

Romania

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Capital: Bucharest
Population: 19.7 million
GNI/capita, PPP: \$22,400

Source: World Bank *World Development Indicators*.

Nations in Transit Ratings and Averaged Scores

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
National Democratic Governance	3.75	4.00	3.75	3.75	4.00	3.75	3.75	3.75	3.50	3.75
Electoral Process	2.50	2.75	2.75	3.00	3.00	3.00	3.25	3.25	3.00	3.00
Civil Society	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.25	2.25	2.25
Independent Media	3.75	4.00	4.00	4.00	4.25	4.25	4.25	4.25	4.25	4.25
Local Democratic Governance	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.25	3.25	3.50
Judicial Framework and Independence	4.00	4.00	4.00	3.75	3.75	3.75	3.75	3.75	3.75	3.75
Corruption	4.00	4.00	4.00	4.00	4.00	4.00	3.75	3.75	3.75	3.75
Democracy Score	3.36	3.46	3.43	3.43	3.5	3.46	3.46	3.46	3.39	3.46

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. If consensus cannot be reached, Freedom House is responsible for the final ratings. The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year. The opinions expressed in this report are those of the author(s).

EXECUTIVE SUMMARY

The year 2017 was a turbulent one in Romania. Following the relatively calm tenure of a caretaker cabinet, 2017 saw massive street protests against government attempts to limit judicial independence and undermine the country's anticorruption framework. A new cabinet led by the Social Democratic Party (PSD) fueled significant public distrust by attempting to pass emergency ordinances in these sensitive areas immediately after taking office in January 2017. The protests halted some of the proposals in early 2017, but debates around the limits of political, administrative, and criminal liability continued throughout the year, engaging the of whole society. While the Constitutional Court made several attempts at drawing clearer boundaries and sanctioning all excesses, by the end of the year it remained unclear how these decisions will be implemented in practice, both by the legislature and by the judicial authorities. The problem is that while in some cases bad managerial decisions are coupled with criminal conduct, in many other cases they are not. Still, in the public administration there was serious concern about what may or may not be seen as illegal conduct. This uncertainty paralyzed decision-making processes at various levels.

The civic sector's reaction to what were deemed bad political decisions was rapid and significant. New groups sprung up around an anticorruption platform in various Romanian cities. Informal gatherings and grassroots movements have grown in profile. The protest mood continued throughout the year, with people in the streets contesting not just proposed changes to the judiciary, but also government decisions on fiscal policies or pensions. This signaled a potential start of political accountability in a country that so far has relied almost exclusively on criminalization to sanction bad political behavior and decisions.

At the same time, a worrying ascent of illiberal discourse was also perceptible. Senior politicians from the ruling coalition, as well as media outlets related to them, have increasingly resorted to xenophobic and anti-Western rhetoric. There were frequent episodes of PSD leaders ranting against foreigners and foreign investors. The banking, insurance, and energy sectors were targets—but sometimes also individual CEOs, either because they took part in street protests or because they did not fall into line with government policies.¹ There was broad support in the parliament for the anti-liberal amendments to the Constitution promoted by the Coalition for Family (a grassroots conservative movement), while the alleged “plot by Soros against Romania” was periodically brought up by party leaders to justify proposed bureaucratic restrictions on civil society.² Mainstream media, including public television actively promoted public figures who spread a nationalist discourse. Although not necessarily coordinated, these are signs of a potential rapid degradation in the democratic governance and fertile ground for dangerous populism and hate speech in the future.

The ruling coalition formed by the PSD and the Alliance of Liberal Democrats (ALDE) was unstable throughout the year, with factions competing for power in the vacuum created by a crisis of leadership. Due to the rejection of a record number of flagship policies or a substantial amendment by the coalition's own MPs, the government was also regarded as incompetent. In June, the cabinet was toppled by the very coalition that put it in place, due to nothing other than infighting within the Social Democratic Party.

The government also hastily prepared legislation in an attempt to patch up the widening budget deficit, which peaked at 4.1 percent of the GDP, the largest in the EU in the second quarter of 2017,³ and closely missed the 3 percent EU stability ceiling at the end of the year. Romania's economic growth is based on consumption, fueled by a boost in social spending,⁴ while investments have been cut. The absorption rate of EU funds remained at record lows halfway into the second programming cycle of EU membership.⁵ Growing macroeconomic imbalances will probably trigger a deficit procedure from the European Commission and Romania may at some point need IMF support.

At the local level there has been a worrisome trend towards consolidating clientelism and opaque governance. The national government has used discretionary funds to foster networks of influence and control at local level, while municipalities have set up public companies to outsource lucrative public functions and bypass the checks and controls applicable to public institutions.

In 2017, the parliament postponed draft legislation aiming at reforming the judicial framework. Both the Superior Council of Magistrates and professional organizations strongly protested some of the

proposed amendments. A general mistrust in the ruling coalition lingered throughout 2017 as events from the beginning of the year remained fresh in the memory of both magistrates and the public.

