomings in the transposition and implementation of the EU acquis regarding the economy, domestic market, or justice system, then "safeguard measures" would be implemented for up to three years. Romania's accession was also accompanied by specific measures to prevent or remedy shortcomings in judicial reform and the fight against corruption. For the past two years, a cooperation and verification mechanism had been established to set benchmarks for monitoring progress in this area. The purpose of this unprecedented mechanism was to assure Romanians and other EU member states that administrative, legislative, and judicial practices in Romania were in line with the rest of the EU. This entitled the European Commission to closely monitor Romania's progress or lack of progress in these areas. However, this strong EU conditionality did not prevent Romania from

sliding back into old habits immediately after accession, including issues with corruption and an ongoing conflict between Prime Minister Calin Popescu Tăriceanu and President Traian Băsescu.

Romania is a semi-presidential republic. The president is directly elected by the voters but has limited powers, which include overseeing defense and foreign policy and appointing (but not dismissing) the prime minister. President Băsescu and Prime Minister Tăriceanu began as allies in the Truth and Justice Alliance formed by the Democratic Party (*Partidul Democrat*, PD) and the National Liberal Party (*Partidul Național Liberal*, PNL), but they fell out over Băsescu's wish to call early elections in order to secure a larger majority (he appointed Tăriceanu in 2004 for the same reason). This divergence over tactics led to more serious disagreements, and coalition infighting has gradually turned unmanageable.

Tăriceanu in turn began seeking parliamentary majorities backed by the opposition rather than the PD, while Băsescu started to evoke his constitutional powers to organize direct consultations in order to push his own agenda. Members of Parliament (MPs), fearful that the president might initiate constitutional reforms of the presidency and electoral system, reacted promptly by focusing on the referendum law, which sparked legal battles in the Constitutional Court and a war between Băsescu and the parliamentary majority. Tăriceanu eliminated his former PD allies and completed his government with more liberals and a junior ally, the Democratic Union of Hungarians in Romania (*Uniunea Democrată Maghiară din România*, UDMR). This minority government, through negotiations within Parliament, survived two no-confidence votes in 2007 and was frequently at odds with the president.

One of the chief characteristics of Romanian political life is that the country's history haunts its present. The phenomenon of digging into the past to level accusations against former Securitate "collaborators" continues to capture public attention and, to a large extent, corrodes the country's transformation and impedes progress. Following the elimination of the PD in March, the Parliament appointed a special committee to investigate alleged abuses of the Constitution by President Băsescu. Dan Voiculescu, president of the Conservative Party (*Partidul Conservator*, PC), chaired the committee. President Băsescu's past included a position as head of Nicolae Ceaușescu's Romanian foreign trade office in Antwerp. Voiculescu, now one of Romania's leading media tycoons, once worked for Dunarea, another Ceaușescu-era former foreign trade enterprise. The Council for the Study of the Securitate Archives (CNSAS), the authority screening the Communist archives, reported that Voiculescu also worked for Ceaușescu's secret service—another ember from Romania's past that continues to fuel political fires.

The special committee's report on Băsescu's alleged constitutional infringements was sent to the Constitutional Court to receive an *avis*. The Court ruled that there was no proof of a serious breach of the Constitution but on April 19 the majority of MPs voted for his suspension. A two-thirds majority (322) of MPs cast their vote to impeach Băsescu, with 108 against and 10 abstentions.¹ Nicolae Văcăroiu, the head of the Senate, became interim head of state. The Constitution, however, gave voters the right to directly sanction this decision in a referendum after a one-month campaign.

MPs tried to modify the referendum law to curb the president's constitutional powers. As Romania had elections for the European Parliament scheduled for May, the Parliament ruled that a referendum could not be organized three months before or after elections. The Parliament also

ruled that a president can be dismissed with a majority of voters present if he was elected in the second round, but if he was elected from the first round with an absolute majority, then a majority from the absolute number of votes is required for dismissal. Additionally, the government rushed an emergency ordinance to restrict the topics on which the president can call a referendum, excluding all constitutional matters.

Another amendment reversed an earlier decision that referendums are valid regardless of turnout (as elections in Romania fail to draw an absolute majority turnout, referendums are even less able to mobilize people). This meant that Băsescu could have remained impeached indefinitely if an absolute majority did not turn out to vote at the referendum. The Constitutional Court was overwhelmed in the space of a few weeks with motions contesting these amendments, and despite having a majority with Social Democratic Party (*Partidul Social Democrat*, PSD) ties, the Court overruled most of these initiatives as unconstitutional. The government postponed the European elections, declaring that the referendum on impeachment, which was held on May 19, would unnecessarily confuse voters.

