



Nations in Transit 2004 ROMANIA*

NIT Ratings	1997	1998	1999	2001	2002	2003	2004
Electoral Process	3.25	3.25	2.75	3.00	3.00	2.75	2.75
Civil Society	3.75	3.75	3.00	3.00	3.00	2.75	2.50
Independent Media	4.25	4.00	3.50	3.50	3.50	3.75	3.75
Governance	4.25	4.00	3.50	3.75	3.75	3.75	3.75
Constitutional, Legislative, and Judicial Framework	4.25	4.25	4.25	4.25	4.25	4.25	4.25
Corruption	n/a	n/a	4.25	4.50	4.75	4.50	4.50

EXECUTIVE SUMMARY

The spectacular fall of Nicolae Ceausescu in 1989 left an unfinished power struggle among elements of the former Communist power establishment led by Ion Iliescu and the unorganized street rioters who had contributed decisively to the end of the regime. To control the urban opposition fearful of a Communist restoration, Ion Iliescu has more than once resorted to vigilante groups, such as those among coal miners. In exchange for various benefits, the miners—presented as the vanguard of the working class by Communist propaganda—served as voluntary antiopposition troops in favor of the post-Communists. The miners clashed with Bucharest protesters, mostly students, in June 1990, closing the new free media for weeks. They also brought down the government when Prime Minister Petre Roman broke with Iliescu a year later and returned to threaten the anti-Communist government as late as 1999, when the army had to be deployed against them.

Throughout this period of political unrest and continuous struggle between old and new elites, Romania's democratization progressed, with independent media and civil society gaining ground and elections qualifying as free and fair in 1992, 1996, and 2000. Following the first and only swing in government from the post-Communists to the anti-Communists in

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NOTE: Nations in Transit ratings are based on a scale of 1 to 7, with 1 representing the highest level and 7 representing the lowest level of democratic development. The 2004 ratings reflect the period January 1 through December 31, 2003. The ratings reflect the consensus of Freedom House, its academic advisors, and the author of this report. The opinions expressed in this report are those of the author.

1996—and the subsequent association of the government with the Hungarian umbrella party, the Democratic Alliance of Hungarians in Romania (DAHR)—the European Commission formally acknowledged in 1997 that Romania had satisfied the so-called Copenhagen political criteria and invited the country to join the European Union (EU) in 1999. In view of Romania's historical legacies—the totalitarian regime of Ceausescu, the violent mode of transition, the rural social structure—Romania has actually been overperforming since the first political swing in 1996, managing to consolidate democracy despite many challenges. Romania expects to sign the accession treaty to the EU in 2005 and become a full member in 2007.

Romania revised its 1991 Constitution in 2003. The new text takes a more liberal approach to minority languages, guarantees an independent judiciary, provides better protection of property rights, and allows EU citizens to both buy land in Romania and run in Romanian local elections. Negotiations with the EU, which started in 2000, are supposed to end by fall 2004, with the next three years dedicated to implementation of the *acquis*, the vast legislation package compulsory for new EU entrants. Progress on EU integration was slow but steady in 2003. A politically stable environment was encouraged in the Parliament by the formal support provided to the governing Social Democratic Party (SDP) by the DAHR.

Electoral Process. In 2003, politics was "business as usual" in Romania. The ruling SDP, Romania's main post-Communist party, continued to strengthen its position by recruiting elected officials from other parties. By the end of the year, the SDP had nearly doubled its number of mayors elected since 2000 and had increased the number of its parliamentarians by 10 percent, all coming from other parties—legal under Romanian law. The main opposition forces were the radical populist Greater Romania Party, the second largest party of the current Romanian Parliament, and the newly formed Truth and Justice Alliance of Centrist Democratic and Liberal Parties, which ranks second in voter popularity after the SDP. The reunification of opposition forces under leaders Teodor Stolojan and Traian Basescu opens the door for a political shake-up in the 2004 elections. After debates among political parties, the electoral legislation was revised slightly during winter 2003–2004. In October 2003, Romania held a national referendum on constitutional reforms associated with its accession to the EU. Allegations of election fraud during the referendum brought by opposition parties and civil society groups raised some concerns about the prospect for similar irregularities in the 2004 parliamentary elections. *Romania's rating for electoral process remains 2.75.*

Civil Society. The main change in the political landscape comes from the growing importance of civil society organizations, which have managed to become a more critical and visible presence than Romania's weak opposition parties. In the last two years, nongovernmental organizations (NGOs) assembled the Coalition for Transparency, pushed successfully for passing transparency legislation, monitored its implementation, and urged the referendum on constitutional reform. They have also become the main actors in child protection, public policy, media monitoring, and anticorruption efforts. This positive trend began with the passage in 2001 of the Freedom of Information Act, advocated by a coalition of civil society groups. Since then, coalitions of NGOs and other civil society actors, such as the media, trade unions, and business associations, have become widespread. In addition, the government is relying more on the expertise of civil society groups, and dialogue and consultation between them have improved significantly. *Given the growing strength and activism of Romania's civil society sector—most notably reflected in 2003 by the cooperative EU accession effort between the governmental Department of European Integration and*

some of the country's most reputable NGOs—Romania's civil society score improves from 2.75 to 2.50.

