



NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

Suite 605, 1717 Massachusetts Avenue, N.W. Washington, D.C. 20036 (202) 328-3136 • FAX (202) 328-3144
• Telex 5106015068 NDIIA

NDI Pre-Election Delegation to Romania January 13-18, 1992

Executive Summary

Based on its long-standing interest in supporting the development of free and fair electoral processes in Romania -- as well as the democratization process overall -- the National Democratic Institute for International Affairs (NDI) organized an international team to gather information about the political climate and administrative preparations prior to the February 9 local elections. Present in Romania from January 13-18, members of the team held meetings with political parties, government bodies, and nongovernmental organizations in Bucharest and two other cities.

The following is a synopsis of the delegation's findings and recommendations offered with the recognition that the electoral process must be assessed from a comprehensive perspective. Accordingly, a final judgement cannot be reached until the completion of that process. However, the delegation feels it appropriate to recognize potential problems and areas of progress that have been witnessed to date, particularly in light of the Institute's observations of the May 1990 elections and the work it has conducted in Romania since then.

Unlike many countries in the former communist bloc, Romania has experienced tremendous political instability throughout its two-year transition. This is a consequence of the lack of consensus over the shape and pace of democratic change. In offering these observations, NDI aims to provide specific points of reference to those Romanians who are committed to building the mechanisms for informed consensus and, ultimately, a democratic Romania.

After hearing numerous assurances by all groups in Romania about their commitment to free and fair elections, it is disturbing to observe that various aspects of the electoral process are not sufficiently developed to the point of ensuring widespread public confidence. The examples enumerated below reflect an inability to strengthen the institutional mechanisms (as opposed to merely establishing the legal foundations) through which democratic institutions can be used and developed effectively. Responsibility for key elements of the process is diffused and, consequently, accountability of the main actors appears in many instances elusive. However, responsibility for these flaws must be shared -- albeit not in equal proportions -- by the broad spectrum of Romanian political leaders.

The first draft of the local election law was introduced in the parliament on July 31, 1991, and more than five months later a final version was adopted. Some of the problems noted below were raised after the 1990 elections and have been raised since the introduction of the draft law in July. Having had a permanent presence in Romania since the introduction of the law, NDI is hard-pressed to identify a concerted attempt to initiate reforms that would address some of these problems. One can express disappointment that the governing party has not done more to confront these structural problems. However, it cannot at this time be concluded that the government has consistently obstructed efforts for reform in all of these areas.

1. The highly decentralized administrative structure for these elections offers insufficient safeguards to ensure transparency and oversight of the electoral process. This is manifest in the absence of training requirements and instructive guidelines for election officials so that various provisions of the electoral law -- particularly those that are ambiguous or vague -- are uniformly understood and interpreted. Examples of such provisions include: the disposition of ballots and other voter materials from the time of their production to the time of their delivery to polling sites; the types of identification that are acceptable in verifying voter identity; and the requirements and process for accreditation of domestic election observers.

It is important to add that requirements for instruction and reporting are not synonymous with government pressure on decentralized and autonomous authorities. Training, instruction and reporting can and should be -- with appropriate specificity on the technical details of election administration and emphasis on impartiality and professionalism -- viewed as appropriate assistance and clarification by the authorities to ensure that the goal of fair and free elections is expected and achieved at all levels of the administration.

2. In the absence of appellate procedures, the performance of magistrates charged with administering the elections is finally accountable only to the court with immediate jurisdiction in that administrative area. This highly localized jurisdiction does not ensure that impartiality will be exercised in the court's decisions, particularly given Romania's tradition of subservience between government-appointed magistrates and the ruling party and the historical absence of a genuine separation of powers.

Even with assurances of impartiality, there is not evidence to suggest that the courts have the necessary resources to investigate complaints properly. Moreover, there are credible reports that prosecutors and police charged with investigating complaints do not fulfill their responsibilities by responding to and providing prompt reports on complaints about violations of the electoral law.

3. The lack of confidence that the courts will be impartial or effective in carrying out their responsibilities is of particular concern when assessing the role of the mayors in the electoral process. Incumbent mayors are vested with substantial powers in the provision of election materials and verifying the eligible electorate. With many mayors acting as contestants in the process itself, their actions require additional scrutiny that does not appear to be exercised by other governmental entities and is not assured by the current framework.