The already weak policy formulation process in Romania underwent further degradation in 2007. The lack of a majority in Parliament meant that every bill had to be negotiated with each MP. Despite Romania's EU-sponsored department for policy formulation, legislative proposals reach Parliament that do not satisfy even minimal requirements. In an extraordinary blunder, the Parliament adopted a law increasing pensions even though Romania's pay-as-you-go system was already overstretched. The bill was rejected by the government and the parliamentary committee in charge of finance (led by a PSD politician), yet it reached the plenum and was adopted instantly.

The 2008 budget is for the first time based on the optimistic expectation that tax collection will improve. By the end of 2007, Romania had missed its inflation target and was downgraded for the first time in years by rating agencies like Standard & Poor's. Nevertheless, the Tăriceanu government survived two no-confidence votes. The last was initiated by the PSD, the largest opposition party, but it failed owing to defections within the party and within its partner in the motion procedure, the PD.

The Tăriceanu government issued 130 emergency ordinances in 2007. These are laws applied immediately after their promulgation by the government, prior to their parliamentary approval. The practice is problematic because it further delays the Parliament's legislative backlog in which ordinances are delayed for months or sometimes years and frequently must undergo significant modifications before being brought for approval; thus creating continuous legal instability. As most of Romania's important legislation continued to be passed in this manner, even after the country's EU accession, the result is a permanent confusion for legal practitioners.

Numerous proposals emerged in 2007 to amend the Constitution to allow a reshaping of Romania's executive. These proposals tended to be maximalist in nature (some argued for the restoration of the monarchy, for full American-style presidentialism, or for full parliamentarianism, giving up direct election of the president). Any constitutional modification must be approved by two-thirds of the joint chambers and by a popular vote. However, such proposals are unlikely to advance given the strict process for amending the Constitution and Romania's political environment, where productive dialogue and the capacity to compromise are

in short supply.

Electoral Process

On May 19, 2007, a solid 74 percent of Romanians voted against the impeachment of President Traian Băsescu. The Audio-Visual Council ruled that broadcasting time during the campaign was not divided equally among the “yes” and “no” camps but mirrored the proportion that political parties currently enjoyed in Parliament.

The European parliamentary elections were postponed from May to November 25. The electoral campaign was dominated by news that Romania’s uncontrolled migration to Italy before and after the EU accession (650,000 Romanians have moved to Italy over the last four years) had started to generate a negative reaction triggered by increased criminality, from petty begging to armed robberies.

There was no observable debate on European issues among politicians or the public during the year, yet a survey of political parties by the Romanian Academic Society showed political positions typical of the “new Europe,” with an abundance of parties in the center-right camp (that is, Liberals, Liberal Democrats, Democrats, and Hungarian Democrats). The PSD positioned itself somewhat more to the left but also quite close to the center on economic issues. The small PLD declared itself against the current foreign and security policies. In total, 35 European MPs were elected by universal proportional suffrage, with an electoral threshold of 5 percent. Turnout was 29 percent. The PD came first with 32 percent, followed by the PSD with 21 percent, the PNL with 15 percent, and the PLD with 7 percent.

During his spring contest with MPs, Băsescu began to speak about a self-serving “political class” insensitive to voters’ needs as the paramount problem in Romania.² The lack of integrity and professionalism of politicians, he said, was responsible for impeding Romania’s successful European integration following its accession on January 1. Băsescu declared that ordinary people stood no chance of seeing any benefit from European funds under these circumstances where interest groups ruled. Returning to the civil society language he had used in the 2004 campaign (and then dropped), he called for a “cleaning” of politics and politicians.

On the one hand, he encouraged prosecutors to continue corruption investigations against top politicians. On the other, he proposed changing the electoral system with the adoption of a single-unit constituency system, so that voters could easily trace responsibility to their MP. This topic has been debated for years, with unions and nongovernmental organizations (NGOs) collecting signatures for such a reform. In reality, NGOs lobbied for a uni-nominal system that could have been based either on a majority (simple or absolute) or on proportionality (within single constituencies). Băsescu himself had always been skeptical, but in February he defied the Parliament to adopt such legislation.

