

# Reforming the mechanisms of political representation in Romania

## Principles, Alternatives, and Recommendations



CENTER FOR THE STUDY  
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This report presents the vision of the Center for the Study of Democracy regarding the reformation of the main institutions and laws playing a key role in the political representation of Romanian citizens. Our ultimate goal is to encourage citizen participation within the political sphere, the efficient aggregation of their interests in the political system, and their accurate implementation into public policies.

The principles found in our vision represent the foundation of a comprehensive public communication and institutional advocacy campaign aimed at developing new laws related to the political system in Romania, led by CSD from January to June 2015, as a civil society organization with academic expertise in the field of Political Science.

This report contains the following main elements:

- (1) Context – challenges the Romanian democracy faces today involving the representation of citizens' interests by politicians from an international context.
- (2) The principles representing the foundation of our recommendations.
- (3) Directions for a long-term reform of political institutions and the mechanisms to ensure citizen representation.
- (4) Technical proposals from the Center for the Study of Democracy created between January - June 2015 derived from the bills debated by Parliament during that period.

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# Introduction

## Political reform has to revolve around the interests of the citizens

National and international political developments in recent years make a question sitting on the tips of world leaders tongues for 25 years more crucial than ever: Will Romania rise to its potential and finally take responsibility for its role in the world and the welfare of their people?

History has consistently proven democracy, paired with international security, is conducive to economic prosperity and the welfare of people. For over 25 years Romania has been walking down the path of democracy - yet it still remains unassertive as a nation. Romania appears to be going through the motions of a self-determined people, but with feeble conviction and accountability – from both its state institutions and citizens.<sup>1</sup> Low effectiveness of state institutions (individually and collaboratively) has regularly been reflected in the credibility polls. Lately Justice (DNA: 61.4%) and the Presidency (50.6%) have been on an upwards trend, but the Parliament (23.8%) and Government (12.6%) are at record lows (INSCOP poll, April 2015).

Romanian political elites are in dire need to capture citizens' interest and involvement to restore the credibility and effectiveness of political institutions. A serious reformation of legislation concerning political representation is a priority for sustained development. The political class needs profound revival and a visionary commitment to the fundamental principles and objectives of democracy reflected through a solid dialogue with civil society based on trust, respect and common objectives.

On the other hand, citizen participation is an essential condition for strengthening the rule of law. Therefore, the existence of a legal framework is necessary for encouraging citizen participation through improving the political offer, raising the level of competitiveness between and within political parties, reducing the distance between the voters and their local and national electees and raising the efficiency of the existing levers of citizen participation in political landscape (referendum, citizen initiatives, local participation tools). It is important both the Romanian society and political elites are introduced to the culture of debate within the decision-making process; this would ensure transparency, capitalization of intellectual and professional energies and the identification of the best solutions to be implemented through public policies. The actions of the National Anticorruption Directorate (NAD) in the recent months represent solid strides towards improving the quality of the political class. However, they will not have beneficial long term effects over the political system because real reform must come from within the parties, through higher moral and leadership standards, complemented with public pressure on

politicians shown by the citizens on a consistent basis, not only in the voting process.

We wish to see this approach reflected through legislative framework contributing to the improvement of the communication between citizens and representatives and, consequently, the implementation of public policies that respond better to public interest. Moreover, it would diminish suspicions that political decisions are made solely on opaque negotiations or settlements among parties. A solid debate could generate several changes inducing predictability and stability within the political system.

A report from the Center for European Policy Analysis (CEPA) published in the summer of 2014 states, given the tense regional context, Romania is at a crossroads of its democratic evolution, which involves major risks but also major opportunities. The political choices the Romanian state will have to make in the near future will determine whether Romania seizes their opportunity or not. The CEPA report also highlights the importance of continuing the reforms of Romania's key sectors<sup>2</sup>. **We do, however, consider it necessary to develop a strategic vision combining the underlying principles of the political evolution of the state with concrete proposals oriented towards several key legislative elements regarding the political representation of citizens.**

## The Crisis of World Democracy

The current international political context is generating additional pressure on Romania to resolve its political representation deficit. Throughout the world, the quality of democracy is in regress for the ninth consecutive year. Nearly twice as many countries downgraded their democracy in 2014 compared to those that progressed (61 to 33, according to the 2015 Freedom House Report). Three of Romania's neighbors have been in decline lately: Hungary, until recently considered a champion of post-communist democratic transition, is ruled by a prime minister who declares sympathy for illiberal regimes; moreover, the extremist Jobbik party is shown through surveys to share this view with ruling Fidesz party. Bulgaria, our partner in EU integration, has experienced a decline in political rights as well. Last but not least, Ukraine, a country sharing a 650 km border with Romania, is involved in a military and political conflict with a high potential of continuing for years, or even decades. This conflict, paired with the deteriorating geopolitical context in Southeastern Europe, has made the development of democracy even more hostile in these countries<sup>3</sup>.

<sup>2</sup> <http://www.contributors.ro/analize/washingtonul-isi-redefineste-interesul-pentru-buna-guvernare-in-europa-de-est/>

<sup>3</sup> Mitchell, W. "Romania after the Ukraine War: Threats and Opportunities", Speech at Babeş-Bolyai University. Cluj-Napoca, Romania November 6, 2014.

<sup>1</sup> Tufis, C. "The not-so-curious case of low political participation in Romania", *Calitatea vieții*, xxv, nr. 3, 2014, p. 281–306.





In this context, Romania must demonstrate its commitment to democracy in an unequivocal manner in order to prove itself as an anchor of stability in a region faced with Russia's expansionist tendencies and our neighbors' derailment from democratic principles. Predictable behavior from the Romanian political elite would build trust in our country and we could increase the quality of life for Romanian citizens by capitalizing on this trust. Although our country theoretically respects democratic institutional rules, episodes of severe institutional conflict, especially those from the summer of 2014 or from the period between May-June 2015, cause concern regarding the stability of Romanian democracy to its international partners, and more importantly, its own citizens. The continual monitoring of justice by the European Commission, the refusal of some states to accept Romania's entry into the Schengen area or the maintaining of visas by the United States government for Romanian citizens demonstrate the suspicions and the fears of our Western partners regarding the quality of Romanian democracy. These do not originate in the quality of Romanian citizens, but almost exclusively in the manner the political class governs the state.

It is high time these suspicions were removed through strong political actions so Romania stops offering reasons to be considered a second rate partner. Romania must become a fully credible international actor and fulfill the strategic action potential it has due to its geographic position and large human capital.