This is particularly true in the case of verifying the voter lists, the veracity of which rests primarily with the mayors. It is critical that the electorate be encouraged by all parties and the government through as many means as possible to ensure the validity of these lists. This could be facilitated by providing political parties and other groups with copies of the lists in order to mobilize the electorate to confirm the lists' accuracy.

4. Despite the lack of confidence in the existing procedures and framework, there is nevertheless an alarming reluctance to use the means currently available to document and

challenge reported abuses. Inadequate mechanisms simply cannot be reformed if there is not sufficient, credible and documented evidence that the mechanisms are indeed inadequate. Relative to the 1990 elections, there is clearly a greater awareness of the need to keep abreast of irregularities and abuses in a disciplined and standard way. It is incumbent on all contestants in the process, however, to translate this awareness into action if the goal is to realize genuine reforms.

5. Concern has been raised regarding military voting in the upcoming elections. Military personnel may vote in areas where they are stationed at the time of the elections regardless of their official residence and are therefore exempt from requirements that voters must be residents of the constituencies where they intend to vote. Some parties expressed concern that they would not gain access to military facilities to conduct a campaign; others complained that military personnel would be unduly influenced by their commanders to vote for the ruling party candidates and lists. Domestic observers expressed concern that they would not have access to observe polling at military barracks on election day. Finally, concerns were raised that military personnel would be transferred to different locations in a direct effort to influence the electoral outcome in a particular area.

Given these sensitivities, other provisions for absentee voting for military personnel should be made as soon as possible, so that votes by military personnel are exercised within the spirit of the law. If this is not done, it is critical that the authorities provide a public accounting for military transfers between now and the time of the election. It is also important for commanders to permit the distribution and presence of political party representatives and materials within military facilities during the campaign.

6. The issue of providing students with the opportunity to vote was also raised, given that students are apparently expected to enter exams during the period of the election and may not be able to return to their residences to vote. The delegation received conflicting information on this matter -- in some cases, students were given special dispensation to return home to vote, and in others no dispensation was being given. As is the case with military personnel, measures to ensure that students can vote in accordance with the spirit of the law should be taken immediately.

7. Two areas that have a significant impact on the conduct of the electoral campaign (and therefore, on its overall fairness) are those relating to campaign financing and access to the media for political parties. The problem NDI identifies here is not with the particular formula that has been reached (or not reached) to address these factors. Rather, our concern is that the rules are being written while the game is underway.

Regarding the issue of financing for election campaigns, it is noted that a draft law allocating some public funds to political parties during the campaign period was introduced after the campaign began and subsequently rejected in the parliament in late December (reportedly by a margin much more narrow than that enjoyed by the majority party). Public funding for political parties varies widely among established democracies and countries in transition. Its

provision does not by itself automatically guarantee free and fair elections any more than its absence would automatically prohibit free and fair elections. Romania has had, however, limited experience with public funding during the 1990 elections, and this created expectations that a critical resource would be available accordingly to some formula.

In a transitional situation, it is not sufficient to argue that the short notice on the decision regarding campaign finance affects all parties equally because they were all advised at the same time that public financing would not be available for these elections. In order to instill a commitment to the respect for the rule of law and to enhance confidence that an equal opportunity for the competition of ideas exists, the framework, i.e. the rules, of the political game, must be established before the game begins.

The availability of public funding must be clearly decided by the competing political forces before a campaign begins in order to ensure equal opportunity for parties to identify and allocate their resources. This is particularly true in a transitional situation where economic difficulties will make any public spending for political purposes a highly unpopular measure. In this instance, the need for political consensus is paramount.

The same holds true for the issue of media access for political parties, where one finds (relative to the 1990 campaign) commendable progress. Political parties are apparently afforded equal access according to a formula that is not inherently undemocratic. Parliamentary parties may participate in the decisions to allocate that time (and monitor its allocation) through the parliamentary commission on media.