Parties have long competed for such a reform, despite the lack of evidence that irregularities are related more closely to proportional voting list systems. Several competitive projects have emerged in the Parliament, including the PSD proposal for a double-ballot majority vote (two rounds in a single constituency), which is already used in Romania to directly elect mayors. This

system has the advantage of creating clear majorities and pushing parties into alliances between the two rounds (that is, if a candidate does not win an absolute majority outright). Some cite a lack of representativeness as a disadvantage of this system. A second proposal (from the NGO ProDemocracy and supported by parties from the Truth and Justice Alliance) featured a mixed system. A third proposal allowed different systems for the Assembly and the Senate. Hungarians tended to oppose all three proposals, as any step away from proportionality threatens a reduced representation for this strong minority, which generally mobilizes its voters effectively and participates in government coalitions as minor partners.

President Băsescu set a summer deadline for the Parliament, but by the end of the session in July, MPs had not yet agreed on a project. The committee in charge of electoral legislation finally offered a version of the NGO proposal where half of the MPs would be elected from the first round, regardless of turnout, in single-unit constituencies. According to the parties' national performance, the other half of the seats would be distributed proportionally to losers in the first round. Although the system was inferior in terms of legitimacy to the current simple proportional formula (parties meeting the 5 percent threshold get seats proportional to votes), it preserved a strong proportional element. The proposal's potential to reform political parties is ambiguous, as few candidates would gain absolute majorities and thus benefit from the direct attribution of a seat.

Nevertheless, the Parliament did not approve the plan until Băsescu announced he would call a referendum to consult voters on the double-ballot system. The government then sent the proposal to Parliament in a procedure known as "assuming responsibility," where Parliament cannot vote against a bill without bringing down the government. As MPs feared the prospect of early elections, the government's project passed. Still, Băsescu announced the referendum and scheduled it for the same day as elections for the European Parliament. The Greater Romanian Party filed a motion to the Constitutional Court, but the Court ruled in line with its previous decisions, declaring there was no constitutional impediment to prevent two simultaneous ballots.

President Băsescu stated that he would not promulgate the government's bill until Romanian citizens had expressed their will by way of a referendum, and the fight over the voting system was the last of a series of vicious struggles between Băsescu and Prime Minister Tăriceanu in 2007. An absolute majority was needed but predictably not reached on November 25, when only 26.5 percent of voters showed up for the referendum. The "yes" vote came to 81.3 percent against a "no" vote of just 16.1 percent. One of the strategies of "no" supporters was to boycott the vote so as to invalidate the process.

Civil Society

Owing to the intensity of political conflict in Romania, few prominent NGOs managed to keep an independent position in 2007. However, in the autumn a coalition of groups, including some trade unions, monitored the integrity of candidates for the European Parliament under the banner of the Romanian Coalition for a Clean Parliament. Otherwise, the general lack of funding, uncooperative behavior of the government, and new defections of civil society activists into politics diminished the watchdog potential of civil society. Notoriously vocal Romanian NGOs,

such as the Group for Social Dialogue and Timisoara Society, lost headquarters that had been rented from municipalities and had serious difficulties securing new offices.

Still other organizations have long courted public funds and worked in close partnership with government agencies, whose friendliness has been needed in order to access EU money. The list is long and includes NGOs that started out as government watchdogs. In a typical scenario, NGOs strongly criticize public agencies and then offer contractual services to remedy the situation. Political parties tried to recruit intellectuals and civil society activists to stand as candidates for elections to the European Parliament. Renate Weber, former president of Romania's Soros Foundation, after years of work as an independent civil society activist, became a candidate for the European Parliament with the PNL.

Major businesspersons sponsor soccer clubs, which typically thrive on fiscal evasion and are pursued in various courts by tax authorities. Sponsorship legislation is poor and outdated, but there are few attempts to revive it. Donations from the 2 percent income tax category increased significantly as compared with 2006, but the total remains a meager €5 million (US\$7.7 million) for all types of NGOs. The Foundation for Development of Civil Society, a resource center for NGOs created during Romania's EU accession, is lobbying to preserve funds for civil society, but the issue is still unresolved. While many incoming EU funds create opportunities for NGOs that act as service providers, they are as a ground rule distributed to the government at every tier (central, regional, local), so the access of NGOs can be made only by partnerships with authorities.

An institution with a brave record of political correctness in 2007 was the Romanian National Antidiscrimination Council (RNAC), an official agency whose members are independent and belong to various NGOs. The RNAC intervened in a dispute where a teacher sued a school over the excessive presence of Byzantine icons. In a wave of response, print and TV editorialists argued that it is crucial for Romania to safeguard its Christian Orthodox identity in the year of its accession to the "Catholic and Protestant" Europe. The Ministry of Education at first sided with the plaintiff but later shifted toward public opinion. The RNAC, whose powers include offering consultative opinions and issuing fines, ruled that the posting of Christian icons in public schools constituted discrimination toward students of other religions as well as nonbelievers. The ministry appealed the decision, and a populist politician and soccer club owner, George Becali, publicly insulted the RNAC head.

