

# What kind of future for Romanian Election Administration?

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## ABSTRACT

Romanian electoral administration has undergone a series of reforms that reshaped it to abide the European Union's administrative reform tendencies and the core guidelines set up by the OSCE and the Venice Commission for the electoral and political domain. The study depicts the core reforms undertaken in the last few years and identifies the reforms of the electoral administration that can be expected in the near future.

**KEYWORDS:** *reform, electoral administration, agentification, professionalization, dematerialization*

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## 1. Introduction

The concept of electoral administration is relatively new for Romania, the emergence and development of which is related in particular to the establishment of the Permanent Electoral Authority. On a theoretical level, the electoral administration represents an aggregation of state bodies and authorities establishing the institutional framework of electoral processes. However, on a functional level, the electoral administration represents the sum of the activities of planning, organizing and conducting the electoral processes, or rather, the management electoral operations.

International Idea (2006) draws three models of electoral administration<sup>2)</sup>:

1. The independent model – electoral management and elections organizing are conducted by an autonomous body functioning independently from the government, thus holding and managing its own budget;

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<sup>2)</sup> Wall, A., Ellis, A. Ayoub, A., Dundas, C. W., Rukambe, J., Staino, S. 2006. *Electoral Management Design – The International IDEA Handbook*, passim.

2. The governmental model – electoral management and elections organizing are conducted by the executive power through its ministry of interior and local authorities;

3. The mixed model – implies the existence of a dual structure composed of an electoral authority that is independent of the executive and an implementation component located within a government department or at a local level.

The Romanian electoral administration follows the pattern of the mixed model mentioned above, as the Permanent Electoral Authority (PEA) and the electoral bureaus are the independent component of the system while the ministries and local public administration authorities with electoral duties are the subsequent components.

Over the past years, the Permanent Electoral Authority and the Romanian electoral administration have undergone a series of reformative processes aimed at improving the electoral processes.

The primary vehicle of this reformative processes is the legislative reshaping by adaptating the norms that regard electoral administration to simply adjust to real situations and past experience, following a series of principles and recommendations for the adoption, amendment or repeal processes of legal norms, such as<sup>3)</sup>:

- Clarity of roles – competences, tasks and objectives of institutional actors involved in the process should be clear and transparent;
- Rejection of unjustified influences – to provide trust in the regulatory activities, it is recommended to block any influence that is outward of the decisional process or that cannot bring an improvement;
- Responsibility and transparency – in order to increase the legitimacy of the institutional actors involved in these processes, as well as the decisions adopted by them;
- Taking on engagements – the assumption of fulfilling quantitative and qualitative objectives to increase efficiency and effectiveness of processes;
- Adequate financing – to prevent unjustified influences and to guarantee an improved quality of these processes;
- Evaluation of performance – establishing control mechanisms for these activities in order to correct potential errors.

The core incentives for reform and innovations of the Romanian electoral administration model and functional attributes are the European Union's administrative reshaping tendencies and the guidelines drawn by international organizations such as the OSCE ODIHR and the Venice Commission.

This study aims at highlighting the core reforms undertaken by the Romanian electoral administration and the Permanent Electoral Authority following these incentives for reform and innovations, thus identifying foreseeable guidelines for future reforms.

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<sup>3)</sup> OECD. 2014. *The Governance of Regulators*, OECD Publishing.

These future adjustments of the electoral administration can arise as a consequence of forecasting future challenges, as well as of encountering obstacles in the past electoral processes.

## 2. The Process of Agentification

In-depth new public management reforms have endorsed the agentification process in the EU. Chiti (2015) identifies the processes of permanent reshaping the institutional frameworks by competence readjustments and the centralisation of powers towards bodies with particular mission and tasks, to be the major public administration tendencies that lead to the “agentification” of the public sector<sup>4</sup>.

Agentification tendencies launched a continuous decentralisation and recalibration of competences process in the administrative sector, granting administrative bodies broader decisional power and prerogatives to regulate and/or monitor a specific field of the public sector. One of the main outcomes of the agentification process is the achievement of a high level of independence in the processes of elaboration and implementation of public policies.