Several scandals erupted around the National Anticorruption Directorate (DNA), and several prosecutors left the unit or were laid off. The chief prosecutor was suspected of friendly relations with various politicians currently under investigation. Though investigations into these allegations were still ongoing at year's end, the scandals have weakened the profile of an institution seen by many as a key player in disciplining public life.

Score Changes:

- **National democratic governance rating declined from 3.50 to 3.75** due to poor governance demonstrated by sustained attempts to decriminalize corruption and infighting within the ruling coalition, as well as due to the promotion of populist policies and an escalation of illiberal discourse.
- **Local Democratic Governance declined from 3.25 to 3.50** due to local governments becoming less responsive to their constituents' concerns and more reliant on funding from the central government.

As a result, Romania's Democracy Score declined from 3.39 to 3.46.

Outlook for 2018: Attempts to weaken judicial independence and the anticorruption framework are expected to continue in 2018, accompanied by an increasing illiberal discourse against groups that oppose those changes. In preparation for the presidential elections scheduled for 2019, the government's populist and clientelistic behavior will also continue, including attempts at buying influence at the local level with public funds. A referendum to change the constitution to redefine "family" could be instrumental in energizing socially conservative groups. The year 2018 also marks 100 years of Romania's existence as a unified state. Major celebrations are planned inside and outside the country. This will increase the nationalist sentiment building upon the existent political narrative.

MAIN REPORT

National Democratic Governance

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
3.75	4.00	3.75	3.75	4.00	3.75	3.75	3.75	3.50	3.75

- In just one year, Romania saw two governments, with one toppled in June by the very coalition that had put it in place due to infighting among power groups within the ruling Social Democratic Party (PSD). The solid center-left majority that emerged from the 2016 elections proved surprisingly unable to form a stable government and implement its electoral program. In 2017, the fight against corruption remained the main determinant of the political life in Romania, one way or the other. Yet there were worrying signs of a descent into populism and anti-Western rhetoric as several political leaders found themselves cornered by the prosecution.
- The PSD won parliamentary elections in December 2016 and formed a comfortable ruling coalition with a junior partner, the Alliance of Liberal Democrats (ALDE). Problems, however, appeared right away. The president, Klaus Iohannis, rejected the coalition's first nomination for the position of prime minister; Sevil Shhaideh, a Muslim woman, was seen as a light-weight stand-in for PSD leader Liviu Dragnea, who could not take the office himself because of a criminal conviction. Concerns were raised about Shhaideh's husband as well, a Syrian national who allegedly had family ties with the regime of Bashar-al Assad.⁶ The second attempt at government formation, with a little-known PSD politician from the country's west, Sorin Grindeanu, was initially successful. However, as soon as he tried to become a decision-maker, loosening the tight grip exerted on the cabinet by the leader of the party, his own parliamentary majority forced him to resign in an unusual step in June 2017.⁷
- The sources of the crisis were twofold. First, the PSD had made bold and largely unrealistic promises in the electoral campaign, based on generous tax cuts and social spending increases, which created visible strain on the public budget by mid-2017. In the first days of the government, it abolished 102 taxes and fees,⁸ increased the minimum salary, and included generous promises of pensions and salary raises in draft laws initiated by ministries. But as months passed and the gap grew larger between plans and reality, the tensions between the party leadership and the prime minister became public.
- Second, attempts to frustrate the fight against corruption by modifying legislation, tampering with institutions, and replacing top prosecutors has also been a priority for the leaders of the ruling coalition.⁹ Both speakers of the House and the Senate are either have criminal convictions (PSD leader Liviu Dragnea) or were under investigation (former prime minister Călin Popescu-Tăriceanu); by contrast, then prime minister Sorini Grindeanu had no such problems. As the year commenced and the blunt, awkward attempt to weaken the judiciary by emergency decree (see Judicial Framework and Independence) brought 600,000 protesters into the streets in the middle of the winter, Grindeanu grew more hesitant of his own party's agenda. But his small rebellion inside the party ultimately failed—PSD remained loyal to Dragnea and the premier had to go following a vote in the parliament in June. The ruling coalition emerged from this crisis fraught and enfeebled, unable to fulfill its goal of gutting the anticorruption framework.
- Various factions competed for power in the ruling coalition, resulting in the withdrawal or amendment of a record number of flagship policies proposed by the government. These included fiscal reforms, such as the so-called split value added tax (VAT),¹⁰ changes in social security contributions, and a proposal to nationalize part of the pension scheme. Legislation was hastily written in an attempt to patch up the widening budget deficit, which peaked at 4.1 percent of the GDP, the largest in the EU in Q2 2017¹¹. The deficit was a result of populist increases in public salaries and some types of pensions throughout the first semester of 2017 and was aimed at buying social peace during the efforts to weaken the judiciary. Romania's economic growth is based on consumption, fueled by a boost in social spending,¹² while investments have been cut. EU funds

absorption remained at record lows, half-way into the second programming cycle of EU membership.¹³