In a second decision, the RNAC fined President Bănescu when he called a journalist a "stinking Gypsy."³ [The comment was captured on video on the journalist's cellular phone, which had been confiscated after the journalist refused to stop recording. Unwittingly, the video function remained engaged and recorded the private exchange between Bănescu and his wife; when the president later returned the phone to the journalist, with his apologies, she found the recording and made it public. Likewise, Minister of Foreign Affairs Adrian Cioroianu made a verbal slip, saying Roma who committed crimes in EU countries should be sent to a camp in the Egyptian desert and he was similarly pursued by the RNAC.⁴

During 2007, the country's various public voices showed a lack of preparedness for joining the wider European discourse. Politics aside, the public sphere was dominated by identity debates highlighting Romania's specificity and apprehensions about "secular Europe." Many

intellectuals in Romanian public life are practicing Orthodox Christians, and there is a growing attitude of bigotry and nationalism in the country. The general tone of public discussion in the media is often offensive to one group or another. Defenders of political correctness are few and generally come from professional civil society, thus carrying little credibility with the wider public, which appears to greatly enjoy the tough language from Bănescu and Becali. The expulsion of some Romanian Roma from Italy by the end of 2007 provoked a new round of identity debates and new expressions of racism, somewhat moderated by regulators like the Audio-Visual Council and RNAC.

Independent Media

In 2007, Romanian media were increasingly concentrated in the hands of a few owners. Of the 12 Romanian dailies, 3 are owned by Swiss media corporation Ringier AG, 2 by Adrian Sarbu (who, in autumn 2007, became chief operating officer of Central European Media Enterprises), 2 by the politician and businessman Dan Voiculescu's family, 2 by the oil tycoon Dinu Patriciu, and 2 by investment fund manager Sorin Ovidiu Vântu. Vântu now owns 14 titles, 3 television stations, a radio station, and a news agency. Sarbu owns 5 television stations alongside 2 national dailies and a network of local newspapers. The Voiculescu family owns 3 television stations, 2 dailies, and several other smaller outlets. Ringier is the only important foreign company to enter the Romanian media market. There were 8 unaffiliated dailies two years ago; now there are only 2.

Corruption in the Romanian media, or *kompromat* (to borrow the Russian term), continues to be the main problem within the press. "Black and gray" PR has turned into a profitable industry in its own right. Full campaigns are funded against political or business opponents, and few newspapers are completely protected from such deals. During the campaign for the patriarchy of the Romanian Orthodox Church, for instance, newspapers lent their support to certain candidates and published defamatory materials against others. Even *Evenimentul Zilei*, Ringier's main quality newspaper, published an article describing the brother of the would-be patriarch Daniel as a secret service officer and a thief. The newspaper later reported on the election of Daniel without mentioning the claims of the earlier piece. Oligarchs under investigation for corruption devote generous space in their media outlets to insult-laden fights against magistrates. During his impeachment process, President Bănescu was criticized on most TV channels and accused of being a dictator threatening Romanian democracy.

The main political pressure in 2007 was on the Romanian public television outlet, SRTV, which includes the four channels TVR1, TVR2, TVR Cultural, and TVRi. During the highly sensitive period before the referendum on President Bănescu in May, tensions mounted between TVR general manager Tudor Giurgiu and TVR news director Rodica Culcer. The press and the opposition had criticized Culcer for her outspoken support of Bănescu during his 2004 election campaign, but her work as TVR news director had generally been praised. The administrative regulations of TVR are protective of employees, and Culcer refused to step down. In the meantime, Giurgiu lost the favor of the government and resigned on May 4, 2007. His replacement was Alexandru Sassu, proposed by the PSD. Like Giurgiu before him, Sassu tried to preside directly over newsroom meetings, replaced all producers, appointed a new news director

Madalina Radulescu, and denied President Bănescu the right to appear on television to promote his referendum. There was only a weak show of solidarity among Romanian media and civil society for the TVR journalists.

Local Democratic Governance

Of the 113 amendments to the electoral reform bill proposed by MPs in 2007, the government included 23 in the final version. The most important was the PSD proposal that heads of county councils should also be directly elected by majority ballot, which has the potential to overhaul regional politics and open the door to significant changes in Romania's administrative organization.