Independent Media. The media (notably the press) along with civil society groups played an important role in the 2003 resignation of three influential ministers on allegations of corruption, a first in Romanian politics. Despite economic difficulties, the press is fairly independent and critical of the government, while electronic media, plagued by debts to the state, have become increasingly sensationalistic and avoid politics altogether to minimize the risk of political pressure. Despite constraints on freedom of expression in both public and private TV, the Romanian media remain the main tool for political accountability owing to the weakness of the judiciary and audit organizations. The new criminal code allows more freedom of expression for journalists. *Romania's rating for independent media remains 3.75.*

Governance. A “sunshine law” came into effect in 2003 that opened the decision-making process in public institutions to public consultation and participation. The modified Constitution also limits the ability of the government to pass legislation through emergency ordinances, a disputed practice that had delayed the Parliament from approving such bills for months or sometimes years after they were already in effect. *Romania's governance rating is unchanged at 3.75*

Constitutional, Legislative, and Judicial Framework. The new Constitution limits the power of the executive compared with the legislative branch, reserves to judges only the right to issue warrants for preventive searches and arrests, and improves the status of superior courts. The reform of the justice system, a crucial part of the EU accession process, achieved some progress in 2003 owing to the passage of revised criminal and civil procedures codes. Other laws in the new judiciary framework (Statute of Magistrates, Organization of the Judiciary, Supreme Council of Magistrates, and Public Prosecutor) should have been enacted in 2003, along with the new criminal and fiscal codes. Only the fiscal code managed to pass through all stages needed for its enactment; consideration of the remaining bills is rescheduled for 2004. Unfortunately, actual court practices still lag behind new legislation. *Romania's rating in this category stays the same at 4.25.*

Corruption. In 2003, Romania passed an important anticorruption package, regulating for the first time conflict of interest for government ministers and civil servants and creating a National Authority for Control. Unlike the Office of the Anticorruption Prosecutor (set up in 2002), which the public suspects of political bias, the National Authority for Control has taken a nonpartisan stand in the implementation of new legislation against corruption and tax evasion. There is still much to do for the public to perceive an actual difference in the fight against corruption, but the framework has been created. The resignation of three ministers following corruption allegations was also a significant step. *The rating for corruption remains 4.50.*

Outlook for 2004. Local and legislative elections are scheduled for 2004, which is also the year Romania plans to close negotiations with the EU in order to sign the accession treaty by 2005. This is a burdensome task, seeing that the most difficult chapters, such as Justice and Home Affairs, Agriculture, and Environment, are still open. The election turnout is likely to be lower than in 2000, but still above 60 percent, with higher mobilization in rural areas.

MAIN REPORT

I. Electoral Process

From the outset, the process of transition in the Romanian political system has been far less sweeping than in other European Union (EU) accession countries. There has been an uneven balance of power between the main post-Communist party (whose name has changed repeatedly through splits, reunifications, and efforts to gain legitimacy as a social democratic party, with Ion Iliescu as the sole chair) and the anti-Communist opposition. There was practically no opposition to Nicolae Ceausescu prior to 1989, and the formation of new political parties began only in January 1990. The coup of Ion Iliescu, self-appointed interim president after the flight of Ceausescu, turned the ad hoc committees of the Romanian revolution into a megaparty—the National Salvation Front (NSF)—that won nearly two-thirds of the vote in the 1990 elections. Supported by the army and the secret service, this party was initially a mix of spontaneous elements and former apparatchiks. After the elections, however, three former nomenklatura members managed to secure the presidency and the chairs of both the Senate and the Chamber of Deputies.

Because it has taken the small anti-Communist parties many years to consolidate their efforts, Romania has experienced the slowest political swing toward democracy in the region, with real gains only as recent as 1996. Since 1989, Romania has had three post-Communist governments out of four full cabinet terms. By the 2004 elections, Romania will have had 11 years of transition dominated by the main post-Communist party (NSF, Democratic NSF, Social Democratic Party of Romania (SDPR), and Social Democratic Party (SDP), with the other 4 "transition" years governed by a broad coalition of anti-Communists and the Democratic Party (DP), an NSF splinter group.

This imbalance explains many of Romania's problems in achieving government accountability and overcoming the disparity in resources between the post-Communists and the anti-Communists. The violence in Romania's transition and the resulting atypical post-Communist party (NSF) prevented the country from experiencing the first wave of anti-Communism that occurred throughout Central Europe following the dissolution of the Soviet Union. To illustrate this lag, it is helpful to compare the transition in Romania with that of Poland—Romania's closest regional match in population, number of peasants, and electoral patterns. Disregarding 1990, post-Communists won similar scores in three rounds of elections in both countries. However, in Poland the anti-Communists governed twice, while they governed only once in Romania. The Polish anti-Communist coalitions were as contentious and divisive as their counterparts in Romania, but the early loss of power by post-Communists prevented them from gaining a major initial advantage in the new post-Soviet Poland.