- The drift into populism was matched by a coordinated attack of the ruling coalition against independent institutions, the system of checks and balances, and administrative controls. A modicum of good governance has so far been assured with the help of external anchors, appeals to the EU’s space of democratic values, and reliance on the rule of law. Excessive politicization of key regulators, such as the Court of Accounts¹⁴ or the body responsible for overseeing the electricity and natural gas sectors, took place in 2017.¹⁵ To head these institutions, the government appointed people with sub-standard qualifications but strong party connections. The framework for corporate governance in most state-owned companies was also weakened and there were attempts at amending the law to exempt critical firms from competitive and transparent management rules.¹⁶
- A worrying ascent of illiberal discourse was also perceptible throughout the year. Senior politicians from the ruling coalition, as well as media outlets associated with them, increasingly resorted to xenophobic and anti-Western rhetoric, including frequent episodes of attacks on foreign investors. The banking, insurance and energy sectors were the primary targets; but sometimes also their CEOs individually, either because they took part in street protests or because they did not fall into line with the government policies.¹⁷ There were numerous attacks on civil society actors and politicians criticizing the government as well (see Civil Society and Independent Media). Although not necessarily coordinated, these developments were symptomatic of a rapid degradation of the quality of democratic governance, and fertile ground for dangerous populism and hate speech in the future.

Electoral Process

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2.50	2.75	2.75	3.00	3.00	3.00	3.25	3.25	3.00	3.00

- No significant changes to electoral legislation took place in 2017, apart from an attempt to loosen the law on the financing of political parties. Still, civil society organizations advocated for a majoritarian system with two rounds for local elections instead of one, as currently provided by the legislation;¹⁸ lower thresholds for the parliament; reducing the number of signatures for candidates; and adopting a consolidated Electoral Code in order to eliminate legislative incoherence.¹⁹ The law on referendums was modified in May in order to facilitate a controversial referendum on the family, but was declared unconstitutional by the Constitutional Court in October.
- An amendment to the law on political parties resulted in an improvement in 2015, allowing a group of just three people to set up a party. As a result, by the end of December 2016 the number of registered parties grew by 65,²⁰ with 8 more registered in 2017.²¹ Although the number of parties has increased, the same big actors dominated the political scene. Serious obstacles in the electoral legislation remained, such as the high number of signatures required to register a candidate, or the provision to dissolve parties if they do not have a certain number of candidates in two consecutive elections. A legislative initiative aimed at lowering the thresholds for parliament was rejected at the first vote.²² Uniunea Salvați România (USR) was the only new party to enter parliament in 2016; the new parties that competed failed to win any important municipalities in 2017.
- Local elections for the office of mayor took place on June 11 in 49 localities from 32 counties.²³ This ballot arose little interest, as just 33 percent of registered voters participated.²⁴ The number of reported irregularities was very low and with no impact.²⁵ Since 2016, the electoral authorities introduced an electronic verification system that significantly reduced the potential of electoral fraud. Another round of local elections took place on November 5 in 17 localities. No independent observation reports have been published that could assess the conditions of these elections. There was also an attempt at a local referendum on October 15, in order to change the name of a county, but it was postponed and had not been held by December 31.
- Several modifications to the electoral legislation generated fierce public debate in 2017. One of the elements of the system that is often criticized is the majoritarian system in one round, used for the local elections, which allows mayors to be elected with low percentages and therefore produce non-

representative mandates. A legislative initiative of the Liberal Party in March to reintroduce the second round in local elections failed.²⁶

- In May, the parliament modified Law 3/2000 regarding the holding of referendums in an expedited manner. According to the proposed amendments, referendums aimed at rights enshrined in the Constitution follow a procedure in which the government sets the date of the consultation through a decision (vs. law, as previously stated).²⁷ The law was contested in the Constitutional Court by a group of opposition senators (PNL and USR). In October, the Constitutional Court found the amendments unconstitutional,²⁸ arguing that proposal overrides the parliament’s constitutional competences, established in article 151 of Romania’s constitution, in terms of its right to trigger a national referendum. A group of Liberal Deputies contested the legislative proposal in December, motivated by a lack of legislative clarity and the fact that the parliament had not fully implemented the Constitutional Court decision.²⁹
- In April, the Chamber of Deputies adopted controversial amendments to the Law 334/2006 on the financing of political parties and electoral campaigns.³⁰ One amendment made it impossible to confiscate funds obtained illegally by political parties and candidates (for example from state owned companies, religious cults, or through donations above the threshold). The legal proposal was just one article long in the initial form and was rejected by the Senate; however, the lower chamber introduced more than 100 amendments unrelated to the initial text—a procedure that violated the constitutional principles. Civil society organizations contested this in the same month.³¹ Although the adopted version eventually allows confiscation, the other provisions *de facto* impair fair competition and encourage the abuse of public resources. The opposition publicly stated that it would contest its constitutionality and the Constitutional Court decided in November that the amendments were in their entirety unconstitutional on procedural grounds, as they were not debated by both chambers of the parliament.³² Some provisions were also deemed to breach the principle of legality on their merits.
- The reestablishment of the Commission for the Electoral Code in the Parliament was requested both by opposition parties³³ and civil society.³⁴ The Commission’s mandate was terminated in 2015, although several laws needed to be reconsidered, including those on presidential elections or referendums. Most experts believe that a single, unified Electoral Code is a priority in Romania in order to eliminate legislative confusion and contradictions.³⁵ The parties in power tended to disagree, having their own strategic calculations.
- The former president of the Permanent Electoral Authority was charged with trafficking of influence and money laundering in two investigations in December 2016³⁶ and December 2017 respectively. She had allegedly rigged procurement rules and gave preferential access to public contracts in exchange for money and goods. A new president, a former ALDE senator, was appointed.³⁷