The Romanian administrative bodies with responsibilities in organizing and validating elections can be divided in 2 categories: permanent institutions (having more attributes than solely the organization of elections and functioning before and after electoral periods) and temporary institutions (established only in electoral periods). The permanent institutions are the Permanent Electoral Authority (PEA), the Special Telecommunications Service, the National Institute of Statistics, the Minister, The Romanian Postal Services, the Romanian Official Journal, local authorities, judicial bodies and the Constitutional Court. Temporarily, in electoral periods, the Central Electoral Bureau, electoral bureaus at different levels (depending on the type of elections) and bureaus of polling stations are established.

In 2004, as a consequence of agentification of the Romanian electoral administration, a recalibration of competences has granted the Permanent Electoral Authority of Romania the attribute of an autonomous institution with general competence in electoral matters. The mission of the institution is to organize and conduct elections and referendums and to control the financing of political parties and election campaigns, exercising the following main powers<sup>5</sup>:

- it draws up proposals concerning the provision of the necessary logistics for the unfolding of the elections, that it sends to the Government and to local public administration authorities for implementation and it monitors the effective implementation of these proposals;

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<sup>4</sup>) Chiti, E. 2015. *In the Aftermath of the Crisis: The EU Administrative System between Impediments and Momentum*, EUI Working Paper LAW 2015/13.

<sup>5</sup>) Law no. 208/2015 on the election of the Senate and the Chamber of Deputies, as well as on the organisation and functioning of the Permanent Electoral Authority, amended.

- it monitors the delimitation of polling stations, the establishment of the premises of polling stations and electoral bureaus;
- it monitors the timely provision of the equipment necessary to the polling stations: standard ballot boxes and booths, stamps, stamp pads, recipients for the transportation of the ballot papers and others; it controls their storage from one electoral period to another;
- it monitors the methods for ensuring the funds necessary for the timely staggered provision of the logistics necessary for the unfolding of the electoral process;
- it monitors the security of polling stations, ballot papers and of the other documents and materials specific to the electoral period;
- it monitors the drawing up and printing of the permanent electoral lists; it monitors and supervises the updates of the Electoral Register;
- it administers the Electoral Register and the Register of polling stations in the country;
- it supervises and monitors the fulfilment of the task's incumbent upon the public authorities and other bodies while preparing and organizing the electoral processes;
- it ensures, within the limits of its competences, the unitary implementation of the legal provisions concerning the organization of elections and referendums;
- it draws up studies and proposals for the improvement of the electoral system, that it publishes and presents to the public authorities, political parties, as well as to the non-governmental organizations concerned;
- it presents to the Parliament, within three months, at the most, from the closing of the elections for the Senate and the Chamber of Deputies, for the President of Romania, for the European Parliament and for the local public administration authorities, or from a national referendum, a report on the organization and unfolding of the elections, respectively of the referendum, including mentions related to the electoral turnout, their unfolding, the irregularities and flaws, including of legislative nature, found and the result of consulting; the report is published under the form of a White Paper;
- it implements programs aimed at informing and educating the voters concerning the Romanian electoral system and concerning the observance of electoral ethics and it ensures their dissemination;
- it organizes specific professional training and education programs in the electoral field for the staff of authorities and institutions with powers in the organization and unfolding of the elections, as well as for the persons likely to become members of the electoral bureaus and computer operators at the level of polling stations;