The Romanian electoral system has been proportional since 1990; prior to constitutional reform, the Parliament had two chambers of roughly equal status, with a stronger Chamber of Deputies after reform. The president is directly elected, but his powers are limited primarily to national defense and foreign policy matters. Despite Iliescu's popularity with both the military and the voters, this semipresidential system has over time been restrained into a semiparliamentary system. Prime Minister Adrian Nastase is the most powerful politician in the country, although Iliescu remains the most trusted by voters. Iliescu has been allowed to run for the Senate in 2004 representing the SDP after the expiration of his third and last presidential term. This deal was cut in 2003 when Iliescu agreed to mobilize public support for Nastase, who will run for president.

Under these circumstances, the creation in September 2003 of an alliance (the Truth and Justice Alliance of Centrist Democratic and Liberal Parties [DA]) between the two main democratic opposition parties—the DP (led by Traian Basescu) and the National Liberal Party (NPL, led by Teodor Stolojan)—can be seen as a step toward balancing the political system. Today, Romania has only four major political parties, the SDP (about 40 percent of the vote), the Democratic Alliance of Hungarians in Romania (DAHR, 7 percent), the populist nationalist Greater Romania Party (GRP, 20 percent), and the new DA alliance (about 28–30 percent). Without the DA, there was a risk that the GRP would maintain its current status as the second largest party in the 2004 elections. Thus, the two DA coalition parties decided to support each other in local elections and to run on joint electoral lists in general elections.

Even the government party may benefit from a stronger democratic opposition. Its dominant position over the last two years has been counterproductive to its stated goal of internal reform and the creation of a modern social democratic party. Since 2000, Romania's government party has been engaged in a campaign to change its national and international image. Once a successor to the Communist Party with barely disguised authoritarian tendencies, the renamed SDP has employed two main techniques to crack its rigidly defined identity. It recruited a few technocrats for key positions of negotiation with the West (for instance, ministers of foreign affairs, finance, and negotiator of EU accession). Also, it hired a young bureaucrat with private sector credentials (Cozmin Gusa) to transform the SDP into a modern social democratic party.

The new recruits received their authority from the prime minister in his twofold position as head of the government and head of the party. Apart from this informal appointment, none of the pro-Western deputies has ever enjoyed real power in the party. True authority lies with the so-called regional barons of the government party—networks of bureaucrats and businessmen who grew rich through state capture during the long privatization years. In July 2003, the party ousted Gusa, the party reformer. His main adversaries in the party, Communist-era bureaucrat Octav Cozmanca and government general secretary Serban Mihailescu, were later forced to step down as well (Mihailescu after repeated corruption scandals), but both retained influential positions in the party. Despite these mixed reforms, the SDP was finally accepted after a decade of unsuccessful applications to the Socialist International, the club of social democratic parties, thus gaining international acceptance for the first time.

Throughout 2003, there was little growth in the popularity of the main political parties, with the government party enjoying a comfortable lead, reported the Romanian Academic Society. The public preference for post-Communists throughout the Romanian transition is explained by the fact that Romania is the only accession country in which Communism deeply intervened in the modification of the social structure. Social engineering policies were carried out successfully in many regions and included the forced urbanization—the destruction of villages under the slogan of “systematization” in the late 1980s—and the most extensive mobilization in Communist Europe. Party membership in Romania (18 percent of the total population) was three times higher than the regional average.

As was recently revealed, two networks of informants operated alongside each other in Communist Romania—the secret service (around 400,000 paid informants) and a for-members-only party network (roughly 500,000 people). Both the nomenklatura and the informants were above the law during the Communist era, enjoying privileged access to

power and scarce economic resources that carried over into the transition era. Furthermore, this extensive recruitment took place particularly among the most educated, another factor in the post-1989 disparity between Romanian and other Central European political elites.

Romania has the most constrained social structure of any transition country. Romanian peasants—making up 42 percent of the population, the highest percentage among new EU members—are mostly subsistence farmers who have voted consistently with the post-Communist party since 1990. The “values” of this population, as well as formal and informal arrangements—both past and present—contribute to the voting behavior of the peasantry. Poverty and poor legislation on land restitution have made peasants easy prey for local elites who control resources and therefore politics.

Also, Romania has the largest population of Roma, between 1 million and 1.5 million, which represents another pool of voters for the post-Communists. Descendants of slaves freed in the mid-nineteenth century, the Roma have been victimized by the disappearance of traditional jobs and the need for unskilled labor in the post-Communist period. With no land to gain from restitution, Roma are the primary losers in the transition process and are heavily dependent on state aid. In short, Romania’s social constraints are far greater than those of its Central European neighbors. The quick, early progress in democratization that could have been accomplished through institutional reforms was only partially achieved in Romania and will continue to lag behind that of other transition nations until a radically new social structure emerges.

Romanian local and legislative elections are scheduled for 2004. Turnout may be low owing to public disappointment with most politicians. Additionally, since the lifting of Schengen visas in 2002, there are over 1 million fewer eligible voters as Romanians leave the country to work in Western Europe. The electoral threshold of 5 percent, increased prior to the 2000 elections, favors big parties. It also reduces the rate of representation; nearly 19 percent of the votes cast in 2000 did not translate into seats. Only about 13 percent of Romanians trust a political party, and there are constant complaints about the quality of political elites. The Parliament failed to pass a 2003 proposal to distribute Senate seats through a majority system because of a lack of consensus among the main parties. The Hungarian Party—a formal supporter of the current government after being a full member of the governing coalition from 1996 to 2000—fears this system will favor the strongest party and disfavor minorities. This apprehension is supported by projections produced by the Romanian Academic Society.