The importance of the county council grew rapidly during the years it functioned as the main relay in the fiscal decentralization process. Most funds from the central budget were traditionally distributed to county councils, which then had a large say over their distribution to communes and towns. This mechanism was curtailed by new legislation starting in 2004. County council presidents play a key role in the distribution of European funds. Most EU funds in 2006 were distributed by regional development boards, where the majority of county council heads have decisive power. This has led to continuous struggles among parties to control this office. Normally, the county head is elected by the council following local elections (councils are elected proportionally). As local elections in 2004 preceded general ones, and the electorate was split over Left and Right, in many counties forging a majority was extremely difficult. The situation was further complicated by squabbles and shifts of the majority within the government alliance. In many counties, this led to reelection of the county heads and continuous bargaining among parties over most projects.

Political migration was prohibited by law in 2006, but even where formal migration has not taken place, there has been instability and fluctuation on county councils. In many counties, the majority is not so much a political but a business majority, bargained among the actors with the strongest economic interests in the county. It is difficult for any company not politically networked to the majority to win a county project, and mayors are continually pressed to switch parties in order to fulfill their promises (and be reelected). County heads are popularly called "local barons" and have emerged as real influence brokers in national politics. A rising star of the PSD, Liviu Dragnea, managed his considerable advance in the party from his position as president of the powerful association of county councils.

The direct election of county heads is not altogether a bad idea. It empowers citizens to vote out corrupt local characters and motivates county heads to invest in popular projects. It could provide stability instead of the current continuous bargaining and fluctuation. However, the idea was opposed by President Bănescu. As the twice former directly elected mayor of Bucharest, Bănescu struggled in vain with a local council that maintained a different political majority and followed its own project agenda. In light of the power distribution in the current legislation, it is likely that regional bargaining would be followed by regional deadlock once county heads have a different constituency from that of the council members. Although Bănescu vowed not to promulgate the government's electoral reform bill until his referendum was held—and had not

done so by year end 2007, he might be forced to accept it in the end, opening the door to new developments.

The decentralization legal package adopted in 2006 was not followed by real implementation, and mayors of smaller administrative units often faced shortages of funds owing to irregular transfers from the central government. Ministers were assigned the priority of proposing decentralization programs in their respective fields (for instance, education or the police), but no serious steps were undertaken in the last years. The influx of funds to the budget owing to Romania's positive economic growth offered the government resources to, in essence, return to bad practices. Despite the adoption in 2003 of clear criteria for distributing funds to subnational government, new programs were created by ministries to distribute by political criteria, especially to counties or mayors from the government party. Even mandatory payments from the central budget have at times been manipulated—for instance, penalizing schools in opposition counties by transferring maintenance funds late in the summer to leave schools unprepared for the coming academic year. Despite an increase in local budgets in 2007, the practice of discretionary allocation is a step back from previous years.

There were other steps back in local governance during the year. Despite turning prefects into civil servants at the EU's request (formerly they were politically appointed), the Democrat prefects were fired once the government coalition split. This EU requirement was intended to prevent the politicization of prefects, but it failed completely. To avoid lawsuits by fired civil servants, which are generally won, the government offers other positions in the administration at a similar level. This strategy adds to the growing group of tenured administrators who are politically appointed rather than hired through the professional training channels created for civil servants, such as the National Institute for Administration.

Judicial Framework and Independence

In the immediate aftermath of Romania's accession to the EU in January, the battle began against Justice Minister Monica Macovei and anticorruption measures agreed upon with the European Commission. An ordinance meant to bring the powers of the Department to Counter International Organized Criminality and Terrorism (DIICOT) in line with the rest of the Office of the Prosecutor General was met with hostility from the general secretariat of the government, MPs, and the media. A provision in the ordinance allowing prosecutors to see phone and e-mail lists without a warrant was considered particularly offensive. In the midst of the battle, the Senate voted on a motion against Minister Macovei, proclaiming justice reform a "failure."

As EU institutions considered Macovei a trusted minister⁵ the motion was postponed until after Romania's accession, but on February 13, 81 senators, including governing and opposition members, voted to dismiss Macovei. The Romanian Parliament, however, may dismiss a minister only by dismissing the entire cabinet. The no-confidence motion in a minister is therefore constitutionally a "simple" motion whose result is not binding on the prime minister. The phrasing of the motion was particularly embarrassing for Romania, as it was for all intents and purposes an inventory of legislation passed to make the country acceptable to Brussels. As public opinion sided with Macovei, who also enjoyed huge support from international media and European institutions, she was not dismissed outright. Negotiations and pressures dragged on for weeks, with the European Commissioner for Justice Franco Frattini made public statements in

Macovei's favor⁶. As ministers from the PD did not agree to continue without her, and the opposition threatened to bring down the whole government, the Truth and Justice Alliance eventually collapsed and all PD ministers were dismissed, including Macovei, who was succeeded by Tudor Chiuariu of the PNL as the new justice minister.