However, this commission was not operational until a month after the campaign began. Perhaps more seriously (and analogous with the situation with the courts and investigative bodies), the commission is clearly not equipped with the resources sufficient to implement its difficult mandate effectively. It is at best a short-term measure, and its functions should be addressed in the context of future legislation that specifies exactly how political parties may convey their ideas through electronic media.

Additionally, future consideration should be devoted to reforming legislation about political parties themselves. While the notion that there should be minimal barriers to creating parties is a commendable one, the evolution of a meaningful multiparty system in Romania would be advanced by a serious attempt to define political parties as distinct institutions rather than groups that can identify 251 members and wish to contest an election.

8. An important reform that has been initiated by nongovernmental organizations is the provision for domestic observers to be present in the polling sites on election day. In order to realize their goal of enhancing public confidence in the election process, domestic observers will need to inform themselves about the electoral process and be nonpartisan in their conduct. Their presence should be viewed by election officials and political parties as one of assistance to and encouragement of a fair process.

Finally, NDI recommends that the government, political parties and nongovernmental organizations all assume responsibility for encouraging informed participation in the electoral process. We recognize that no election system is perfect, and that the one in Romania is evolving. NDI views these elections as an opportunity for Romanians to gain further experience as candidates, voters, and citizens, and to develop the confidence and momentum that will be needed to achieve a meaningful democracy.

Election Framework

Local elections were originally anticipated to be held within six months of the May 1990 national elections. However, several factors resulted in the long delay to hold local elections.

First, the new parliament immediately began the process of drafting a new constitution and considering legislative proposals for privatization, land reform, and other components of the Roman government's program. The priority of holding local elections became tied with progress on the constitution, which was expected to address in some form a decentralization of power at the local level and a possible restructuring of government authority. At the same time, the damage to Romania's image internationally after the miners' incident of June 1990 led the government to emphasize its economic reform programs and shift attention away from the problems of political instability. Finally, the opposition's poor showing in the national elections and their belief that they had been grossly cheated resulted in a disorganized but consistent campaign to deny legitimacy to the new government. The opposition parties called for the formation of a transitional government and new national elections and created little momentum to focus on political change at the local level.

As the final version of the draft principles for the constitution became clarified in the summer of 1991, the government was under increasing pressure to hold some form of elections in order to gain international credibility. Draft laws for local elections and new local administration were submitted in late July, 1991 just before a month-long parliamentary recess. Events changed again in September, when another visit to Bucharest by the miners resulted in the removal of Prime Minister Roman and greater uncertainty about the country's political stability. The very economic reforms that the Roman government had promoted to gain international acceptance contributed to the miners' revolt, which found significant popular support (as in June 1990) among a population that had not expected radical economic change. In order to confront the growing political instability, the new government led by Prime Minister Stolojan redoubled its efforts to complete the constitution and hold elections as soon as possible.

The constitution was completed in mid-November, and plans to hold a referendum and local elections went on a fast track. After initial announcements of a December 15 local election date prompted opposition objections that the time was too short, the Stolojan government negotiated the February date with opposition party leaders and announced plans to hold a constitutional referendum three weeks after the constitution was passed. The local election law (and the one on local administration, which turned out not be at great variance with the new constitution) was hastily completed shortly after the constitution.

A. Offices to Be Elected

On February 9, 1992, Romanians will elect more than 30,000 local councillors and mayors directly on the basis of the law passed in late November 1991. Councillors and mayors

will be elected within three kinds of as constituencies defined by existing administrative boundaries: communes (groups of villages that together form a constituency), towns, and cities. The number of councillors assigned to constituency depends on the size of the population.

Councillors are elected from a list ballot and seats are allocated proportionally through a complex counting process that establishes minimal thresholds and redistributes "extra votes" (see Appendix IX, 1990 Election Report). This reflects a change from the original draft law, which initially called for councillors to be elected from single-member districts that would have been drawn within new or the existing administrative boundaries. Proposals to redraw the country's administrative boundaries in preparation for local elections failed to generate much support because of the implications for territorial autonomy for the country's minority populations.

Mayors are directly elected on a straight majoritarian system, with a provision for a run-off between the top two candidates if no one emerges with a simple majority. This too is a change from the draft law, which originally called for the mayors to be indirectly elected by the local councils. The proposal to elect mayors indirectly was criticized as a sign that genuine decentralization was not an aim of the local administration law.