The October 2003 referendum on constitutional reform was almost scuttled by public disinterest and absenteeism. The surprising necessary turnout of over 50 percent in the last two hours of voting led to strong allegations of fraud by opposition parties and civil society groups. The Romanian media predict that some of the supposed irregularities—such as mobile ballot boxes or the removal from electoral lists of candidates who allegedly work abroad—may recur in the 2004 elections.

After years of unity, the DAHR lost a few members at the end of 2003. The head of the DAHR, Bishop Laszlo Tokes, is a hero of the Romanian revolution and an outspoken nationalist. This dissident group advocates creating an ethnofederal unit in Transylvania out of two and a half compact Hungarian counties. Less than half of the Hungarians in Romania live in this region; however, local governments are predominantly Hungarian. The DAHR fears that because of the party's long incumbency since 1990, they may lose some seats in local elections. The party is confident that Hungarians will not divide their vote in general

elections; the DAHR customarily receives around 7 percent of the vote, and anything below 5 percent would leave the Hungarian community without representation.

II. Civil Society

The Romanian nonprofit sector currently includes about 4,000 active nongovernmental organizations (NGOs) out of approximately 70,000 registered associations and foundations, according to Romania's leading civil society watchdog Centras. Other sources put the number of active groups closer to 2,500. Romania also has the highest membership in trade unions of all accession countries. Strikes, both legal and illegal, are frequent.

Civil society has played a key role in the democratization of Romania. As early as 1991, when democratic institution building was just beginning and the private business sector represented less than 10 percent of the Romanian economy, NGOs undertook various public roles, from election monitoring to social services and civic education. Though NGOs are still sponsored largely by international donors, their role and presence in public life is continually increasing.

Following the 2001 passage of the Freedom of Information Act (FOIA) by a domestic coalition of NGOs, a permanent Coalition for Transparency was created that became extremely active in 2003. The coalition used the FOIA to push for transparency in areas as diverse as state subsidies, phone tapings, and environmental protection. It won several lawsuits against government agencies on the basis of the FOIA, each forcing the government to increase transparency in public administration. Of the many advocacy projects initiated by Romanian civil society, the most notable are campaigns for reforming electoral legislation, democratizing the military, challenging corrupt ministers, and improving the transparency of policy and administrative processes.

There has also been a significant increase in media coverage of NGO activism. Members of the Coalition for Transparency, as well as prominent social NGOs, are frequently featured in the press and have a strong reputation as opinion leaders. Coalitions of NGOs and other civil society actors—such as the media, trade unions, and business associations—are a growing phenomenon. In addition, the government is turning more frequently to the expertise of civil society groups, and dialogue and the consultation process have improved significantly.

The legal status of NGOs, however, did not improve in 2003. According to a new bill—passed as an emergency ordinance despite a clear lack of emergency—NGOs must still get approval from a ministry to register. NGOs are prohibited from using certain names and acronyms, such as “national,” “institute,” or “academic,” although the ordinance cannot be enforced retroactively for NGOs that already carry such names. Furthermore, to qualify for public money, NGOs must have a certificate from a ministry. Out of the 14 NGOs certified by the end of 2003, 3 are connected to Prime Minister Nastase, according to the Romanian Open Society Fund.

A new initiative by the opposition NPL was partially endorsed by the Finance Department. The draft bill proposes that companies make donations directly to NGOs in exchange for tax exemptions. Donations can be as high as 60 percent of the profit tax but no more than 2 percent of turnover. Owing to the current sponsorship law, as well as strong national preferences, Romanian businesspeople traditionally donate to sports clubs or highly visible,

often unprofitable media outlets rather than to charities. The NPL draft bill requires further adjustments before it can receive consideration from the Parliament.

Romania was late in developing a think tank presence compared with neighbors such as Bulgaria. But think tanks have developed considerably as of late and play a growing part in policy design and advocacy, including fiscal and social reform, anticorruption legislation, FOIA implementation, and the policy capacity of parties. This expanded role is also indicated by their association with various Western agencies (the U.S. Agency for International Development and the World Bank, for example) as domestic consultants assisting the government in the reform process. As with all NGOs, however, access to European funds for Romanian think tanks remains limited compared with that for other Central European countries, though the trend is moving in the right direction.

Overall, the influence of NGOs in Romania has increased significantly over the last three years. Thanks to the weakness of opposition political parties in Romania, NGOs—especially coalitions, such as the newly formed anticorruption Coalition for a Clean Parliament—attract a great deal of media attention and succeed in having a powerful voice. Faced with serious doubts about Romania's capacity to implement the reforms needed for European accession, the government initiated cooperative working groups between the Department of European Integration and the country's most reputable NGOs. The mobilization of NGOs around judicial reform also prompted the government to invite public debate on draft laws previously sent to the Parliament, despite already having the necessary majority to pass them.