- it draws up programs and it establishes unitary procedures concerning the exercise of the right to vote by disabled persons and it ensures their dissemination;
- it draws up its draft budget, approved by the law on the State budget;
- it draws up the list of the specialized staff certified by the National Institute of Statistics, taking part in the centralization and processing of data and in the ascertaining of the results of the voting;
- it coordinates the national electoral information system;
- it acquires, under the law, the computer applications and/or services used by the Central Electoral Bureau for the centralization of the results of the voting;
- it draws up and submits to the Government for approval, together with the Ministry of Interior, the date of the elections and the calendar of the actions scheduled to take place during the electoral period;
- it draws up and submits to the Government, for approval, together with the Ministry of Interior, the draft decisions for the proper organization and unfolding of the elections;
- it draws up draft normative acts for the improvement and refinement of the Romanian electoral system, that it submits to the Government for analysis and for exercising the right of legislative initiative;
- it presents to the Government, for approval, together with the Ministry of Public Finances and the Ministry of Interior, the draft Government decision for the approval of the expenditure necessary for the organization and unfolding of the elections;
- it certifies for proof of non-alteration, ten days before the date of the elections, the computer applications used by the Central Electoral Bureau for the centralization of the results of the voting and it makes them available for the political parties and organizations of citizens belonging to national minorities enlisted in the electoral competition, upon their written request;
- it addresses proposals to the Government for the establishment of the date for the organization and unfolding of the partial elections for the local public administration authorities and it supports their organization;
- it sees to the observance of the law on the organization and unfolding of local referendums;
- it ensures the implementation of the legislation concerning the funding of the activity of political parties and of the electoral campaigns;
- it organizes national and international conferences, seminars and congresses in its field of activity;
- it ensures the transparency of the expenditure incurred for the organization and unfolding of the elections and referendums.

The Central Electoral Bureau is established in electoral periods and in order to grant trust and legitimacy to electoral processes, it is composed of magistrates of the High Court of Cassation and Justice, the president and vice-presidents of

the Permanent Electoral Authority (except for referendums) and representatives of political organizations. The number and selection criteria of representatives of political organizations varies depending on the type of elections. The core attributes of a Central Electoral Bureau are to:

- seek uniform application and interpretation of legal provisions;
- provide specific publications in the Official Journal of Romania;
- solve complaints about his or her own activity and complaints about the activity of inferior electoral bureaus;
- check and validate your applications;
- cancel the elections in a polling station or in an electoral district, if it finds that the result of the elections or of the elections was carried out by electoral fraud;
- may order the redistribution of votes in a polling station or the restoration of the centralization of votes and the result of elections in an electoral constituency if, on the basis of the evidence administered, it finds that errors have been committed or inconsistencies have been recorded between the data recorded in the minutes;
- aggregate the national result and assign or set the mandates.

Lower electoral bureaus implement these competencies at the level at which they are established. Depending on the type of elections, these electoral bureaus are organized at county and/or local administration levels as well as for citizens domiciled or residing abroad. These bureaus are also composed of magistrates and representatives of political organizations. The level of the court from which the magistrates are assigned, the number and selection criteria of representatives of political organizations, as well as the designation of a PEA representative in these bureaus varies depending on the type of elections.

The electoral bureaus of polling stations are composed of the president of the electoral bureau of the polling station and his/her alternate, the computer operator and the members of political organizations. The number and selection criteria of representatives of political organizations, as well as the presence of a computer operator varies depending on the type of elections. The electoral bureaus of the polling stations receive the electoral logistics for their polling station, conduct the voting process, take all the measures aimed at ensuring order within the premises of the polling station and around it, count the votes and record the results of the vote, and remit to the upper electoral bureaus the minutes including the results of the vote.

During the electoral period, the Permanent Electoral Authority, although operating separately from the Central Electoral Bureau, cooperates functionally with it through its representatives in the Central Electoral Bureau and county electoral bureaus, as well as through the technical staff that is part of the secretariat of these offices.

This administrative framework of specialized bodies provides clarity of roles and competence derived from agentification goals. Also, given the structure of these institutions, legitimacy and impartiality are provided.

### 3. Closer to the “Client”

The weberian state, the scientific management or the classical theories of administrative systems often neglected that the end goal of an administrative system is an increase in the quality of citizens' lives. Thus, a “*transfer of business and management principles in the public sector*” was achieved by implementing new public management principles and the administrative reforms deriving from it<sup>6)</sup>.