The departure of the minister for internal affairs, Vasile Blaga, was a second blow to the European Commission, as he had been the other most effective minister in transposing the European acquis. Blaga was replaced by Christian David of the PNL.

The Romanian justice system and the government's anticorruption efforts remained under close EU monitoring even after accession and were evaluated against a number of benchmarks set by the European Commission. The existence of this mechanism explains the puzzling behavior of the Romanian government, whose MPs frequently joined opposition MPs in 2007 in their reluctance to fulfill commitments to the EU (especially those calling for greater political accountability and increased powers to magistrates) but later had to promulgate ordinances to this effect (sometimes retrospectively), fearing that the safeguard mechanism would be activated otherwise. The result was permanent confusion, resulting in a lack of legislative implementation.

In an ostensible effort to advance reform of the criminal and civil codes in 2007, Parliament began a review of newly proposed procedures for the criminal code, which earlier had been posted for public debate on the Justice Ministry site under Minister Macovei. U.S. and British ambassadors, as well as the Romanian media and former minister Macovei, accused MPs of changing the bill to make the prosecution of corruption more difficult. Among the new practices introduced by MPs were notifying suspects in advance of domestic searches and identifying the precise object of the search, notifying suspects of wiretapping, and closing criminal investigations if they exceed a length of six months. These provisions would make it impossible for Romania not only to prosecute domestic corruption, but also to cooperate effectively in international investigations of terrorism and organized crime.

The capacity of Romania's Superior Council of Magistrates (SCM) to ensure both accountability and control of magistrates has been one of the main concerns of the European Commission. Although it notes some progress, the European Commission also stated that "the accountability and ethical standards of the Council and its individual members remain issues of concern. The same applies for the potential conflicts of interest of the SCM members." Romanian civil society also complains about the lack of transparency of the SCM. In an open letter, magistrate associations as well as watchdog NGOs deplored the fact that SCM meeting agendas are not made public, despite the existence of a law to that effect. They also offered a number of proposals to improve SCM transparency, including observing a three-day advance posting of meeting agendas on the SCM Web site and publication of minutes or ex officio communication of meeting transcripts. In 2007, EU and U.S. diplomats attended important SCM meetings to assist the passage of crucial reform bills during the accession transition. Though still weak, with inspectors inherited from the Communist era and plagued by conflicts of interest, the SCM did make some progress in 2007 and was helped by an unprecedented endorsement from national and international public opinion for the protection of magistrates from political interventions.

Still, the quality of Romanian courts remains poor, and verdicts are seldom predictable. The European Commission, whose experts reviewed prosecutor files as part of the monitoring

mechanism, was so puzzled by the frequent refusals to begin top-level corruption trials on various procedural grounds that it ruled to launch an investigation. In a defiant response, the Romanian High Court of Justice and Cassation stated that the EU is not allowed to interfere with the business of the Romanian judiciary.

Ironically, quality does not evolve with hierarchy in the Romanian judiciary, and sometimes the reverse is true. Most judges recruited after 1989 are still in the lower courts. Appeals courts and the Supreme Court are staffed by many Communist-era senior magistrates. Attempts to appoint heads of courts on the basis of open competitions have, so far, failed. In the upper-level courts most of the magistrates are political appointees from before 2005, and some have records of integrity that are, at best, controversial.

Corruption

There were serious setbacks in Romania's anticorruption effort in 2007. In March—barely three months after it joined the EU—the Romanian government attempted to remove Monica Macovei, an independent justice minister who had shaken up the structure and accountability of the judiciary and the prosecutor's office in order to attack corruption head-on. Investigations by the National Anticorruption Directorate (DNA) had begun to reach the top levels of Romanian politics. In 2006, Deputy Prime Minister George Copos from the Conservative Party resigned under charges of corruption. In 2007, the same situation threatened Deputy Prime Minister Markó Béla, head of the Democratic Alliance of Hungarians (DAHR), and the ministers of economics and communications (members of the PNL and DAHR).