III. Independent Media

The Romanian media landscape is lively—with hundreds of newspapers, radio networks, and TV stations—but debates about the true extent of media freedom are still frequent. The media scored a great success in 2003, when after months of campaigning, three government ministers were forced to resign because of corruption allegations. These successful investigations were the sole work of Romanian print journalism and constituted a first in Romanian political life.

In contrast, the Romanian electronic media are far more restrained. Except on the few occasions when opposition leaders are featured on talk shows, criticism of the government, president, or prime minister during prime-time broadcasts has become impossible. Interestingly, though, this was a widespread practice during the previous government's administration. Control over prime-time television, both public and private, is maintained by various means. Much of it is self-censorship by editors, as private TV network publishers owe large sums to the state budget in unpaid contributions to social security and other taxes and therefore vulnerable. Talk-show guests are carefully screened to avoid harsh criticism of the government, and newscasts are manipulated to the same effect.

To escape political pressure, editors take refuge in the tabloid press. In the last two years, TV news journals have become less political and more sensationalistic, often featuring only violent crimes and traffic accidents. Although editors claim this is done to strengthen ratings, news programming is losing its audience and is down almost 20 percent since 2000. Public TV is the only source still showing a high quantity of political news, but as a general rule, the coverage is not critical of the prime minister and government. News coverage typically ignores opposition parties and some opinion leaders known for their critical stance toward the government party. Prime Minister Nastase alone accounts for over half of the political

appearances on TV news shows, according to the Media Monitoring Agency. The government party directly controls public TV and radio, where most of the board members are state appointees.

Since 2000, many journalists have fled or been forced out of public broadcasting newsrooms because of a severe increase in political pressure. The last and most notorious case was that of Brindusa Armanca—a Timisoaran journalist and director of the regional public TV station until 2001—who was fired for disclosing company information to the press. The internal regulations of TVR, the Romanian public television, specify that an employee who reveals details of the broadcaster's business to the media can be fired. Owing to such draconian regulations, there is little accurate information about the internal operations of public broadcasting companies. TVR, with four channels, trails the ratings of two private TV channels (ProTV and Antena 1) in urban areas. However, at the national level TVR is the leading outlet (with roughly 31 percent of the television audience), since it enjoys a monopoly in rural areas. In the private sector, self-censorship is the main problem rather than direct intervention by the government. Resignations at private outlets due to editorial censorship are rare.

What explains this near total compliance? The media are not profitable owing to the country's small advertising market. Overall spending on advertising in Romania, reports Arbo Media, is roughly a quarter of that spent in the Czech Republic, a far smaller market, and a sixth of that spent in Hungary, with half the population of Romania. The majority of press outlets are in a precarious economic situation, and the government profits from their vulnerability. It uses the advertising budget of the still large state sector (50 percent of Romania's economic assets are not yet privatized) to buy advertising in friendly newspapers or electronic media. A recent study reported by the Media Monitoring Agency showed a direct correlation between the amount of state publicity received by newspapers and the number of corruption stories published.

The average salary of journalists in Romania is the lowest among EU accession candidates. Cases where journalists receive "a second salary" from political parties or institutions have become more frequent in the last few years. There are many professional organizations for journalists, but very few of these actively give assistance to journalists. Ownership of Romanian media is rather opaque, and the press is often used as an instrument to promote the owners' businesses and to blackmail competitors. Foreign ownership has increased only in recent years, but to little effect. In a move that further reduced competition in the market, a German subsidiary of Bertelsmann sold the best-selling *Evenimentul Zilei* daily to the Swiss Ringier group; with control of the two highest-selling dailies in Romania plus the main sports daily, Swiss Ringier now owns roughly 40 percent of the dailies' market. The German media group WAZ owns two newspapers, *Romania Libera* and *National*.

After the accidental death of the owner of *Adevarul*, the most influential political newspaper, it was revealed that a hidden actor had lent the presumed owner the money to buy his shares. In many editorial offices, taboo topics are respected by journalists, including financial interests of media owners as well as "helpful" political interests. This situation is usually worse among local media, where local "barons" own or control most newspapers and TV stations through advertising. The privatization of the only large-scale printer in Romania, Letea Bacau, and the main distribution company, Rodipet, is also a source of great concern, as publishers fear these enterprises will end up in the wrong hands.

In 2003, there were reports of violence against journalists investigating corruption, presumably instigated by local barons. One case prompted a protest march of about a hundred journalists in Timisoara, accusing officials in the SDP of orchestrating the violence. The attention given to these cases by the police was considered unsatisfactory by media organizations. During the year, however, the government engaged in constructive dialogue over changes to legislation concerning journalists. In the new criminal code the government submitted for public debate, for example, insult and defamation of the nation are no longer classified as criminal offenses. Jail sentences for libel have been changed to “fine days,” a legal construct that authorizes the substitution of fines for jail time. Nearly 60 percent of journalists surveyed by the Independent Center for Journalism confess to killing stories following the threat of lawsuits, but the Romanian media are also notoriously inaccurate and unprofessional.

In short, victim and perpetrator are difficult to distinguish in the complex Romanian media landscape, where soft threats to the freedom of expression are prevalent. Yet 2003 was not necessarily worse than previous years. On the contrary, the changes in the criminal code are positive and answer long-term concerns expressed by the media community. Still, without greater transparency in the media business environment, freedom of the press in Romania will continue to remain tenuous.