### January-June 2015: six months of opportunity, disappointment and hope

Following the presidential elections of November 2 and November 16, 2014, Romania experienced a window of opportunity for deep changes in the political system. The events surrounding the elections that took place in polling stations from abroad opened a path of discussion to introducing new mechanisms to enhance the access of voters to the electoral process. In this context, it is laudable a more comprehensive discussion began surrounding the manner political institutions – Parliament, Government, Presidency, local authorities, political parties – interact with citizens. Therefore, all political parties mentioned in their public discourse the need to implement reforms in response citizen dissatisfaction of the political class, reflecting the low levels of trust in the above mentioned institutions.

Political parties have attributed a fast pace to these discussions. In January 2015, Parliament reinstated the parliamentary committee set up with the purpose of proposing new electoral legislation. Taking into consideration the Constitutional Court ruling, which decided electoral legislation can be modified a year prior to elections at the latest, the political parties have set a deadline for adopting and implementing legislative changes for the beginning of June 2015, a year before the 2016 local elections. Up to this date, four fundamental laws have already been adopted by Parliament and promulgated by President Klaus Iohannis: the law on financing parties and electoral campaigns, the law on local elections, the law on parties, and the law on national elections. **Thus, we can claim politicians reacted to this window of opportunity and made minor changes to the legislative framework, but in each case the changes failed to provide significant improvement from the perspective of political representation.**

The law on parties makes it easier to form new parties, yet it makes it compulsory for them to stand in two successive elections at a regional level; if not, they face the risk of being dissolved.

The law on party financing maintains the non-transparent means of acquiring money by parties while it even introduces new ones (through loans). Although it introduces the possibility to recuperate the money spent during a campaign from the state budget, this applies only to parties that gain at least 3% of the vote, thus discouraging smaller, newly formed parties from participating in elections.

The electoral laws (for local and national elections) are founded on the principle of closed party lists, giving citizens the possibility to vote only for parties, not the most qualified individual of their choice. The structure of closed party lists is established solely by party elites with no influence from the citizens. The decisions of the selections of party candidates and their placement on the closed lists are often non-transparent, dependent on internal political bargaining and electoral calculi, and made with little, if any, input from citizens or at least the parties' membership base. Alas, the electoral laws maintain the high 5% threshold for access into the elected bodies, creating yet another barrier for smaller parties and ultimately impeding citizens from expressing themselves politically.

Therefore, we cannot speak about real, in-depth reforms, but rather about half measures at best. Moreover, formal debates in Parliament were not complimented by raising the ethical and rigor standards. Politicians left room for non-transparent practices making the objective of increasing citizens' trust in institutions, and the quality of citizen representation by institutions, far from being achieved. Moreover, the procedure for the adoption of these laws, and the work method the parliamentary committee created to consider revisions have drawn criticism from civil society regarding the lack of transparency during the deliberation process. Parliament still has bills concerning legislative elections and postal voting for Romanians abroad in their agenda. Additionally, there are other themes fundamental to the quality of political representation which are still ignored; they include the functioning and structure of the Parliament, administrative-territorial reform and the functioning of local authorities.

Between January and June 2015, when there were discussions on the above-mentioned issues, we witnessed some unprecedented results in the fight against corruption with prosecutors aiming at numerous top politicians. During this period, criminal investigations were initiated and arrests were made in the case of several former or current ministers, members of Parliament and local political leaders, culminating in the indictment of Prime Minister Victor Ponta for corruption. Coincidentally, there was an increase in critical voices from the political class toward the justice system, accusing the prosecutors of acting in the political interests of the opposition. Therefore, we are facing a real state crisis with the political leadership in Government conflicting with the leadership of the justice system. It is in this context we can mention the criticism from the President of the Senate, Călin Popescu-Tăriceanu, and Prime Minister Ponta, towards the chief prosecutor of the NAD, Laura Kovesi, and the President of the Supreme Court, Livia Stanciu.



It is regrettable that Parliament, which is the main representative forum of any democracy, is an obstacle to the development of the country. The Parliament reflects the quality of the political system and, more precisely, of the main political parties. Currently, the renewal of the political class and the elimination of incompetent politicians who do not serve the public interest are not done by the political parties, as it should be. On the contrary, the renewal of the political elite is carried by the justice system. This sad reality does not convey an oversized justice system with political affinities, but rather a political system dominated by corruption and incapable of functioning for the benefit of Romanian citizens.

## Challenges

Prior to the adaptation of the previously mentioned laws, between February and April 2015, an unprecedented mobilization of civil society was prompted in attempt to propose and determine the Parliament to implement real reforms. Our team, comprised of political science specialists from universities in Romania and abroad, contributed with a series of scientifically based recommendations for reform of the political system. Our intervention is based on the premise there is a wide agreement within civil society, and even between parties, that issues need to be addressed regarding the political system, but the solutions to these issues are not at all obvious. Channels of communication between politicians and civil society are not well developed and politicians often make decisions without a solid technical ground or general knowledge of the matter. Such an example is the electoral reform prior to the 2008 legislative elections leading to the implementation of an electoral system that has barely achieved its goals and continues to produce severe side effects<sup>1</sup>.

On the other hand, the proposals from civil society are frequently disconnected from political and social reality, and often made in an aggressive, antagonizing tone. We salute the ability of civil society from the past six months to have a more professional approach towards dialogue with politicians and, at the same time, the open attitude of politicians towards consultations and dialogue. However the practical results of this dialogue, illustrated by the laws recently adopted, demonstrate politicians perceive this dialogue as a formality while they continue to resist change.

Therefore we consider, with the presidential elections of 2014, Romania has entered a long-term process of political institution reformation with the first half of 2015 representing the first stage of this process. The main benefit of this stage is civil society's capacity to mobilize and engage in dialogue with political institutions while they display the willingness to participate in this dialogue. Although the results of this dialogue are unsatisfactory in practice, it is paramount it continues throughout the following months and years.

Subsequently, it is critical reforms within the political parties take place, especially the large ones, through their own decision and will. The design of the electoral system is irrelevant if those holding public are not honest, competent and devoted

to public interest. Although we believe the type of electoral system influences the quality of democracy, if the candidates we choose from are weak, the elected officials will implicitly be weak as well, regardless of the procedure by which they are chosen.

## Principles and Intervention Areas

Our proposals regarding the improvement of political representation in Romania target three major complementary areas of intervention:

1. Elections and electoral procedures
2. The foundation, functioning and financing of political parties
3. The structure and powers of Parliament to control and influence mechanisms addressed to representatives between elections.

The order in which these are presented in this report reflects the importance we attribute to each theme in the advocacy campaign led by CSD between January and June of 2015. Also, the third section refers to themes we consider important from the point of view of political representation but which have not entered the political agenda thus far.