As was the case in 1990, election results in any constituency that reports voter turnout of less than 50 percent plus one of the eligible electorate are nullified. The results of subsequent new elections are binding in those constituencies.

B. The Campaign Period and Qualifications for Candidacy

With the negotiations of a new election date, the election law established a campaign period of 60 days with campaigning prohibited two days before the election. In practice, the campaign began in January, just prior to the filing deadline of January 9 and after the holiday season. Despite the fact that the laws on local administration and elections had been in draft form and in the parliament since July (and did not change substantially when passed in November), most parties did not begin to identify and recruit the more than 30,000 candidates until after the law was passed. At the same time, divisions within the ruling National Salvation Front (FSN) affected that party's electoral preparations, as efforts to avoid a split of the party were not successful until late December.

During the time of the delegation's January visit, challenges to individual and list candidacies were being filed and resolved. It is difficult to assess the extent to which, at this stage, there are significant barriers to any parties or candidates that seek public office. However, a few examples highlight some of the problems observed to date and reflect the inherent weaknesses of the political system rather than particular instances of misconduct or abuse.

One example is that of the Liberal Party, formerly the National Liberal Party - Youth Wing. The Liberal Party was reportedly declared ineligible to contest these elections on the

grounds that its registration was declared invalid and that its name was too similar to other contesting parties. Given the uncertainty about the current number of political parties in Romania (estimates range from 87 on the list provided by the parliamentary commission on media to more than 150 according to Central Election officials), it appears that the legal basis for parties is very much open to different interpretations by judicial authorities.

This suggests that the previous legislation authorizing the legality of political parties requires greater specificity, as was noted in 1990. This is particularly important with respect to creating mechanisms and allocating resources to verify the documentation establishing a new political party. Moreover, the requirement that parties demonstrate 251 members to qualify for legal status is one that warrants future examination if there is concerted interest in developing a strong, competitive and viable multi-party system. Finally, this law should also be reexamined if a party has been denied the opportunity to participate in the elections on the grounds that its name is similar to another. This phenomenon persists throughout Romania and may in this case have been the basis for a pernicious decision on the part of the courts.

Another example relates to the eligibility of candidates running on behalf of the Socialist Party of Labor (PSM). Formed by a former prime minister under Ceausescu, the PSM is considered by many as the "old communist party." (It should be noted, however, that this label is also frequently attributed to the FSN as a whole or, by some, to that faction within the FSN that is supporting President Iliescu.) The delegation was told that PSM candidates were being denied eligibility because the party was not legally registered, a decision which some officials cited with apparent relief and in some cases, pride.

The delegation was not able to meet with the PSM and therefore cannot determine the extent to which it believes its participation in the electoral process is denied on spurious grounds. (Some PSM members, for example, are running on coalition tickets that are not identified with the PSM symbol or name.) Nevertheless, the issue of barring candidates on the basis of their ideological perspective or previous political affiliations is one that directly affects the openness of the electoral process and warrants further examination.

C. Election Administration

Responsibility for the election administration is divided among three entities: local officials (mayors and county administrators, known as prefects), constituency and polling site electoral bureaus, and the courts. Local officials are charged with producing, posting and correcting the voter lists, identifying polling stations, designating public places where political party materials may be posted, and purchasing and delivering election materials (i.e., ballots, booths and curtains, tally sheets, and boxes) to election bureaus. Election bureaus are charged with registering candidates and publicizing the final candidate lists, administering the balloting and counting procedures, and "monitoring the observance of the legal provisions regarding the elections in keeping with their territorial competence." The courts appoint election commissions and have responsibility of resolving most complaints, including those relating to validity of candidacies, and the conduct of the election campaign.

The electoral law provides that local elections are administered by constituency election bureaus consisting of at least two magistrates appointed by the county (judet) courts and political party representatives. The size of the bureau will vary according to the population size of the constituency. These magistrates complete the composition of the constituency bureau by appointing the party representatives. The county courts also designate magistrates for the polling sites bureaus to administer the election on February 9. A polling station election bureau consists of a president and vice president and seven to nine political party representatives appointed through lottery by the chairman and vice chairman of the constituency bureau.