The effects of projecting private sector values and principles in public administration and considering public service consumers as “*clients*”<sup>7)</sup> are an increase in a state body's performance. As for the Romanian electoral administration, the Permanent Electoral Authority and the electoral bureaus show responsiveness, transparency and will to simplify procedures.

The administration of elections can also be viewed as a form of service provision. This means, among other things, that the “product” of election administration (the procedure and the decision) cannot be “produced” consistently in the same way, as is the case in industry, where the entire production process is intended to be replicated time and time again. Each case is in many respects a unique occurrence. The parties, as human individuals, are different, the factual basis of each case is different, and also the “production environment” is different: Institutions managing elections come in a variety of forms and standards and with a variety of equipment. In addition, the legislation offers the adjudicator with a wide discretion in the application of the law to the particulars of a given case, so as to come up with a decision in precisely that case.

Quality management is nowadays often driven by considerations of consumer service. In this way, the quality of the process is being benchmarked primarily to its responsiveness to the needs, requirements and expectations of the customer. The process is of high quality, if the customer is content with the product he receives. In contrast, it is acknowledged that even if the workings of the organization are efficient in itself and the product is flawless, the process still remains of poor quality unless the customer, in his role as external evaluator, is not content and if the product does not meet his needs.

As regards elections, it should be kept in mind that the assessment of the quality of the process cannot be based merely on whether the customer is happy or unhappy. The institution managing elections and the electoral process itself are bound by the law and marked by impartiality and the equal treatment of all comers.

In addition, customer satisfaction pertaining to the institution managing elections can of course not be taken to mean that the customers – if this is the term

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<sup>6)</sup> Dreschler, W. 2010. *Public Administration in Times of Crisis*, The 18th NISPAcee Annual Conference, May 12 – 14, 2010, Warsaw, Poland, p. 17.

<sup>7)</sup> Pollitt, C., Bouckaert, G. 2011. *Public Management Reform: A Comparative Analysis – New Public Management, Governance, and the Neo-Weberian State*, Third Edition, Oxford, U.K.: Oxford University Press, p.10.



we wish to use of the participants in elections – should be satisfied by giving them what they want. This is so because the institutions administering elections must operate within the bounds of the law and because the participants in elections usually have opposing wishes and expectations. In contrast, customer satisfaction relating to elections can mean that whatever the customers are given under the law and other rules, and how they are treated in this context, are done as well as possible also in view of the service principle.

Legality is a critically important quality criterion for the activities of the institutions managing elections. Therefore, the legislator usually lays down certain limits to the quality of the election processes. It would in fact be quite easy to measure the quality of elections by equating quality with legality. It is, of course, a clear premise of the rule of law that where the elections are in fact contrary to the law, they are concomitantly also of poor quality.

That being said, legality is a necessary, but still not a sufficient criterion for quality in elections. The achievement of quality and high standards of elections require that the institution managing elections, as the leader of the process, is both discerning and skillful in the selection of the most useful and the most appropriate methods and in the exercise of those methods.

There are no universal methods to ensure transparency and responsiveness of institution managing elections suitable to all contexts and that transparency and responsiveness of the institution administering elections should be correlated in order to maintain a just balance between them. Also, transparency and responsiveness of the electoral institutions require efforts from all stakeholders and other interested parties such as the media and the civil society.

The transparency of election management bodies provides a basis for demonstrating its impartiality and increasing its credibility.

In Romania the degree of transparency is different depending on the institution handling complaints. For example, election bureaus and the Permanent Electoral Authority don't organize public session while the courts and the Constitutional Court do so. The latter also broadcasts its sessions live via internet. All decisions are motivated and published on the internet, some of them in an open data format. Of course, the motivation or the arguments used to adopt a decision are not always the clearest or justified but transparency helps us see the shortcomings and to improve the process.

Participants in an election will generally have greater trust if they have access to detailed procedural information and can understand how the electoral process works. Transparency, along with the public scrutiny that follows, usually provides additional motivation for the institution managing elections to comply with the rules and be prepared to be held accountable for its actions.