Civil Society

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.25	2.25	2.25

- Grassroots civil society movements became more visible and relevant in 2017, as hundreds of thousands of people took the streets and protested against government’s hasty attempts to change the judicial system and legal framework. The pressure political parties put on civil society intensified in 2017 through legislative measures inspired by the illiberal democracies in the region. Allegations of the existence of a so-called Soros network reemerged in the political discourse.
- The year 2017 started with massive protests against the government’s attempt to amend the Criminal Code and pardon certain offences, including certain categories of abuse of office and conflicts of interests. The public perceived the government’s sudden move, instituted by emergency decrees, as an attempt to recreate clientelistic rules for the political class and bring back past times of impunity, rather than well thought-through measures of good governance, as the minister of justice claimed in January.³⁸ At the peak of the protests in January and February, about 600,000

people took to the streets in dozens of municipalities in Romania and abroad.³⁹ This was the largest protest in Romania since the fall of the communist regime. Demonstrations of solidarity with the anticorruption movement were also organized in Bulgaria and Moldova.

- The protests were a success of the spontaneous, informal civil society, as the controversial proposals were withdrawn under public pressure and the minister who initiated them resigned in February. However, some of the unpopular amendments remained on the agenda at year's end. In October, several NGOs and civic groups met with President Klaus Iohannis and proposed their own amendments to the justice system, at the same time asking for a reform of the Electoral Code.⁴⁰
- Civil society came under pressure throughout the year, targeted both by public campaigns and legislative initiatives. A proposal modifying Government Ordinance 26/2000⁴¹ on associations and foundations, submitted in March, represented a major threat to the sustainability of the sector. The law, which passed in tacit procedure through the Senate in November, requires nongovernment organizations (NGOs) to publish their incomes and expenses twice a year in the Official Gazette and mandates that, if the data is not published, the NGOs will be dissolved within 30 days. This would be not only death-by-bureaucracy for many small civic organizations, but was also allegedly unconstitutional. Moreover, public utility organizations may no longer join campaigns opposing the actions of political parties or candidates.⁴² At year's end, the law was undergoing legal procedures in the Chamber of Deputies, where it received a negative vote from the Human Rights Commission. One of the main reasons for the delay of a final vote was civil society opposition. A rather critical position on the legislative proposal was also published by the Expert Council on NGO Law of the Council of Europe in December.⁴³
- On the other hand, propaganda campaigns against the "Soros network", reignited during the protests in early 2017 with the goal to smear the demonstrators, continued throughout 2017. Civil society organizations working on good governance were constantly subjected to smears on TV stations and news portals controlled by politicians and business owners. In October, a group of NGOs requested that the media regulator penalize the Antena 3 station, as journalists affiliated with that outlet stated that the organizations' purpose was to denigrate the country and to destabilize the rule of law.⁴⁴ Politicians also invoked the "Soros network", including the presidents of both chambers of the parliament and the mayor of Bucharest, who was constantly criticized by NGOs for the lack of transparency in managing the budget of the capital city.⁴⁵ However, this recurrent offensive against certain parts of civil society, coming from the members of the ruling coalition, also testified to the fact that critical and liberal forces and self-organizing groups increasingly matter and are perceived as a nuisance by the illiberal forces in society.
- Amending the Constitution became a topic of fierce polemics in 2017. The Coalition for Family, a socially conservative movement, gathered more than three million signatures in order to modify article 48 of the Constitution. The proposed changes state that the family must be composed of a man and a woman, therefore forbidding same sex marriages; the Civil Code was already clear on this aspect, as it does not allow this type of legal status. In 2016, the proposal passed the Senate and in March 2017 a majority of deputies voted in support of the draft law. Numerous civil society organizations criticized the proposal,⁴⁶ arguing that it is likely to reduce gay and reproductive rights in the future. Dozens of NGOs and activists formed the RESPECT network in response to the advocacy of the Coalition for Family.⁴⁷ The purpose of the civic alliance was to protect human rights, democratic principles, and fight against illiberal initiatives.
- At the end of 2016, there were formally 97,208 registered organizations in Romania.⁴⁸ The sustainability of civil society in terms of funding remained a structural issue, in a business environment that has its own problems of solvency and integrity, and where corporate sponsorship for causes of good governance and similar issues is rare. The 2017 amendments on fiscal and labor matters will limit even more the fundraising capacities of the NGOs. Excessive reporting of names and identification information for all individuals making even symbolic donations will block the development of an already underdeveloped practice of financially contributing to NGOs.