The designated magistrates are usually judges from the local court system but may also be lawyers or "other persons with an impeccable reputation who do not belong to any party." The list of magistrates is submitted (except in the case of Bucharest) to the county courts by the mayors and prefects within the judet. Consequently, despite the fact that the courts actually appoint the magistrates, mayors who may also be contesting the elections themselves have a significant if not direct role in selecting the election administrators.

Although the law provides for parties to have a role in the election process, this is in practice somewhat limited. Because there are usually more parties contesting the election than there are slots on the constituency bureau, the party representatives are chosen by lottery among parties who are contesting the elections in that constituency. However, candidate lists are finalized 13 days after the filing deadline, so that in practice, party representatives are assigned to constituency bureaus only two weeks before the election.

As mentioned above, election commissions exercise primarily administrative functions and are not bodies that resolve complaints. An exception, however, is the stipulation that complaints about composition of election bureaus in the polling sites are to be resolved by the constituency bureaus (article 26). Polling site election bureaus resolve complaints about their own activities at the time of the complaint and without appeal.

During the 1990 elections, it was clear that administrative inconsistencies and irregularities were sufficient to create an opportunity for willful fraud. The international observer delegation of that time recommended that a program to instruct election officials on the implementation of the electoral law be conducted to ensure that the electoral law is consistently applied and interpreted. In a January 1992 meeting with the national Central Election Bureau chairman, NDI was informed that judges and magistrates throughout the country had the opportunity to raise questions with the chairman of the about implementing the law through a national teleconference call, but that written instructions and guidelines would not be produced and were not the responsibility of the national bureau. The national bureau would instead be available to anyone who had questions but would take no additional responsibility in monitoring the conduct or implementation of the process.

One government official acknowledged that such instruction and training could obviate the potential for administrative inconsistencies. He asserted that it would nevertheless be

politically difficult because it would create the impression that the government was dictating to the local authorities. He also acknowledged that the interests in self-preservation of some election officials could well run contrary to the goal of good and impartial administration. Nevertheless, this official appeared receptive to the notion that the government could play a positive role by required a minimum standard of uniformity in election administration and oversight -- even as he suggested that the channels for conveying such information are unclear.

One local election bureau official with whom the delegation met stated that such guidelines were not necessary because experience had been gained through the 1990 elections and the 1991 constitutional referendum and "people know what to do." When asked a particular question about his commission's understanding of the role of domestic observers, this same official stated that he understood that role but others might have a different (although not necessary contrary) interpretation of that role. In another area, the judet-level court judge had taken it upon himself to issue written guidelines and ensure that magistrates and party representatives would be trained even if the commissions did not assume this responsibility. Several local party representatives reported that they planned to train their bureau representatives and cooperate with other training initiatives.

In short, it appears possible that the same inconsistencies and irregularities witnessed in 1990 will be visible in 1992 and that some officials are currently more concerned about the implications of this prospect than others. With the exception of the interest expressed by nongovernmental organizations who wish to monitor the process, however, there appears to be no strategic or concerted effort at the national level to minimize prospective irregularities because of the expectation that a decentralized approach is equivalent to a democratic process.

D. The Campaign

As noted above, the campaign officially began on December 9, but only recently is there any evidence that an election is underway. In larger cities there is no shortage of candidates or parties contesting the elections, but it is difficult to gauge the degree of competition in smaller towns and villages.

Among the still-undetermined number of parties that are contesting the elections, there are two main groupings. The first is the ruling FSN, which despite internal divisions is fielding candidates on one list and with the same symbol. The other is the Democratic Convention. This coalition was initiated by the five main parliamentary opposition parties (Democratic Union of Hungarians in Romania, National Liberal Party, National Peasants' Party - Christian and Democratic, the Social Democratic Party, and the Romanian Ecological Party) and has grown to include the newer Party of Civic Alliance, other smaller parties, and several nonparty civic associations and groups. The Convention is identified by the symbol of a key.