## General Principles

1. **As a key element of democracy, political representation must reflect the interests of the citizens and of the country.** Democracy requires an ongoing dialogue between informed and involved citizens and stakeholders acting in public interest, as well as a permanent control from the citizens.
2. **Changes are required in the institutional and legislative design in order to improve the quality of political representation;** they should arrive as a package of complementary measures aiming to improve the political representation of citizens.
3. **Legislative changes must take into account the thoughtful proposals of civil society and the academia.** The consideration over new public policies should take place in an open, public forum with Parliamentary votes easily understood by citizens.
4. **The mechanisms of political representation must ensure the promotion of competence and honesty in public office.** This implies not only a transparent electoral legislation ensuring equal opportunities to those who want to participate in the elections as candidates or voters, but also an effort from the parties to increase transparency to the filters of internal selection of individuals promoted to public office.

### I. Electoral Reform

#### Principles:

- The implementation of a protocol for organizing elections that ensures all Romanian citizens' have access to an easy voting process, wherever they are.
- Complete transparency throughout all phases of the electoral process and the unrestrained access of electoral observers.
- The implementation of organizational procedures

<sup>1</sup> Gherghina, Sergiu, și George Jigla. "Where does the mechanism collapse? Understanding the 2008 Romanian electoral system." Representation 48.4 (2012): 445-459.



that would ensure access to electoral competition for all parties, without imposing barriers for the benefit of large parties.

- Promoting an electoral formula ensuring equal opportunities for all candidates, not only for those on the party list, but also for those who are independent.
- Promoting an electoral formula that would raise the level of competitiveness of the elections and would support the promotion of the most competent candidates to public office, not of the ones who are most loyal to their parties, nor of the ones who are the strongest from a financial perspective.

#### **Main Recommendations:**

The system for legislative elections should be based on the principle of proportionality, with the following elements:

- The vote must be casted on open party lists in order to allow voters to have a wide array of options not just between parties, but also within them.
  - The criteria for becoming a candidate must be simplified for independent candidates to encourage them to participate in the electoral process.
  - The electoral threshold to be reached by parties in order to receive seats in the Parliament must be lowered from 5% to 3% of the votes, in accordance with the recommendations of the Council of Europe, due to the fact that a lower threshold ensures greater proportional distribution of mandates.
- For other types of elections organized in Romania, we recommend that:
- The mayors must be elected by majority votes in two voting rounds, instead of one voting round, in order to ensure greater representation in their communities.
  - The open list principle must be introduced in the election of local and country councilors, currently elected through closed party lists.
  - The electoral threshold for local and county councils should be completely eliminated.

From the viewpoint of the procedures for organizing elections, we recommend:

- Publishing a consistent Electoral Code, which would gather the entire electoral legislation
  - Prohibiting by law the adoption of a government emergency ordinance amending the electoral legislation
  - Adopting a calendar for updating the electoral legislation which would respect international standards
  - Amending the legislation in order to allow the Election Bureau a more transparent and inclusive activity
- The electoral legislation must grant access to the electoral process for Romanians abroad. In this sense, we recommend the following:
- The Organization of polling stations abroad should consider the number of voters from the previous elections and the estimations regarding the variation of this number. Polling stations must be equipped with enough material for at least 1000 voters.
  - Introducing the possibility of postal voting through mechanisms that ensure its secrecy and reduced costs for registering and exercising the right to vote by Romanians abroad.

## **II. The establishment and functioning of political parties**

#### **Principles:**

- Easy legal association into a party for any group of citizens.
- Establishing clear and less restrictive conditions for party deregistration, in accordance with the conditions pro-

vided by the Constitution.

- Ensuring by law that each legally formed party benefits from equal treatment from the state regarding the allocation of the financial and logistic conditions necessary for its daily functioning.
- Imposing clear, transparent rules for financing parties in such a manner that parties will not be tempted to cut corners in order to have access to greater resources.

#### **Main recommendations:**

Establishing political parties with only three founding members and in an easier manner is the main political reform element in 2015. However, the following are still necessary:

- Revising the criteria through which a party can be disbanded, meaning eliminating the obligation of parties established with a local purpose to develop regional or national activities.
- Increasing transparency levels in financing parties and companies, especially concerning loans and donation, by eliminating the possibility that they remain anonymous.
- Lowering the threshold a party needs to reach in an election (currently set 3%) in order to make it eligible for the reimbursement of campaign expenses from the state to prevent discouraging the participation of smaller parties in elections.

## **III. Mechanisms of representation between elections**

#### **Principles:**

- Legislative Reforms and the revision of the Constitution must start from the premise that the Parliament is the main pillar of representative democracy. The Government's constant abuse of emergency ordinances must be halted.
- It is necessary to develop an institutional framework conferring the Parliament the main law making attributions and efficient control mechanisms in its relation to the Government.
- Referendums and the Citizens' Initiative are important mechanisms for political representation and the will expressed through these instruments should be implemented without leaving room for interpretation.
- The legislative reform regarding parties and the legislative election mechanism are designed to ensure the Parliament has a higher level of competence and performance. At the same time, the Parliament has to regain its institutional role as the main forum for deliberation and representation in democracy.

#### **Main recommendations:**

- The legislative process must be controlled especially by Parliament and the abuse of government emergency ordinances must come to an end. Moreover, parliamentary control mechanisms such as questions or interpellations of ministers, simple motions or motions of no confidence have to become more efficient.
- Introducing the possibility of organizing a referendum as a result of citizens' initiative.
- Clarifying the legal status of referendum results, in order to avoid situations as the one following the 2009 referendum. The text of the law should be clearer on the mandatory or advisory nature of the referendum.
- Adding efficiency to the citizen legislative initiative in such a manner that it becomes a real instrument accessible to citizens.





# I. The reform of the electoral system and of electoral procedures

In terms of reform, the electoral legislation is probably the biggest challenge, as it features many dimensions and it concerns various types of elections (for mayors, city councils, county councils, county council presidents, legislative, presidential, European). The current electoral legislation is still based on political decisions taken immediately after the Revolution, involving a series of additions and adjustments that referred to its specific components.

This section mainly targets **three elements**:

- The electoral system (with emphasis on legislative elections)
- Electoral procedures on Romanian territory
- Electoral procedures for Romanians who live abroad

## Electoral reform principles:

1. The implementation of a protocol for organizing elections that would ensure all Romanian citizens access to vote, wherever they are.
2. Complete transparency throughout all the phases of the electoral process and the undeniable access of electoral observers.
3. The implementation of organizational procedures that would ensure access to the electoral competition without imposing obstacles for the benefit of large parties.
4. Promoting an electoral formula which would ensure equal opportunities for all candidates, not only those on the party list but also those who are independent.
5. Promoting an electoral formula that would raise the level of competitiveness of the elections and that would support the promotion of the most competent candidates to public office, not of the ones who are most loyal to their parties, nor of the ones who are the strongest from a financial perspective.