- The grassroots component of civil society became more numerous after the Colectiv fire in October 2015 and the protests in 2017. Even so, the level of civic involvement (including the simple presence at the ballots), with some exceptions, tended to be low.⁴⁹ An effect of the protests was the emergence of grassroots-based initiatives like the Democracy Fund, which supported civic ideas empowering citizens and nongovernment associations. The Fund was supported through voluntary donations from more than 880 contributors.⁵⁰ While the extent of its influence remained rather limited in 2017, the Fund opened opportunities for activists to finance civic initiatives in a rather simple and transparent manner. However, in general, the funding opportunities for civic actions and advocacy remained rather limited during the year.

Independent Media

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
3.75	4.00	4.00	4.00	4.25	4.25	4.25	4.25	4.25	4.25

- The media remained highly polarized and vulnerable in 2017, with a shaky economic basis at the central and especially local level. Printed press was in free-fall, with major newspapers such as *Romania Libera* or *Adevarul* distributing less than 15,000 copies per issue,⁵¹ while tabloid press was slightly more successful in terms of circulation. Antena 3 and Romania TV, two TV stations often criticized for manipulations, fake news, and frequent derailments from journalistic standards, have top ratings among news channels.⁵² News portals and blogs owned by the same holdings, or by the people connected to them, were often used as “primary sources” in order to diffuse responsibility and avoid sanctions.
- Disinformation and fake news, circulated back-and-forth on social media, remained a serious issue. Romania TV was until recently owned by the former PSD/PRU politician Sebastian Ghiță, currently a fugitive in Serbia, with a European arrest warrant for corruption on his name. The editorial policy of the station came under fire after the protests in January and February, when almost 600,000 citizens contested the swift and nontransparent changes to the justice laws by the government coalition. The news frequently included false allegations about George Soros, claiming that he had paid the protesters and falsely suggesting that the street demonstrations were part of a coup. Antena 3, a TV station owned by the family of media tycoon Dan Voiculescu, who was sentenced to jail for corruption in 2014, adopted a similar line of reasoning.
- The National Audiovisual Council (CNA) remained weak. In 2017, meetings were not held according to regulations and decisions were often inconsistent or lacking teeth.⁵³ Both protesters and civil society criticized the functioning of the CAN.⁵⁴ Despite the fact that in February a fellow member asked for the resignation of the body’s president, she remained in office while indicted for abuse in office.⁵⁵
- Several legislative changes took place in 2017. The Audiovisual Code was modified in February and included new improved regulations on defamation and the right to reply.⁵⁶ Still, the implementation of the Code remained a primary problem. Law 1/2017 eliminated the general tax used for financing the public TV and radio (in a populist package, which abolished 102 taxes in one stroke) and instead introduced subsidies from the state budget. The change operated by the new cabinet was criticized, as it may lead to an even less transparent financing of the public TV and radio and higher politicization of the two institutions.
- The president of the public radio, Ovidiu Miculescu, refused to resign, despite being declared incompatible to hold office by the High Court of Cassation and Justice in February. Dozens of public radio employees signed a letter asking for his departure, while civil society and journalist associations sent a letter to this effect to the speakers of the two houses of the parliament.⁵⁷ Miculescu was finally dismissed by the parliament in April, but only after dragging his feet for several months.
- Increased politicization has been noted at the national press agency, Agerpres. A draft law pending in parliament at year’s end would introduce the possibility of dismissing its head based on a political vote in the Parliament⁵⁸ which may take place every year. A similar system was in place for the

national television and radio, and was frequently criticized for strengthening political clientelism due to the constant reshuffling of management.