Tudor Chiuariu, member of the PNL, was named Macovei's successor. Romanian media voiced concern that PNL politicians would try to influence investigations concerning their party. Indeed, soon after his appointment Minister Chiuariu asked the head of the DNA, Daniel Morar, to put on hold criminal investigations of top politicians until the political struggle against President Băsescu and his referendum were finalized. This telephone conversation between them was witnessed by an official from the Anticorruption Department within the Ministry of Justice, who later resigned in protest.

By autumn 2007, nine ministers were under investigation by the DNA, but procedural snags held up all high-level corruption cases, and Minister Chiuariu had tried to fire anticorruption prosecutor Doru Țuluș for investigating his political sponsors. Most of the files concerning current and former dignitaries were investigated by Țuluș, who had already indicted eight MPs; in August, Minister Chiuariu announced Țuluș's dismissal. Under the ensuing public outrage, Chiuariu postponed his decision to rally support from the SCM, parliamentary members, the president of the Senate, the PNL, the tabloid media, and so forth. The final report brought no serious evidence justifying the dismissal of Țuluș, especially since the European Commission's May report had praised the DNA. The prosecutors' section of the SCM therefore voted against Minister Chiuariu, who was the only member to vote in favor of Țuluș's dismissal.

For the first time in Romania, magistrates mobilized to defend the independence of the judiciary. About 60 DNA prosecutors, the National Union of Judges, and four other legal professional

associations expressed their disapproval of the inappropriate way in which the minister of justice tried to remove DNA prosecutors from office. Following his request to dismiss Doru Țuluș, the National Institute of Magistracy, the only body authorized to train magistrates, sent a letter to Justice Minister Chiuariu calling off an invitation to take part in a meeting with justice auditors. A few Ministry of Justice officials resigned in protest.

Politicians have continually tried to control the DNA's activity by modifying its legal status or scaling back legal anticorruption instruments. A new law was passed in late March 2007 decriminalizing certain aspects of bank fraud previously under the jurisdiction of the DNA. The law is likely to be applied retroactively to bank officers who received kickbacks for granting illegitimate loans, which will lead to the dismissal of numerous pending cases at the DNA. In October, an emergency ordinance initiated by Minister Chiuariu closed the advisory commission on the prosecution of current and former ministers. According to the Law of Ministerial Responsibility passed in 2005, this commission advised the president on the lifting of the immunity of cabinet members charged by the DNA. A Constitutional Court decision of 2007 extended its authority also over former ministers, answering an appeal by former prime minister Adrian Năstase. In the new formula proposed by the ordinance, investigation of former ministers would require parliamentary approval, and the advisory commission would comprise magistrates and would hear cases prior to the first instance. The Constitutional Court ruled in the end that it was unconstitutional, but all investigations concerning current and former ministers had de facto been stopped for several months.

Romanian courts are extremely cautious in cases concerning top politicians and generally use any pretext to pass the decision to another court. While the European Commission praised the activity of anticorruption prosecutors, it also noted in its 2007 report that rigor in prosecution is not mirrored by judicial decisions. An analysis of sentences in corruption cases shows that penalties are typically not decisive, and in many cases of high-level corruption, judges grant suspended penalties. The European Commission expressed concern that this undermines recent progress in investigations and negatively affects public perception of the political commitment to tackle corruption. The public is exasperated that despite increased prosecutorial activity, courts do not bring cases to closure, and the level of corruption was perceived to have risen again in 2007. Transparency International rates Romania as the most corrupt EU member country.

Politicians investigated by the DNA invariably claim that these efforts constitute a political witch hunt.⁷ A review of cases shows that no party was spared. Former PSD president Adrian Năstase was tried for accepting bribes, blackmail, and influence peddling; Șerban Mihăilescu (MP from PSD and former minister secretary general of the Romanian government) was tried for accepting bribes in the form of cash and hunting rifles; Ioan Stan (MP from PSD) was under investigation for exercising undue influence as a party leader; Miron Mitrea (MP from PSD and former minister of transport) has been indicted for accepting bribes. Other MPs and PSD-affiliated mayors are also facing indictment. From the Democratic Party, the DNA charged Gheorghe Falcă (mayor of Arad and godson of President Băsescu) with accepting bribes and abuse of office; Ionel Manțog (former secretary of state) with accepting bribes and abuse of office; Stelian Duțu (MP) with abuse of office; Cosmin Popescu (former secretary of state) with intellectual forgery and helping a criminal; and other mayors and lower-ranked politicians with similar transgressions. At the beginning of the year, the National Liberal Party had only a few mayors and regional leaders under investigation.