Based on the experience of other European democracies, we consider that an electoral system with open lists for electing not only MPs, but also local and county council members, would be beneficial, as it would:

- Raise the competition levels within parties without altering their organizational coherence,
- Eliminate the possibility of creating safe seats,
- Stimulate all the candidates on the list, regardless of their position, to become actively involved in the electoral campaign,
- Offer equal opportunities for all the candidates on the list to be elected.

We consider that the introduction of open lists would be a favorable addition to the emergence of new political parties. This would raise the level of competition within the party system, and the open lists would raise the level of competition within parties.

The main principle that we invoke is that, just as in the market economy, a higher level of competition between players favors the consumer, in this case the voter.

A new electoral law has been passed by the Parliament in June 2015, but this is not a step in the right direction, as it placed at the core of the electoral system the closed party lists, which give an overwhelmingly decisive say on who gets elected to the parties and not to the voters. Thus, we believe that “electoral reform” has not yet been achieved in Romania, despite the fact that this phrase has been used in the public discourse by politicians.

## 1.1. What is the electoral system used for electing MPs?

The way in which MPs are elected matters to the way in which democracy functions. However, there is no clear, unique and optimal solution for all democracies, as the characteristics of an electoral system depend on the attributes of the society and of the institutional system of the state in which it is applied.

Moreover, the very understanding of what makes a good electoral system differs according to the importance given to each of the following principles:

1. It ensures a high quality political representation of citizens, leading to parliaments which closely reflect the citizens' political preferences;
2. It increases the chances of a stable and efficient government;
3. It allows sanctioning of both parties and MPs who fall short of the citizens' expectations;
4. It tends to lead to a powerful party system and to the existence of coherent party coalitions;
5. It allows the existence of a viable and efficient opposition;
6. It is associated with a citizen-friendly electoral process;
7. It can be applied without serious difficulties.

Our recommendations for a new electoral system in Romania take into account prioritizing the principles in a manner that we consider suitable not only for the Romanian society, but also for the current and the foreseeable future international context. Moreover, our principles are also influenced by the number and the quality of the studies which evaluate the functionality of electoral systems in new democracies, highlighting the countries with a communist past.

## Why a new electoral system?

For the 1990 legislative elections the Romanian political elite agreed on a system of proportional representations which highlighted the role and the relevance of party structures and which marginalized individual candidacies (the Law Decree 92/1990). The accepted electoral formula featured closed party lists, and it was a mixture between a Hare quota applied to electoral constituencies and applying d'Hondt divisors at national level to distribute the remaining undistributed votes at the level of constituencies. The system was constantly modified in the sense of reducing proportionality, especially through





raising electoral thresholds with the purpose of encouraging small players and limiting fragmentation. The new regulations have drastically limited the chances of small parties and of independent candidates to obtain seats.

The electoral reform that preceded the 2008 elections, which was the result of a public debate that lasted more than five years, did not alter the proportionality of result, but it did introduce a new element in the logic of proportional representation. County multi-member constituencies were divided into “electoral colleges” with a magnitude of one. Additionally, there was the rule according to which the “electoral colleges” that are won with a majority of votes (50%+1) are selected, for each party, from the number of seats assigned proportionally to that specific party based on the Hare quota applied at the level of the constituency and on the d’Hondt divisors at national level. The new system has, therefore, introduced a new dimension that rewards candidates with better performances rather than the structure of the party they belong to. The role of the candidates is reinforced without diminishing the importance of parties.

The discontent with the system used in the 2008 and 2012 elections originates in the effects this formula had over the dimension of the legislative body following the 2012 elections. Since the main principle is proportionality and given the large number of candidates of the Social Liberal Union (SLU) who obtained over 50% of the votes in their own colleges, supplementing the number of MPs was necessary so that the seat distribution reflected the distribution of votes for parties joint at county and at national level. In this manner, the Chamber of Deputies ended up including a record number of 412 members.

Other reason for criticism of this system concerns the complicated process of transforming votes into Parliament seats, leaving the impression that the system is grossly arbitrary, with terms such as “lottery” or “chance” being frequently associated with the current system by the media <sup>1</sup>.

These shortcomings have been invoked to justify a new change of the electoral system, presently disputed in Parliament. The option over which it appears there is consensus involves returning to a closed list electoral system, which would practically imply returning to the exact same system used until 2004, which faced numerous criticisms and reforming attempts, eventually resulting in the 2008 changes.

### What type of electoral system?

The Romanian society experiences a serious political representation deficit. Studies<sup>2</sup> from recent years have shown, globally, mismatching citizens’ political preferences and politicians’ preferences, along with a deep discontent regarding the limited possibilities of electing responsible, efficient MPs and of sanctioning those who disappoint the electorate.

Generally, electoral systems can be divided into three main

<sup>1</sup> Ibid.

<sup>2</sup> Pippa Norris, *Democratic Deficit: Critical Citizens Revisited*. Cambridge University Press, 2011. Bellamy, Richard, și Sandra Kröger. “Domesticating the democratic deficit? The role of national parliaments and parties in the EU’s system of governance.” *Parliamentary affairs* 67.2 (2014): 437-457. For Romania, see Sergiu Gherghina (ed.), *Voturi și politici. Dinamica partidelor românești în ultimele două decenii*. Institutul European, 2011.

categories: (1) majority, (2) proportional and (3) mixed, the latter being combinations between a majority and a proportional component.

As opposed to majority electoral systems, proportional ones tend to ensure a higher degree of political representation of the main social categories, reflected in the existing parties. Proportional systems encourage ideological pluralism, the existence of minority parties, party cooperation for public policy process and citizens’ vote participation<sup>3</sup>.

By encouraging coalition governments, which are more frequent in proportional systems, the division of power between those forming the coalition is more transparent. Proportional voting formulas encourage the functioning and institutionalization of parties as a whole, at the same time permitting pluralism, the existence of multiple parties within the system and at the level of local and national decision-making structures. This implies ideological and leadership clarifications at party level, as well as continuity of the policies promoted by parties.

Proportional systems may have several shortcomings regarding the quality of the governing. Therefore, coalition governments, which appear more frequently than in majority voting systems, tend to be less efficient in implementing governing programs. However, introducing a national electoral threshold limits fragmentation and establishes a performance standard which has to be met by the parties that want to enter the Parliament and, implicitly, have the opportunity to be part of the government.