## 4. Simplification and innovation

Examples of simplification measures adopted by the Permanent Electoral Authority refer to the possibility to check online the polling stations to which a voter is assigned, the means to file reports electronically, as well as the possibility of e-mail registering of applications for the Electoral Experts Body or for their designation as the computer operator of a polling station.

Correspondence vote further simplified the means of exercising the right to vote with the parliamentary elections of 2016. Romanian citizens residing abroad were able to vote through the postal services, still maintaining the secrecy of the free vote.

Dematerialisation of the electoral administration also represents a reform for improving “customer satisfaction”.

An important project implemented by the Permanent Electoral Authority towards dematerialisation and improvement of electoral processes via the broader use of technology is the System for Turnout Monitoring and Illegal Voting Prevention.

The System for Turnout Monitoring and Illegal Voting Prevention is an innovative project for the Romanian electoral system which was put in practice for the first time at the local elections which took place on the 5<sup>th</sup> of June 2016 and later in the parliamentary elections which took place on 11 December 2016.

The responsibility for the implementation of this project belonged primarily to the Special Telecommunications Service and the Permanent Electoral Authority. Basically System for Turnout Monitoring and Illegal Voting Prevention targeted the real-time monitoring of the voting turnout, the identification of the attempts of multiple voting and voter eligibility verification.

The current legal provisions pertaining to local and parliamentary elections stipulate that every voter can exercise its right to vote only after his/her personal identification number was registered by a computer operator in the System for Turnout Monitoring and Illegal Voting Prevention. The registration of the personal identification numbers was done on tablets provided by the Special Telecommunications Service, automatically – using the capabilities of the tablet to photograph the voter’s identity card or by manually introducing the personal identification number.

Computer operators were recruited and trained by the Special Telecommunications Service, with the support of the Permanent Electoral Authority.

By registering all the voters in the System for Turnout Monitoring and Illegal Voting Prevention, the election bureau was able to determine in real time if the voter was allocated to the polling station, if he/she fulfilled the legal conditions to exercise his/her right to vote, e.g., had over 18 years, didn’t lose his/her voting right due to a conviction, didn’t already vote in another polling station. Thus, the system played an essential part in preventing or identifying and sanctioning multiple voting attempts.

After polling stations closed at 21:00, the verification module was disabled and the data collection module of the voting results was activated. Operators completed

the electronic form protocols, which reported the errors, where necessary, through the validation keys, and which were forwarded to the Central Electoral Bureau. Although it had no official status, voting results consolidation was done in real time and with a high degree of accuracy.

The implementation of the Electoral Register by the Permanent Electoral Authority is another example of electoral administration dematerialization. The Electoral Register is a computer system through which the identification data of the Romanian citizens who have the right to vote and the information regarding their assignments at polling stations are registered and updated in a unified database. The citizens with the right to vote benefit from means of verifying the fairness of their data in the Electoral Register, can point to any errors, omissions or incorrect entries, and can check online the polling stations to which they are assigned.

However, further reforms can be undertaken. The electoral legislation should be reshaped in order to provide short response times in all aspects of the electoral administration. As well as this, regulatory solutions must be identified in order to facilitate correspondence voting for all types of elections and referendums.

As well as this, the capabilities of the Electoral Register can be enhanced to also compile lists of supporters for candidates or citizens' initiatives.

The legal and technical capabilities of SIMPV do not feature results centralization, however, given the technical infrastructure that is already in place, the system could be enhanced to feature these capabilities.

As well as this, in terms of dematerialization, budget permitting, electronical means of casting or verifying votes could be adopted.

## 5. Depoliticization

Depoliticisation and professionalisation of administrative bodies tends to eliminate the obstacles posed in the processes of public policies formulation and implementation by political agendas, as political lobbying of some entities or individuals can often be stronger than the will of the people<sup>8)</sup>.

Law no. 208/2015 on the election of the Senate and the Chamber of Deputies, as well as on the organization and functioning of the Permanent Electoral Authority, amended, establishes the Permanent Electoral Authority's structure, being composed by an apolitical leadership representing the core governing institutions of the state and a technical apparatus.