- Various types of pressure on media were reported during the year 2017. Several journalists resigned from newsrooms, individually or in groups, blaming censorship and the politicization of the management in the private media, which frequently chose to become obedient and serve powerful politicians in exchange for protection. In July, tax inspectors visited the office of Rise Project on the same day that a high-profile investigation into the businesses of PSD president Liviu Dragnea was to be published; the journalists, as well as the general public regarded this as political harassment.⁵⁹

Local Democratic Governance

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.25	3.25	3.50

- The local government system continued to be undermined in 2017 by increased uncertainty about the rules of the game and the expanding scope for clientelism in financial allocations. The ruling coalition raised salaries for small and medium localities as part of its populist agenda, but the move put a strain on local budgets and promised more problems for the future. By contrast, the absorption rate of EU funds remained low and municipalities (such as Bucharest) have been encouraged to create off-budget, local entities with little control on spending and politicized leadership.
- The year 2017 was one of the increasingly few without general elections, local or national, in Romania this decade. The direct pressure on the local administration to get involved in political campaigns and contribute to party machineries to some extent abated. Local by-elections took place on June 11 in 49 municipalities and on November 5 in 17 more, for positions that had been vacated by *force majeure* or resignations. They produced little surprises in terms of distribution of mandates, with the large national parties taking most votes. More significantly, the vote did not generate much interest in the communities themselves: only one voter in three bothered to participate (see Electoral Process).⁶⁰
- This is a sign that the stakes of the political game at the local level in the past year were different—most actors jockeyed for positions and public resources distributed to regions and communities by the new government installed in January. Indeed, in the new national budget put forward at the beginning of the year, the all-powerful Ministry of Regional Development, Public Administration & EU Funds (MDRAP-FE) managed to attach a controversial executive order (OUG 6/2017), which created exemptions for itself from both the Public Finance Law and the Fiscal Accountability Law. More specifically, contrary to accepted practice, MDRAP-FE earmarked a large sum of RON 30 billion (€7 billion, \$8.6 billion) as commitments for investments, to be used until 2020 for financing the National Program for Local Development (PNDL), a scheme of distributing national funds locally. Second, as an exception from the general budget laws, money from this scheme can be used for covering current expenditure “when needed”.⁶¹
- The move is a worrying signal that clientelism in local governments may gradually increase, in parallel with a spending spree initiated by the newly installed government. Its observers have criticized PNDL since its creation in 2013 due to the discretionary, opaque, and politicized nature of disbursement, as well as the lack of objective criteria for the allocation of investment projects, which resulted in parties in power using the program as a public purse to reward pliant mayors.⁶² In the more than 5,000 projects now being implemented (records are not clear, which is a problem in itself), almost half of the work contracts are won by less than a dozen companies, generally with close party or family connections with the leaders of public institutions, as various evaluations show.⁶³ The risks are that, with the behemoth PNDL, which is wholly funded by national money, applying “soft rules” in the selection of infrastructure projects and supervision of contractors, local governments may lose interest for the EU structural funds, which are more “bureaucratic”, i.e. rule-based and transparent. Second, that the whole business environment at the local level may fully embrace the previously dominant practices of preferring personal connections in public administration, uncompetitive tenders, and rent-seeking. Third, by promising local governments money they do not have, and pushing them to actually start works on this basis, the government

plants the seeds of a fiscal crisis in local budgets—similar to what we have seen in other South-European countries during the last crisis.

- As part of a broader legislative package to raise salaries in the public sector, local civil servants benefited from an important salary raise in mid-2017, which in many smaller towns and rural communes will be unsustainable in the long term. The elected officials (mayors and councilors) had already lobbied successfully for a rise a few months earlier when their compensation packages had been increased by 30 percent.⁶⁴ The combined magnitude of these salary increases was unprecedented and has already created problems in local budgets: the unstoppable political drive to implement the rises to the maximum allowed by law in many places saw the money run out before the end of the year.⁶⁵ This only magnified the negative political effects of the PNDL financing scheme: institutional uncertainty; impossibility to predict and plan resources; local governments lobbying individually the upper echelons for “emergency transfers”, which only reinforces clientelism; and diminished engagement with the citizens, who are not part of these dealings.
- The anticorruption campaign continued to produce victims at the local level, with high profile cases of mayors in important cities being investigated, some under house arrest and others charged with multiple offences: Târgu Mureş, Tulcea, Năvodari.⁶⁶ Rural mayors and councilors from various counties (Timiș, Suceava, Mehedinți, Gorj) were also put under investigation. If anything, these trends show that corruption at the local level cannot be uprooted by prosecutors and courts only, even after years of energetic offensives. More needs to be done to strengthen prevention and create the right incentives among representatives and civil servants at the local level, by making the governance more transparent, accountable and predictable. By and large, in 2017 things moved in the opposite direction.