Majority systems, on the other hand, make the merit of generating majorities and, consequently, stronger governments, at the cost of major disproportions and of limiting political pluralism. These are usually associated with the existence of two or three large and well institutionalized parties (the well-known and frequently invoked cases of the US or the UK political party systems). Although citizens understand them better and despite the fact that they are easier to apply, majority systems encourage strategic voting, they lead to the overrepresentation of large parties to the detriment of smaller ones and they often generate parliamentary majorities in the absence of a majority of votes.

Majority systems also create mechanisms to alter the competition with the ease with which the so-called “safe seats” can be created, in which the winner can be predicted with a high degree of certainty even before the elections, regardless of the resources or the effort to communicate with the voters. Over 50% of the winners of the seats for the House of Commons in the United Kingdom are known before the elections<sup>4</sup>. In the United States, 85% of the constituencies for the House of Representatives are considered safe seats<sup>5</sup>. Especially in the United States, however, there is the idea of an internal competition within parties – with their American characteristics – but this element is far less present in European democracies and especially in Romania. Safe seats also exist in closed list proportional systems; those who occupy the first positions of a closed list proposed by a large party are certain they will be elected.

<sup>3</sup> Blais, A. and L. Massicotte (1997) Electoral formulas: a microscopic perspective, *European Journal of Political Research* 32: 107-129.

<sup>4</sup> <http://www.electoral-reform.org.uk/safe-seats>

<sup>5</sup> <http://www.fairvote.org/research-and-analysis/congressional-elections/fairvotes-projections-for-u-s-house-elections-in-2016/>

Mixed systems represent an intermediate category that combines proportionality elements with majority voting formulas, in either one or two voting rounds. When it comes to compensatory mixed systems (as the case of Germany), their main goal is ensuring proportionality, but the compensation mechanisms can lead to the increase of the number of MPs. On the other hand, states such as Hungary do not use a compensatory mechanism, which mainly implies the same disadvantage of the disproportions just as majority systems. The system Romania used in 2008 and in 2012 is included in the compensatory mixed systems, but is atypical even for this category.

**Our recommendation leans towards utilizing an open list proportional electoral system, with county constituencies and a 4% national electoral threshold for parties and 8% for party coalitions. Voters have a single vote which can be given to a party, to a candidate on a party list or to an independent candidate.**

### Why an open list proportional system?

In addition to the advantages offered by proportionality, we must weigh the advantages and disadvantages of using open lists as opposed to using closed lists. Closed lists have the advantage of simplicity: parties order a list of candidates in each constituency and the voter votes a party and, consequently, its proposed list. According to internal rules, party lists are established through a mechanism that involves both central and local (constituency) branch management. However, closed lists are most often associated with a high degree of centralization: central management has the final word regarding list structure. This works to the advantage of party institutionalization, but it alters the quality of electoral competition, especially since parties can place candidates in safe positions. For instance, in a constituency in which the party assumes it will obtain four or five mandates, the first three candidates on the list will be certain of their mandates even before the elections.

On the other hand, open lists stimulate the competition between candidates of the same party, as they are perceived as a threat to internal discipline<sup>1</sup>. Although parties can interpret this aspect as a threat to internal stability, especially during electoral competition, we have identified an open list formula which ensures a middle ground between the parties controlling their internal dynamic and a level that ensures a high level of competition.

There are, however, studies which highlight the merits of open lists, not only from the viewpoint of parties and the activity of the electees, but also from the viewpoint of the voters. From the perspective of the representative role assumed by MPs as a result of the elections, our proposal can function better than a mixed or closed list uninominal system<sup>2</sup>. At the same time, open lists increase the feeling of efficiency that voters associate with their vote because they have more options<sup>3</sup>. Addition-

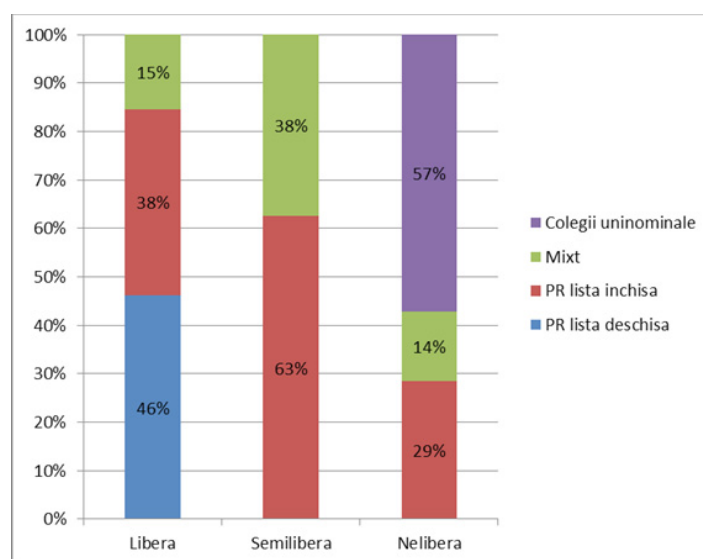
<sup>1</sup> Carey, J. & M. Shugart, „Incentives to cultivate a personal vote: a rank ordering of electoral formulas”, *Electoral Studies* 14, 1995, pp. 417-39.

<sup>2</sup> Carman, C. & M. Shephard, 'Electoral Poachers? An Assessment of Shadowing Behaviour in the Scottish Parliament', *Journal of Legislative Studies* Volume 13, No. 4, 2007, pp. 483-497

<sup>3</sup> Clarke, H. D., & A. C. Acock, "National Elections and Political Attitudes: The Case of Political Efficacy", *British Journal of Political Science*, 19(4), 1989, pp. 551-562; Birch, S., "Perceptions of Electoral Fairness and Voter Turnout." *Comparative Political Studies* 43(12), 2010, pp. 1601-1622

ally, open list proportional systems are easy to understand for citizens and rather easy to administer.

Proportional systems based on open lists are used frequently, including in the case of former communist countries. This allows evaluating the intended effects, as well as some possible unwanted side effects. Only in Europe there are 10 countries that have this type of electoral system. A comparison between former communist countries from the viewpoint of the level of democratization and of the type of electoral system indicates, as you can see in Figure 1, a strong connection between the type of electoral system and the level of democratization. Thus, proportional systems with open lists are found only in former communist countries with a high level of democratization (called free in the Freedom House classification). Of the 13 former communist countries, 6 use open list proportional representation, 5 use the closed list type, and 2 use a mixed system.