IV. Governance

Romania scores last among EU accession countries in the World Bank's composite index of government accountability, effectiveness, regulatory quality, rule of law, control of corruption, and political stability. More important, Romania experienced the least improvement in performance between 1998 and 2002 among all the states included in this panel study. These scores confirm Romania's low grades on public administration reform in the European Commission's 2003 progress report on accession.

A “sunshine law” was put into effect in 2003 that opened the decision-making process in public institutions to public consultation and participation. The scope of the e-procurement system, set up a few years ago, was broadened, and bids for public contracts have become more transparent. The modified Constitution also limits the ability of the government to pass legislation through emergency ordinances. This disputed practice had diminished the Parliament's role as the main rule-making institution by delaying the legislature's approval for months or sometimes years after such emergency bills were already in effect. However, a culture of secrecy still persists at the governmental level, and NGOs are obliged to enforce the FOIA through the court system. Courts ruled increasingly in their favor in 2003, forcing even the prosecutor-general to disclose the number of tapped phones, a highly sensitive issue in Romania.

Of the reforms initiated through agreements with the EU and the World Bank, decentralization has been the most advanced, though most of the progress was made prior to 2001. By and large, a reasonably functional system of local governance was created through successive legislative acts (in 1991, 1994, 1998, and 2001). Only minor adjustments are still needed, such as clarifying the functions of local and county councils, detailing the reassignment of attributions and revenues, and refining the criteria for allocating resources from ministries and counties to localities. As in almost every field, enforcement of the existing legislation is not sufficient. Laws are often ignored, interpreted loosely, or broken

outright to perpetuate the former pattern of patronizing and subordinating the lower tiers of government.

In turn, the local governments would prefer to maintain their political connections and loose environment, where there are no hard budgetary constraints and everything is negotiable on a case-by-case basis. Certain financial allocations are made in defiance of the Law on State Budget in order to build political networks inside territories (a technique known as "equalization grants"). These sums are not only discretionary, but also opaque, so it is hard for independent observers or the public to see where the money went within the infrastructure and why. The new Law on the Civil Service, passed early in 2003 (as part of the anticorruption package), requires that the prefect become a professional "high civil servant," with all the requirements and protections of such a position. Months after the law was adopted and following government reorganization, several prefects were reshuffled. Some were criticized not for their ineffectiveness as prefects, but for their ties as local party organization leaders.

The Law on the Civil Service attempts to define the scope and status of that sector in Romania. It also increases the depoliticization of civil service by transforming a number of top appointees into a special class of "high civil servants" (for instance, prefects). Despite this reform, public administration remains severely politicized. The prosecutor-general appealed the decision of the Supreme Court of Justice that the Romanian presidency had illegally fired a tenured civil servant after the last elections. A few civil servants tenured on the basis of the first Law on the Civil Service, in 1999, sued the government for being dismissed during the change of power in 2001. Most cases were decided in their favor or are still under appeal. Civil servants now have a union to protect their interests in the courts.

Unfortunately, across the entire field of government reform there is a general impression that laws are passed to create the appearance of change rather than to truly impact the system. The same problem affects transparency laws; for example, there are no clear consequences for failing to correctly report data in the assets and interest declaration forms. There are no consequences if a ministry keeps secret a draft or policy document before sending it to the Parliament, although the "sunshine law" stipulates at least one month of prior disclosure. Appeals to the judiciary by civil society are usually successful but are lengthy and slow.

V. Constitutional, Legislative, and Judicial Framework

Romania revised its 1991 Constitution in 2003. The stated reason was to allow European citizens to run in local elections and buy land in Romania, though the country's EU accession isn't expected until 2007 at the earliest. After two years of debate, no proposals with the potential for significant change passed. These had included eliminating a chamber of the Parliament, reducing the number of members of Parliament—currently among the largest per capita in the world—and forbidding political migration from one party to another. The revised Constitution features limited improvements in the separation of powers, the effectiveness of the two chambers, and the recruitment of higher-quality parliamentarians. A legislation approval deadline of 45 days was introduced to avoid delays between the two chambers, but as no part of the legislative chain was eliminated, this risks only further exacerbating the already low quality of legislation passed. Property will be "guaranteed" instead of merely "protected," and the rights of Hungarians to use their native language in the courts or local government is again part of the Constitution, as it had been in the 1964 version.

Strictly speaking, these constitutional changes are not indispensable. The 1991 Constitution had not prevented the fairer treatment of property, nor did it forbid the use of minority languages. If these practices have not been encouraged so far, it is because of a lack of political will, not because of inadequacies in the Constitution. Progress was achieved in limiting immunity for members of Parliament, who can now be charged without the approval of their chamber for offenses committed outside the Parliament and unrelated to politics. Also, the judiciary has been improved by making judges the sole authority empowered to issue warrants for preventive searches and arrests and by subordinating the police to prosecutors. However, like the police, prosecutors fight constantly against their *de facto* submission to magistrates. These practices are a reaction to the Communist era, when the police dominated the prosecutors and the prosecutors dominated the judges.