Despite a report by the American Bar Association showing that Romanian legislation is still behind in granting sufficient powers to law enforcement agencies to investigate organized crime and corruption, anticorruption instruments adopted in previous years began to be dismantled in 2007. The Chamber of Deputies modified the criminal procedural code, limiting investigations to a maximum of six months and wiretapping to a maximum of 120 days, among other changes. The European Commission commented that “these amendments would seriously limit the potential of the investigators in collecting evidence, particularly when tackling well-established criminal groups or powerful governmental representatives deeply involved with corruption.” An amendment calling for seven-year prison terms for journalists who publish leaks was first adopted, then dropped. The American ambassador in Bucharest joined the European Commission in its warning that such provisions are not suitable for an EU member country.

Equally telling is the embattled attempt to create the National Agency for Integrity (ANI). The draft law proposed by Monica Macovei was approved by the government in July 2006 and finally adopted by the Romanian Senate in May 2007. Under the law, the president and vice presidents of the agency are to be appointed (and can be recalled) by the Senate, upon proposal of the National Integrity Council, the agency’s ruling body, for a four-year mandate. Concerns were expressed by the European Commission over the final version of the ANI. Originally, the goal was to set up an agency able to verify and take action in a zone not covered by any other institution in Romania—namely, wealth that cannot be justified by the income(s) of the verified person. However the adopted form of the ANI legislation replaced the concept of “illicit” wealth instead of “unjustified” wealth. An article in the Romanian Constitution claiming that “all wealth is presumed licit” has so far allowed the few defendants charged with illicit enrichment to file for non-constitutionality and escape prosecution. In fact, individuals have no legal obligation to preserve any records of how they acquired their wealth, and the burden of proof is on the prosecutors.

Precisely to avoid this problem, the ANI was originally designed to remain within the area of administrative procedure, much like its model, the U.S. Office of Government Ethics, but the Parliament scaled it back. At the European Commission’s suggestion, a government ordinance was again promulgated to revise the law (which went into force in June 2007), replacing “illicit wealth” with “unjustified wealth.” Although establishing the ANI is part of the absolute EU conditionality and its failure can trigger the safeguard clause, the Romanian Parliament restored its preferred “illicit wealth” language when the ordinance came up for approval in the autumn.

The natural question is, why did the European Commission not activate the safeguard clause, which was created to protect the EU from such a breach of legal commitments? It was the first time such a tough post-accession mechanism was introduced, but the penalties proved inadequate to the monitoring mechanism. Activating the clause, at worst, would mean that Romania’s judicial decisions would no longer be recognized in the EU. Bad publicity aside, this move would not hurt either the government or the Parliament as much as it would hurt European companies doing business in Romania. Although activation of the safeguard clause was discussed by the European Commission, it was promptly abandoned and relegated to the “lessons learned” chapter for further accessions.

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¹ “Romania's MPs Suspend President,” BBC News, April 18, 2007, <http://news.bbc.co.uk/2/hi/europe/6572003.stm>.

² “Discursul Presedintelui Traian Basescu adresat Parlamentului Romaniei” [Speech of President Traian Basecu Addressing Romanian Parliament], E-JURIDIC.RO Portalul lumii juridice din Romania [portal of the Romanian judicial world], February 15, 2007,

<http://www.e-juridic.ro/stiri/discursul-presedintelui-traian-basescu-adresat-parlamentului-romaniei-851.html>

³ “Clubul Roman de Presa discuta maine cazul 'Basescu—tiganca imputita” [Romanian Press Club will Debate Tomorrow the Case "Basescu—Dirty Gypsy"], ROL.ro Romania Online, May 21, 2007, <http://stiri.rol.ro/content/view/52528/2/>

⁴ “Cioaba condamna declaratia lui Cioroianu despre mutarea romilor in desertul egiptean” [Cioaba Condemns Cioroianu Statement Regarding the Move of the Roma Population in the Egyptian Desert], ROL.ro Romania Online, November 5, 2007, <http://stiri.rol.ro/content/view/90491/2/>

⁵ See Judy Dempsey, “Reform Shouldn't Stop with EU Membership,” *International Herald Tribune*, February 6, 2008, <http://www.iht.com/articles/2008/02/06/europe/letter.php>.

⁶ See the interview with commissioner Frattini in *Cotidianul*, March 13, 2006: "There would be a disaster for Romania if Mrs Macovei cannot enjoy the support from the political groups." http://ec.europa.eu/commission_barroso/frattini/news/archives_2006_en.htm

⁷, “Romania: Reporter’s Notebook” Global Integrity Report 2007 Assessment, <http://report.globalintegrity.org/Romania/2007/notebook>