**Figure 1. The type of electoral system and the democratization level among former communist countries**

**Sources:** IFES (2009) and Freedom in the World (2014)

Additionally, there are studies that demonstrate favorable correlations of the open list proportional systems regarding the level of corruption (IFES 2009). Of course, these correlations do not guarantee the existence of a causal determination from the voting system type towards the level of democratization or of corruption, but they do add an extra element of plausibility as opposed to the studies which evaluate the effects of the electoral system at national level and which converge towards the same conclusion.

Although the economical evolution of a country is influenced by many internal and international factors, the data provided in Table 1 support the theory that open list proportional systems do not create a disadvantage concerning the economic growth among former communist countries with a high level of democratization, category which includes Romania. On the contrary, both the medium and the median values for the growth of the GDP per capita for the period 2000-2013 are slightly higher in the countries with this voting system than in the others.

		Medium growth of GDP per capita 2000-2013		
FH 2014	Electoral system	Medium	Median	N
Free	PR open list	3.5	3.8	6
	PR open list	3.3	3.6	5
	Mixed	3.2	3.2	2
	Total	3.4	3.6	13
Semifree	PR closed list	3.9	4.2	5
	Mixed	6.0	5.8	3
	Total	4.7	4.6	8
Nonfree	PR closed list	6.5	6.5	2
	Mixed	8.0	8.0	1
	Uninominal Colleges	8.5	7.8	4
	Total	7.9	8.0	7

**Table 1. The type of electoral system, the level of democratization and economic growth among former communist countries**

**Sources:** Proportional Representation Open List Electoral Systems in Europe (2009), Freedom in the World (2014), World Bank Group (2015)

### Electoral systems for other types of elections

Apart from legislative elections, in Romania there are elections for the President, for city mayors, for councils, for county councils, for county council presidents and for choosing Romanian representatives in the European Parliament.

In the context of the current debates on the reform of the political system, voting for mayors has peculiarly drawn attention, the MPs nowadays discussing the amendments to the law of local elections. Despite the reactions of the civil society, Parliament has decided to maintain the majority system with one voting round, used in the 2012 elections. On the other hand, the civil society expressed its opinion in favor of returning to the majority voting with two rounds, used until and including the 2008 local elections.

Scholars vastly agree over the importance of the role of the local government to the overall quality of democracy in a society<sup>1</sup>. John Stuart Mill (1861) revealed how the habits and norms necessary for national governing were mostly apprehended at the local level, not only by citizens but also by the political elite<sup>2</sup>. Over 40% of the European national political elites and counting have held office at the local level<sup>3</sup>. The way in which the elites are chosen for public office, especially the mayors, impact the quality of democracy at local and at national level. For this reason, the current debate in Romania regarding the manner of choosing mayors – in one or two voting rounds – is

<sup>1</sup> Loughlin, J. Subnational Democracy in the European Union Challenges and Opportunities (With the collaboration of Eliseo Aja, Udo Bullmann, Frank Hendriks, Anders Lidström and Daniel-L. Seiler). Oxford, Oxford University Press, 2001; Loughlin, M., I. Legality and Locality: The Role of Law in Central-Local Government Relations. Oxford, Clarendon Press, 1996

<sup>2</sup> Mill, J. St. Considerations on Representative Government, 1861

<sup>3</sup> Cotta, M. & H. Best, 'Between Professionalization and Democratization: A Synoptic View on the Making of the European Representative' in Cotta, M. and Best, H. (eds.) Parliamentary representatives in Europe, 1848-2000: legislative recruitment and careers in eleven European countries. Oxford, Oxford University Press, 2000, pp. 493-526.

of utter importance. There are two camps: on one hand, the politicians from almost every party in Parliament, who support electing mayors in a single voting round, and on the other hand, the organizations of the civil society who became involved in the debate and who almost unanimously requested mayor elections with two voting rounds.

The first camps has two main arguments: the voting system with a single voting round would be (1) easier for citizens to understand and (2) it would imply fewer expenses from local budgets. The simplicity reason is hard to back up, since Romanian vote for the president in two voting rounds, and a large number of citizens have had the chances to vote for mayors in two rounds up until and including 2008. Regarding costs, the 2012 local elections, which took place in a single day for mayors, members of the councils and presidents of county councils (both offices voted in a single round), local councils and county councils, have implied an approximate cost of 13 lei per citizen with voting right, according to a report of the PEA<sup>4</sup>.

Taking into consideration that most of the expenses come from organizing polling stations and paying civil servants in charge of the evolution of the electoral process, and assuming that the second voting round would take place for approximately half of the city halls (as in 2008), we can assume that the second round would cost approximately half than the first one. The sum may seem big, but it actually represents less than 10% of the expenses allocated to Parliament for an electoral cycle or 0.06% of the state budget for 2015.

To continue, we will bring arguments in favor of organizing elections for mayors in two voting rounds. In an attempt to establish which of the two types of majority voting is better, Romania is offering the right context for a natural experiment due to the change from the voting system for electing mayors used until and including 2008 to the elections with one voting round in 2012. The data clearly reveal that the second voting round mattered to a large proportion of Romanian municipalities.

The second round took place in 60% of municipalities in 2004 and in 48% of municipalities in 2008. Both in 2004 and in 2008, in 45% of the municipalities which organized second rounds of voting the difference between candidates was less or equal to 10%. In 2008, there was a switch in the order of the first candidates in the second round as opposed to the first round in 27% of the city halls. Over one third of the mayors elected for the first mandate in 2008 who won the second round had had the second place in the first voting round. In other words, if the elections had been organized in a single voting round, the number of mayors would have dropped with one third.

The 2012 elections, having winners after a single voting round, were more frequently dominated by a candidate with a score of over 50% than the previous ones. Thus, in 70% of municipalities the first candidate had over 50%, and the average result of the first candidate was 57%. The average difference between the first two positions in 2012 was double the difference in 2008 (31% as opposed to 15%) (Figure 2).