The issue of property restitution remains the best example of the distance between law and practice in Romania. While the new Constitution states that property will not be nationalized in the future—an unlikely possibility in view of the country's EU accession—Romania struggles daily (and loses) in the European Court of Human Rights (ECHR) in Strasbourg to *keep* nationalized property. Newly appointed in fall 2003, the prosecutor-general gave no sign that he intends to backtrack on this issue. While the new Constitution was being approved, the Supreme Court of Justice ruled in an extraordinary appeal that not even a building confiscated by the Red Army without papers and passed to the Romanian state can be returned to the former owners. The post-Communists have always been against restitution, and fantastic figures have been circulated for the total sum in claims the government would need to pay.

The main difference between Romania and other Central European countries over the past decade has been the degree of political will to create an autonomous society rather than remain dependent on the old Socialist model. As elites increasingly agree on essential issues—such as how to handle the Communist legacy, most notably property—progress toward transition has been smoother and faster. In Central Europe, such a consensus existed from the onset of transition in 1989, as Communist parties had already exhausted the possibilities of reforming the former system. In the first years of transition in post-totalitarian Romania, the Communist successors attempted unsuccessfully to pursue these half-baked reforms. Romania's post-Communists have only recently become promoters of the market economy.

Crucial judicial reforms were expected in 2003 and should have been enacted, including four laws creating a new judicial framework (the Law on the Statute of Magistrates, the Law on the Organization of the Judiciary, the Law on the Supreme Council of Magistrates, and the Law on the Public Prosecutor), the new criminal code, the criminal and civil procedures codes, and the fiscal code. Contrary to expectations, the government passed only the first two laws during the year but did not go through chambers. No decision was taken on the two most important issues: the mechanism for appointing judges to the Supreme Council of Magistrates (SCM), the self-governing body expected to take over regulatory power from the Ministry of Justice, and the use of extraordinary appeals.

Initially an exception, the "extraordinary appeal" by the prosecutor-general was made a norm in the past decade in order to challenge final solutions by judges favoring owners of nationalized real estate. In practice, this meant that owners who had waited in vain for the return of property that had been confiscated by the Communist regime could take their claims to court. Prior to a 1995 Law of Restitution, courts ruled mostly in favor of owners. The government would appeal, and the trial would eventually reach the Supreme Court. The

Supreme Court also ruled in favor of the owner. Then the prosecutor-general would appeal, a second panel of judges from the Supreme Court would be created, and they would rule in favor of the government. Many of these cases have now reached the ECHR in Strasbourg, and not surprisingly, the Romanian government lost in all 2003 judgments.

The Supreme Court judge who reversed most of these decisions has been promoted to the number two position in the Department of Justice. The ECHR cannot ask for the restitution of property but can only fine the Romanian government and set damages for property owners. Thus, each case lost by the government is paid for by the Romanian taxpayers, while the state or state's tenants keep the property. The original landowners have always been viewed unfavorably by the SDP as "propertied classes," yet the new tenants of these properties and luxurious houses are cronies of the political establishment. This confused mixture of political ideologies is typical of Romanian transition under post-Communist rule.

Pressed hard by the European Commission, the World Bank, and most other international donors, the Romanian government pledged to do away with extraordinary appeals. In the revised procedure for civil cases, scheduled to be implemented in 2003, the extraordinary appeal no longer exists, though current appeals will be judged until a final solution is reached. However, the revised criminal code (passed in 2003) preserved the possibility for extraordinary appeal. Among the final sentences of the Supreme Court during the first half of 2003, the prosecutor-general (subordinate to the minister of justice) successfully appealed 156 criminal law suits and 238 civil law suits, according to Department of Justice data. Prosecutor-General Joita Tanase, who was dismissed in the fall of 2003, had previously challenged all final sentences with some political importance—from generals condemned of firing on anti-Ceausescu protesters in Timisoara to the banker who bankrupted the chief state trade bank, Bancorex, by giving preferential loans to SDP cronies. Tanase's successor has so far shown more restraint.

The Romanian courts are weakened by low budgets and excessive property lawsuits resulting from contradictory restitution legislation. But political interventionism remains the number one problem. Bad politics prompts bad justice in Romania, overriding any endemic organizational or administrative problems in the judiciary. As an example, a court hindered the creation of the new opposition alliance without providing serious grounds. Also, the reluctance to grant some fiscal autonomy to courts has long prevented decentralization of the judiciary. Unfortunately, successive governments have shown their distrust in the self-regulating abilities of magistrates and take the position that judicial reform and corruption can be tackled only by strengthening the control of the Ministry of Justice. However, the constant enhancement of governmental power over the judiciary is contradictory to the aims of the reform process.

For international donors assisting judicial reform in Romania, the main goal is to transfer oversight from the Justice Ministry—which directly controls judges and participates in their appointment—to the SCM. The revised Constitution opens the door for this development and helps to insulate the SCM from political intervention. The appointment process in the new Constitution is close to the current one but makes the Romanian president (rather than the minister of justice) chair of the council.