The parties running in the Democratic Convention appear to be working together better at the local level than at the national level. In some areas, Convention parties are running separate candidate lists. With the exception of the UDMR, no Convention party the delegation

met with on the national level could provide an estimate of how many candidates they were running and where. Some parties complained that prospective candidates had been discouraged from running but offered no documentation. All the parties could identify a person within their organization responsible for gathering information about electoral violations, and most expressed a desire to work with nongovernmental organizations that are interested in monitoring the elections.

The only apparent campaign activity is on the television, which features one-and-a-half hours of free time Monday through Friday to political parties and independent candidates. Parliamentary parties receive five minutes, extra-parliamentary parties three minutes, and independent candidates two minutes. The time is allocated by the newly-formed Parliamentary Commission on the Media, which has one representative of each parliamentary party and is chaired by an independent MP who was elected on an FSN list.

Three representatives of the commission meet daily to respond to requests for time, and the entire commission meets once a week to finalize a schedule for the following week. Acknowledged widely as an interim measure, the composition and decisions of the commission appear to be more heavily criticized by opposition party representatives at the local level than those at the national level. Some members of the ruling party have also criticized the commission's decision to allow opposition parties running in the Democratic Convention (and other) coalitions to pool their time.

The Front still enjoys a significant material advantage over the opposition and appears to be the only party with a campaign beyond the television, although even this is barely detectable. In driving through several cities in the Oltenia region, there were few posters, leaflets or other visible signs of campaign activity. Opposition parties complained of the lack of time to organize a campaign and of the lack of resources. However, in Constanta, the Party of Civic Alliance was reportedly distributing bags of household goods (detergent, etc.) as a means of attracting parents with young families. A similar campaign appeal was reportedly being used by the Democratic Agrarian Party (currently in coalition with the Front), which involved distributing bags of potatoes that were donated by the network of agricultural cooperatives. Such actions would seem to be clearly in violation of Article 94 of the electoral law, but there was no evidence that complaints against these practices had been filed.

As in 1990, there were complaints that the Front has taken unfair advantage of its incumbency during the campaign. One example was in the city of Craiova, where Convention party leaders said that Front propaganda was being posted in shops not designated by the mayor as a posting area and that managers of these same shops refused to post opposition materials. (Public shops are still run by the state and their managers are appointed by local authorities.) When this was raised with FSN representatives, one deputy initially responded that this was only true in private shops, where owners could post (or not post) whatever they wished. Another, however, expressed assurances that Front members charged with posting materials were trained to do so in accordance with the law but conceded that some supporters might have been over-enthusiastic. He offered to organize a team that would go to all the shops in the area to make

sure that the law was being observed and welcomed the presence of domestic monitors in this effort.

When asked whether, as a ruling party, the FSN felt it necessary to introduce certain reforms or encourage an open campaign to demonstrate its commitment to free elections, these same FSN officials in Craiova (which included three parliamentary deputies) did not respond directly. They expressed optimism that the elections would be better than last time because people were more experienced and demonstrated responsiveness to complaints about particulars. However, they clearly did not identify a need to take affirmative action in initiating administrative reforms or to take measures that would set expectations among Romanians that the election process should be free and open.

This relates to one final observation regarding a comparison to 1990, which is the overall campaign climate. In 1990, there were numerous reports of harassment, intimidation and violence against opposition candidates and supporters. The delegation heard of some instances along these lines in both Craiova and Constanta, and national party leaders stated that they had heard of similar reports throughout the country but could offer no specifics. Opposition party leaders who raised these problems appeared quite familiar with the need to document them but expressed their lack of confidence that anything would be done with the information when pressed to show the actual documentation.

It appears likely that because of poor organization, limited resources and lack of confidence, parties will not be as disciplined about collecting this information as is ideally desired. Nevertheless, there is some observable progress in this area. At the same time, domestic groups that have expressed interest in monitoring the elections need to take a more proactive approach in pursuing these complaints in order to create a basis for implementing reforms after the elections.

It is evident that a flawed process continues to be an important rationale for the limited development of pluralistic politics in Romania. It remains to be seen whether the work being done to address these difficulties is at this time sufficient to generate the momentum for long-term change. However, even limited progress is better than regression. In order to offer effective assistance to Romania's committed democrats, the international community must recognize their patience and optimism as well as provide our own.