<sup>4</sup> [http://www.roaep.ro/logistica/wp-content/uploads/2015/03/ISTORIC-ALEGERI\\_V5-SINTETIC-3.pdf](http://www.roaep.ro/logistica/wp-content/uploads/2015/03/ISTORIC-ALEGERI_V5-SINTETIC-3.pdf)





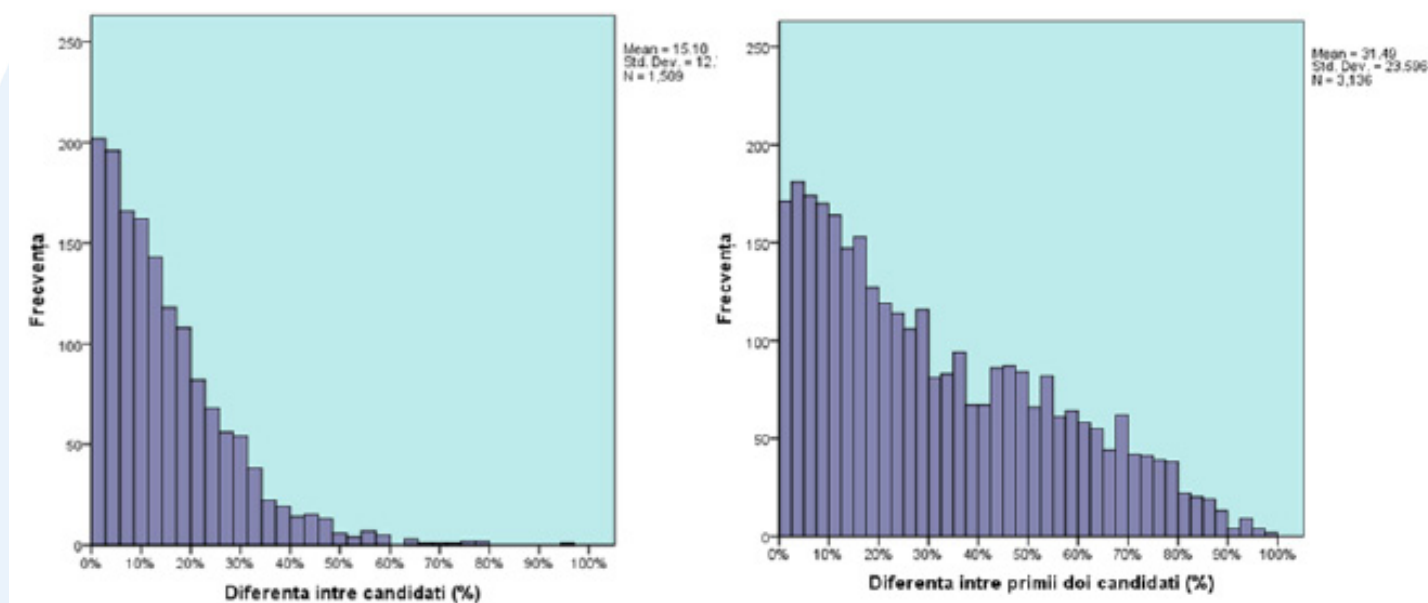


Figure 2. The distribution of the difference in score between candidates in the second round of voting in the 2008 local elections (left), and the distribution of the difference in score between the first two candidates in the 2012 local elections (right).

As a first conclusion, elections with two voting rounds tend to be more disputed than those with a single round, having a significant number of voters involved in tight electoral competitions which favor better political communication.

The above mentioned argument is an addition to the others mentioned by members of the civil society and by experts, being supported in the political science literature on electoral systems. Let us briefly present them:

1. One voting round elections favor the mayors who already hold office and the parties they belong to. There are in control over local resources and they have a head start in the campaign over the other candidates. Also, the mayor holding office has the advantage of popularity. After several electoral cycles, the opposition tends to become weaker and the chances of emerging strong competitors become slimmer. The data regarding Romania show a growing possibility for a mayor to win elections according to the pre-existing number of mandates, and holding elections with a single voting round would strengthen this effect.

2. One voting round elections are less favorable to debating over the existing issues of a municipality and the possible solutions than the elections with two voting rounds. A single voting round offer less time for organizing public debates, especially those in which the main candidates confront each other directly. A candidate who is certain he/she will win should have no reasons to expose himself/herself publicly.

3. One round voting encourages strategic voting of those who participate. If it clear my favorite candidate does not stand a chance of winning, then I will either not go to vote, or I will not vote for him/her and I will vote for a candidate who has a chance of beating the candidate I prefer less. Strategic voting is vulnerable to the quality of the information on the candidates' chances of winning. Mayors holding office influencing the local media before the elections by presenting distorted results of opinion polls is still a rather frequent situation. Maintaining elections with one voting round will stimulate mayors holding office to develop even more these practices, which will have a negative impact on the quality of political representation.

4. The second voting round stimulates both candidates and parties to identify common themes and create coalitions to obtain majorities. Although this can be interpreted in a negative manner, forming pre-electoral coalitions prevents ideological fragmentation, merging ideas with a broader political support, and ultimately these pre-electoral coalitions can be the foundations of some coalitions in local councils. These pre-electoral negotiations, assumed in front of the electorate, are preferable to post-electoral ones, which are less transparent and which often involve splitting the attributions acquired in the elections.

A mayor who became elected without the majority of votes (assuming his/her party obtained a similar percentage) is obliged to negotiate and offer resources or jobs to ensure a majority.

5. Last but not least, one voting round elections raise fewer problems regarding representation. A mayor elected in a single round with less than half of the votes is less representative for a community than a mayor who won the elections in the second round.

To conclude, we consider that electing mayors in two voting rounds is more favorable to a democratic local government than one voting round and we strongly recommend returning to this type of elections.

With regards to the other types of elections, we consider the following:

- Considering that the future discussions over Constitutional amendments seem to originate in the idea of maintaining the principle of direct elections for the president, it would be beneficial to elect him/her in two voting rounds.
- The open list principle, previously explained in the case of legislative elections, should be applied to the election of local and county councils, for which the closed list system is still being used. Also, the electoral threshold should be eliminated, allowing each party or independent candidate who obtains a number of votes equal with the electoral coefficient to obtain representation.
- County council presidents play a very important administrative role, not only through their attributions with local development, but also through the budgets they administer. For this reason, we consider that, in the short run, their election



directly by the population in two voting rounds, not in one (as it happened in 2008 and 2012) would be beneficial. However, this discussion has to be re-opened in the context of a broader debate over the administrative-territorial reorganization of the country, which could lead to changes regarding administrative structures and to a different approach of local government institutions.

- The open list principle should also be applied to electing Romanian representatives in the European Parliament.

## 1.2. Procedures for organizing elections

Apart from the applied electoral formula, the elements of electoral procedure are important with regard to the legitimacy of the electees in a democracy. The electoral legislation does not currently ensure complete transparency of the process and leaves room for honorable practices, which maintains a cloud of suspicion over the fairness of elections, it increases the voters' disinterest for participating in the elections and it casts a shadow over the entire mandate of those elected.