The leadership of the PEA features a president (appointed through bylaw adopted in joint session of the Senate and the Chamber of Deputies, upon proposal by the parliamentary groups, from among the persons with training and experience in the legal or administrative field), two vice-presidents (one appointed by the President of Romania, the other by the Prime Minister), as well as a Secretary

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<sup>8)</sup> Howlett M., Ramesh, M. 2004. *Studiul Politicilor Publice: cicluri și subsisteme ale politicilor*, Bucharest, Romania: Epigraf Publishing House, p. 121.

General (appointed by the Prime Minister based on an exam). The specialized apparatus comprises highly experience personnel, appointed based on an exam, that cannot be members of political parties.

The depoliticization of the electoral administration reforms also targeted the leadership of electoral precincts. In 2015, the Electoral Experts Body (EEB) was established as permanent register of citizens that can be designated presidents of the polling stations or their deputies. Electoral experts cannot be members of political parties and are admitted in the EEB following the passing of an examination or if they had previously fulfilled the position of president of the polling station or his deputy and have not committed contraventions regarding elections or referendums or have not committed serious errors in the operations of recording voting results in official minutes.

## **6. Conclusions: The road forward**

The way ahead for Romanian election administration encompasses the expectations of voters and election stakeholders alike regarding the integrity of the electoral process and the quality of the services provided by election administration. It may also involve accessibility to electoral processes, transparency and responsiveness to the needs of election actors. In addition, it should continuously tackle issues such as the legal framework, the size of electoral districts, electoral management and administration, voter registration, registration of electoral competitors, political financing, election campaign, election security, the actual voting, recording and consolidation of results, election monitoring and electoral disputes.

The future of election administration is linked to the use of technology in electoral processes, mainly on its capacity to replicate the success of SIMPV in other electoral processes than local and parliamentary elections. Technology can play a major part in improving the responsiveness, the quality and the security of elections. The way technologies were going to affect elections and the way elections could benefit from the advantages it offers, was one of the very first issues that was considered by the Permanent Electoral Authority of Romania at its foundation. Risks and deficiencies, such as security gaps, security intrusions and abusive use of big data to influence voter opinion were acknowledged by Permanent Electoral Authority which has also seen the big promises that technology brought with it.

Technology comes with its own challenges and provocations due primarily to a complexity which surpasses the capacity for understanding of laymen. As, technology is feared in Romania to open the door to fraudulent interventions the auditing of elections can be considered as a remedy to suspicions in that regard.

A cost-benefit analysis shows that although the initial investment for acquiring new technologies are significant, on long term costs are significantly reduced, resulting in savings for the organization of elections. We must test policy ideas, learn from empiricism, and adapt regulatory technology over time. Paraphrasing Bill

Gates, the first rule of any technology used in elections is that automation applied to free and fair elections will magnify their conformity with the international standards. The second is that automation applied to elections which lack integrity will only magnify election frauds and malpractice.

However, the use of technology alone cannot guarantee modern and secure elections in Romania. One of the first steps that should pave the road to a modern and secure Romanian voting system is the codification of electoral law. Another must have is the professionalization of the lower election administration, which involves defining an occupational standard for the election experts and their continuous training. Taking into account the required competencies to organize elections, the capabilities of organizing electoral processes could be exported and the PEA could be enabled to manage even professional elections. One more prerequisite is the separation of administrative and jurisdictional duties, which can be done by transferring all election disputes to the courts. Also, a clear division of responsibilities between vendors, certification agencies and electoral administration is required to ensure full accountability in the use of new technologies in elections.

Implementing a modern and secure voting system in Romania is an ongoing task because this entails more than the use of technology such as e-voting. Other states' election practices cannot be transferred *de plano* in Romania, without a large debate and voter education campaigns or without researching and testing in order to substantiate future possible policy options. However, as new technologies rapidly pervade all aspects of electoral cycle, the use of e-voting in Romania is inescapable, the question being not if e-voting will be used in Romania, but when will it be used.

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