Judicial Framework and Independence

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
4.00	4.00	4.00	3.75	3.75	3.75	3.75	3.75	3.75	3.75

- Fierce debates started at the beginning of 2017 in Romania about the need and limits of judicial independence, as well as about judicial accountability mechanisms. The ruling coalition decided to embark on a large-scale reform process regarding the legal framework of the justice system. The Superior Council of Magistracy, organizations representing judges and prosecutors, and formal and informal civil society groups strongly criticized the proposed amendments.
- As early as January, the newly instated government was confronted with massive protests after making public two pieces of legislation that would have undermined the efficiency of the criminal justice system in the country. The first draft⁶⁷ included amendments to the Criminal Code that decriminalized certain offences and limited the scope of others, as well as controversial changes of the procedural rules. At the same time, apart from the dubious amendments, the draft also contained articles that aimed to bring criminal procedures into line with numerous Constitutional Court decisions. But they were used by the government merely as a justification for the need to urgently change the legislation. The second draft presented in the same month included a generous pardon that would apply even to serious offences, such as corruption and violent crimes.⁶⁸
- Protesters and civil society groups vividly criticized these drafts and argued that in fact they promoted the interests of political figures convicted of corruption offenses or facing accusations of graft.⁶⁹ In spite of the protests, the government adopted the first draft through an emergency ordinance (the notorious emergency ordinance 13/2017), while the second draft was sent to the parliament. Upon the adoption of EGO 13/2017 protests intensified throughout the country, reaching the highest number of people in the streets after the 1989 revolution (see Civil Society), while the pushback from the associations of magistrates, who gave strong signs of independence, was also unexpected and unprecedented.⁷⁰ Faced with this massive social upraise, the government abolished EGO 13/2017 by EGO 14/2017, thus eliminating the controversial amendments. Minister of Justice Florin Iordache resigned in February. At year’s end, watered-down versions of the laws remained pending in the parliament.⁷¹
- The government justified the amendments with the need to comply with European Court of Human Rights (ECtHR) rulings that sanctioned Romania for the poor conditions of its penitentiaries.

However, no impact assessment had been done in relation to the pardon draft and the National Administration of Penitentiaries contested the figures advanced by the Minister of Justice⁷² as to how many detainees would benefit from the proposals. Following these events, in April, the ECtHR released its pilot decision giving Romania six months to propose a plan to address the issue of improper detention conditions.⁷³ In May, the parliament adopted legislation allowing for certain convicted persons to be released from jails earlier. After the law came into force, newly appointed Minister of Justice Tudorel Toader stated that he did not expect these provisions to have such a high impact on so many individuals,⁷⁴ confirming the diagnosis of poor planning and politically motivated decisions.

- The National Anticorruption Directorate (NAD) also started a criminal investigation in relation to the adoption of EGO 13/2017. Politicians in the ruling coalition argued against this investigation, which they regarded as interference of the prosecutors in top political decisions. In February, the Speaker of the Senate lodged a challenge with the Constitutional Court and the court found that absent concrete indications of criminal conduct, the prosecutors had indeed overstepped the limits of their mandate when they aimed to assess the legality of political decisions, thus generating a constitutional conflict between state institutions.⁷⁵ The investigation had been closed by the day of the Constitutional Court decision and the file was forwarded for further inquiries to the Prosecutor General's Office. The decision led to increasing tensions between the government and the DNA and ultimately, in September, the Judicial Inspection initiated disciplinary action against the Chief-Prosecutor of the DNA, Laura-Codruța Kovesi, following a complaint filed by two journalists.⁷⁶
- The ambit of criminal investigations and the difference between acceptable political decisions and illegal decisions are subject to a long-lasting discussion in Romanian society, which is still in search of clear boundaries between (i) executive discretion and criminal conduct; and between (ii) political responsibility and administrative or criminal liability. The limits of what can and cannot be subject to criminal investigations were explored by the Constitutional Court in a June decision on the constitutionality of provisions on abuse in office,⁷⁷ as well as in the decisions regarding a constitutional conflict between the DNA and the government in relation to the investigation of EGO 13/2017. In essence, the Court found that abuse of office cannot be committed by the mere exercise of constitutional and legal competencies by agents of state powers. The Court, relying on a Venice Commission report,⁷⁸ further explained that abuse of office demands that a competence provided for in the law is misused and that behavior should be severe enough to entail criminal liability. At year's end, the government and the parliament were still exploring the mechanism to introduce a severity test, the most likely option being a monetary one.
- The Constitutional Court rejected⁷⁹ two other complaints about potential constitutional conflicts between the parliament and the government, and between the government and the Superior Council of Magistracy. The Court found that the government was entitled to issue the EGO 13/2017 in areas provided for by the Constitution and that the government was not required to demand the opinion of the Superior Council of Magistracy on draft legislation, with the exception of legislation regarding judicial organization.
- In August, Minister of Justice Tudor Toader published a large judicial reform package. Similar to the January package, some amendments bring the legislation into line with past Constitutional Court decisions, while others controversially posed a threat to judicial independence as a whole and to functional independence in particular. The proposals included changes to the institutional set-up of the Judicial Inspection and strong provisions regarding the liability of magistrates. The Superior Council of Magistrates gave a negative vote on the proposals in September⁸⁰ and approximately 4000 magistrates⁸¹ (out of a total of about 7000) signed a letter of protest asking the government to withdraw the proposal. Other judicial actors⁸² and civil society groups also demanded that this initiative be dropped; several streets protests took place. A slightly amended draft was pending in parliament at year's end, with the ruling coalition key figures demanding a fast track procedure. The Superior Council of Magistrates equally vetoed the new version of the amendments, but its opinion was merely consultative.