Prosecutors, who are directly subordinate to the Ministry of Justice, also make up half the council. The Parliament appoints two members from the civil society in the SCM, further decreasing the proportion of judges as direct representatives. Under these circumstances,

even a formal transfer of power from the Ministry of Justice to the SCM risks making little actual change in practice. Furthermore, following passage of the Constitution, judges in the Supreme Court will not have their tenure renewed automatically every six years but will for the first time have unlimited tenure. While this is obviously an improvement over the former system, it also provides a fresh opportunity for the abuse of political appointments.

VI. Corruption

In 2003, Romania was again listed in Transparency International's Corruption Perceptions Index as the most corrupt of the EU accession countries, ranking 85 out of the 133 countries surveyed. While Romania's survey score marginally improved (from 2.6 in 2002 to 2.8 in 2003, with 0 being the most corrupt and 10 the least), the country dropped several places (down from 79 in 1999). In addition, the findings of Transparency International's 2003 Global Corruption Barometer indicated that Romanians believe corruption is most prevalent in political parties and the courts.

However, important legislation was passed in 2003 to fight corruption and regulate conflicts of interest. The comprehensive Anticorruption Law adopted in April was in fact a package of laws, including assets and interest disclosure requirements for top dignitaries and civil servants, measures to enhance the anticorruption institutional framework, and a new Law on the Civil Service to replace the 1999 version. From June 2003, the government assembled all administrative control units under a minister delegate; an increase in the efficiency of controls was subsequently reported. The new minister of control also started investigating party members for the first time. Still, public perception of corruption remains high.

Administrative corruption in Romania is closely correlated with the government's inability to deliver fair and timely service to the public. As a general rule, bribes are seen as the only way to meet needs and get things done. Reported bribes and administrative abuses are linked, revealing that bribes are often a consequence of mistreatment and widespread delays. Among those polled, 23 percent acknowledge they have "connections" that help them on a regular basis in dealing with public services, reports the *East European Constitutional Review*. The likelihood that connected people will receive adequate public service is considerably higher than it is for the rest of the public. Roughly 15 percent of those surveyed indicate they have the resources to bribe on a regular basis, though this does not necessarily ensure satisfactory results. The majority of citizens who are not "connected" and do not have the resources for bribes (about 50 percent of the population) are quite dissatisfied with the quality of public service they receive.

The perception of judges and parliamentarians as highly corrupt has been steady for years, but local governments are increasingly seen as improving. Implementation of anticorruption measures remains the main challenge. The 2001 FOIA is still only partially implemented. An estimate by the Romanian Academic Society after monitoring all county capitals reported that only 15 percent of public agencies have complied with the law by producing reports for 2002, even though two-thirds complied with the creation of an FOIA office. Statements of personal wealth—compulsory for public servants under this new legislation—are useful instruments of accountability despite difficulty in verifying the information.

The fact is that Romania's corruption is as much a matter of underdevelopment as it is a holdover from the Communist era. This rural post-Communist society has yet to become fully modernized, and its administration has never reached the impartiality, impersonality, and

fairness that generally characterize modern bureaucracies. Therefore, corruption manifests as public positions are used to seek personal gain, but also more broadly as a widespread breakdown in efforts to build a systemized and fair public service. Discriminatory public service may not be prompted by financial gain alone but is nevertheless the norm in societies dominated by groups with disproportionate powers. In some cases, a favor may be granted to acknowledge superior status, without money even being involved. The superimposition of Communism on traditional rural societies led to a culture of privilege governed more by unwritten rules than by formal laws. As other forms of social stratification have been annihilated by the Communist regime, status—or the relative distance of an individual from the groups or networks holding power—is still the determining factor in the Romanian social hierarchy.

Corruption in Romania is still grounded in the social structure of a country with almost no middle class and networks of individuals with disproportionate influence. The most significant corruption is inherently related to power—and thus the political sphere—rather than economics. As it involves the state, corruption in Romania is rooted in gaining positions that offer direct access to material resources, from cash to campaign logistics. Public resources are continually abused, whereas the use of private funds to sponsor corruption is insignificant by comparison. Political corruption manifests itself mostly through the traffic of influence, which culminates in activities such as political migration from one party to another; this has exceeded the level acceptable in other Central European countries, not to mention established democracies.

The situation is most serious in the case of mayors, who are directly elected. Over 50 percent of mayors regularly switch parties, usually in favor of the government party or its satellites regardless of their respective constituencies. By the end of 2003, the SDP[had nearly doubled its number of mayors elected in 2000 by recruiting from other parties, according to the Romanian Academic Society's *Policy Warning Report*. At 14 percent, party migration in the Parliament is less frequent thanks to the proportional party list electoral system. Some incentives for corruption among politicians include ambassadorships, advancement in the party, and "pork barrel" initiatives to get reelected. Interestingly, the "map" of political migrations coincides with government grants for infrastructure.

When corruption begins at the top, it is difficult to argue that fighting petty bureaucratic corruption is a worthy goal or even feasible in an environment of growing cynicism. Romanians are highly skeptical that the new agencies created to fight corruption are impartial and will in fact expose people in power. The public can hardly be convinced of the impartiality of the one-year-old Office of the Anticorruption Prosecutor when the only first-rank politicians charged are former and current opposition leaders. Overall, public scrutiny improved in 2003 and accountability mechanisms multiplied. Enforcing them, however, is the most serious challenge for the future.