Corruption

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
4.00	4.00	4.00	4.00	4.00	4.00	3.75	3.75	3.75	3.75

- The fight against high-level corruption has been central to the past 15 years of Romania’s evolution, with important people going to jail and losing their assets for graft offenses. Romanian society sees this as one of the most important gains and was willing to go to the streets to protest when it felt that the anticorruption agenda was under threat. In 2017, the government attempted to undermine the work of anticorruption institutions but, given the rapid and clear reaction of the public, it stopped short of succeeding during the year.
- The beginning of the year was marked by turmoil over the adoption amendments to the criminal code and criminal procedures code (see Civil Society and Judicial Framework and Independence). EGO 13/2017 would have set a monetary threshold for abuse of office at €50,000 (\$61,000), and everything below this amount would have been left out of the scope of criminal justice. The government claimed this would ensure that trivial cases would not be dealt with in the criminal justice system, while civil society and protesters argued that this threshold is far too high for Romania. While the EGO 13/2017 was abolished,⁸³ the controversy continued.
- The DNA has also had to deal with internal turmoil in 2017, with two prosecutors dismissed from the organization on the grounds of not complying with the condition of having a “good reputation”. Meanwhile, the two prosecutors declared that their dismissal was due to the fact that they refused to follow orders given by the Chief-Prosecutor, which they considered inappropriate.⁸⁴ Following the June leak of recordings that allegedly took place in an internal meeting of the Chief Prosecution and prosecutors of the DNA, there were widespread debates about the orders given by management to case prosecutors to investigate certain political actors. The authenticity of the recordings also remained controversial.
- Another sensitive issue was connected to the allegedly friendly relations between the Chief-Prosecutor of the DNA and certain politicians under investigation. While the DNA Chief-Prosecutor denied the allegations, several political figures claimed that they had participated in various events together. An investigation of the Prosecutor General’s Office, which ended without an indictment, found that the Chief-Prosecutor participated in a private party with politicians. This further fueled attacks by key political stakeholders against the Chief Prosecutor, who was invited to testify before a parliamentary investigation commission. She refused to do so—a move challenged in the Constitutional Court. In July, the Court ruled in favor of the parliament.⁸⁵
- The public health system came under fire in 2017 as two major corruption investigations surfaced. The first one, in May, regarded embezzlement and bribery committed by the manager of the “Nicolae Malaxa” Hospital in Bucharest.⁸⁶ The second investigation looked into a potential organized crime ring inside the National Health Insurance House, which included its president. The network had allegedly requested illegal reimbursement for medical services provided at home for non-existing patients, thus causing €3 million (\$3.7 million) damage to the state budget.⁸⁷
- Controversial PSD MP and businessman Sebastian Ghiță, on trial on corruption and money laundering charges related to his IT company Teamnet, failed to appear at a local DNA office after being summoned by prosecutors. An international warrant had been issued for him at the end of 2016, and in April 2017 he was located and detained in Belgrade, Serbia.⁸⁸ The Romanian authorities have demanded his extradition, but the demand was pending at year’s end.
- In July, the DNA initiated a criminal investigation in a case regarding the island of Belina, charging Sevil Shhaideh and Rovana Plumb, former members of the government, with abuse of office.⁸⁹ The investigation concerns the legality of several government decisions regarding the island of Belina, a small island in the Danube next to the Bulgarian border. Belina was transferred to the Teleorman County Council and its concessions were immediately given to a private company with strong ties with Liviu Dragnea, president of PSD, without following public procurement regulations. Following this investigation, a complaint was filed before the Constitutional Court on the grounds of a constitutional conflict between the DNA and the government. In November, the Court ruled that there was no constitutional conflict, as the DNA’s investigation concerns the legality with which the government adopted the decisions regarding Belina.⁹⁰

- The National Institution for the Management of Seized Assets (ANABI), created in 2016, became operational in 2017 and presented first activity report.⁹¹The report highlighted institutional and procedural developments, as well as the practical steps taken by ANABI to improve asset recovery in Romania.
- In June, a new system of ex-ante checks on conflicts of interest in public procurement developed by the National Integrity Agency became functional. PREVENT is an online system which, through cross-checking and very complex analyses, can pinpoint potential incompatibilities and conflicts of interest occurring during the procurement process. If such irregularities are identified, a notification is sent to the head of the contracting authority with a request to eliminate the problem. The system will function on the basis of information provided by stakeholders involved in the tender directly in the electronic public procurement system (SEAP). By September, the system had analyzed 2,995 public procurement procedures worth over €1.3 billion (\$1.6 billion) and generated the first integrity warnings for potential conflicts of interest.⁹²

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