In Romania, the integrity of the elections has been questioned multiple times during the last year. There is the vast perception that electoral procedures and results are slightly altered without the sanction of those responsible. According to a comprehensive study on the various perceptions of the integrity of elections<sup>1</sup>, Romanian elections were listed well below the first half of the classification, in the category "moderate electoral integrity". The 2014 presidential elections were ranked 80 out of 127, and the 2012 legislative elections were ranked 92 out of 127. This study was based on the perceptions of experts selected from the countries that were studied. Romanian experts have concluded that the most problematic aspects of the electoral process in Romania were voter registration, mass-media coverage, financing electoral campaign and the quality of electoral legislation. As you can notice in the following table, the first three categories obtained scores under 50 out of 100. To illustrate the low degree of trust in the integrity of elections in Romania, we have selected from the previously mentioned study the elections between 2012-2014 from the European Union and the Republic of Moldova. The perception on the elections in Romania is the worst in the European Union, resembling only with the opinions expressed by experts from the Western Balkans.

According to the previously mentioned study, trust in the integrity of elections depends on electoral logistics (the procedures regarding electoral operations), media coverage of the electoral campaign and the way in which electoral campaigns are financed. The report of the mission of the Organization for Security and Co-operation in Europe (OSCE) confirms that Romania must improve its legislation in these areas. Electoral procedures currently seem to have been conceived in order to simplify the responsibilities of the authorities and to maintain a reduced cost for organizing elections. However, as shown by the sources mentioned above, these efficiency efforts are not adapted to international standards and do not always meet the needs of the voters.

<sup>1</sup> "The Year in Elections, 2014" The Electoral Integrity Project <https://sites.google.com/site/electoralintegrityproject4/projects/expert-survey-2/the-year-in-elections-2014>

Perceptions of Electoral Integrity by election 2012-2014

Rank	Country name	Election date	Office	PEI Index	Electoral laws	Electoral procedures	District boundaries	Voter registration	Party and candidate registration	Media coverage	Campaign finance	Voting process	Vote count	Results	Electoral authorities	PEI response rate
2	Lithuania	25/05/2014	Presidential	86	93	93	81	80	88	74	79	84	95	92	89	19%
3	Czech Republic	19/09/2013	Legislative	85	88	93	87	94	84	84	76	86	97	94	94	74%
5	Sweden	14/09/2014	Legislative	84	84	92	79	91	84	68	73	84	94	90	95	53%
6	Germany	22/09/2013	Legislative	84	82	91	79	86	86	74	76	82	95	90	87	64%
7	Slovenia	13/07/2014	Legislative	83	83	82	78	94	81	76	75	84	95	80	91	18%
9	Netherlands	12/09/2012	Legislative	83	93	93	72	88	82	69	69	80	90	90	90	56%
11	Austria	29/09/2013	Legislative	82	82	92	79	87	76	67	64	84	93	87	91	46%
13	Czech Republic	12/10/2012	Legislative	81	82	93	72	88	80	67	73	74	94	88	88	58%
15	Czech Republic	25/10/2012	Presidential	80	85	82	79	95	87	65	68	76	95	84	83	48%
16	Slovakia	29/03/2014	Presidential	80	79	87	75	80	90	70	64	72	94	89	86	32%
18	Slovenia	02/12/2012	Presidential	79	75	90	69	90	76	60	65	83	94	83	89	30%
19	Cyprus	24/02/2013	Presidential	78	87	89	73	80	77	66	61	77	89	90	84	37%
20	Lithuania	28/10/2012	Legislative	78	89	75	79	79	88	71	64	75	88	76	78	31%
21	Latvia	04/10/2014	Legislative	77	78	86	76	73	77	68	65	75	91	82	83	40%
22	Belgium	25/05/2014	Legislative	77	73	85	68	82	79	71	71	73	83	83	82	32%
32	Italy	24/02/2013	Legislative	73	55	89	72	80	73	62	59	71	84	81	83	44%
35	Malta	09/03/2013	Legislative	72	60	89	63	71	75	57	51	72	91	83	82	31%
54	Bulgaria	05/10/2014	Legislative	67	78	70	73	57	73	58	51	67	84	77	75	35%
66	Moldova	30/11/2014	Legislative	65	67	74	95	75	66	72	72	88	88	72	74	25%
67	Hungary	06/04/2014	Legislative	65	44	76	44	75	66	46	50	72	84	78	67	44%
80	Romania	16/11/2014	Presidential	63	53	63	62	44	73	53	55	57	84	78	65	50%
90	Bulgaria	12/05/2013	Legislative	60	61	62	60	45	70	56	46	62	73	52	63	51%
92	Romania	09/12/2012	Legislative	59	56	67	51	43	66	45	46	57	74	74	60	33%

Table 2. Perception on electoral integrity

Source: The Electoral Integrity Project (PEI)

Legal provision	International good practices
In order to <b>candidate</b> , a citizen must <b>submit a certain number of signatures</b> along with a financial guarantee	Paragraph 7.5 of the OSCE Copenhagen Convention is breached, which recommends requesting just one of the two conditions.
Only some candidate representatives can be present in a polling station, with positive discrimination of the political parties in Parliament;  Some political parties (especially parliamentary ones) can have a member and a representative in the electoral bureau of the polling station	Representatives of all candidates have legal access to polling stations, most laws limiting a single representative – voting bureau member to each candidate.
The polling station closes at 9 p.m. regardless of the voters outside the stations who could not vote	Polling stations close after all voters present outside the station at closing time have expressed their votes.
The independent candidates' representatives cannot observe electoral operations	Representatives of all candidates have legal access to observe all electoral operations.
The observers and representatives of independent candidates or of certain parties cannot observe the activities and the meetings of electoral bureaus.	Observers and representatives of all candidates have legal access to the activities and the meetings of electoral bureaus.
The deadline for submitting requests for canceling the elections is 24 hours for legislative, European Parliament elections and local elections (art. 15.3 of the law 35/2008)	The deadline for submitting complaints and appeals allows properly exercising this possibility.

**Table 3. Examples of provisions from the Romanian electoral legislation that are contradicting the international good practices**

The Romanian electoral legislation has mainly remained in the framework established in the '90s, being made up by an electoral law regarding each voting modality. In some cases, the laws contain different provisions for the same electoral procedures – for example, vote extension. Another unusual situation involved the fact that legal provisions are not applied, as was the case of those on voter registration, which were adopted more than six years ago. The emphasis of electoral reforms from the past ten years was almost exclusively on the modification of the electoral system<sup>1</sup>. The provisions regarding organizing elections and electoral procedures have remained almost unchanged for almost 20 years. Moreover, Romanian authorities barely react to the recommendations of the international organizations that monitor elections (see the reports of the OSCE) or of the Venice Commission.

According to the PEI study, the score for the perceptions of electoral laws was of 53/100 for the presidential elections law and of 56/100 for legislative elections law, as opposed to a medium score of 80/100 in the other countries of the EU and Republic of Moldova. Adapting the Romanian electoral legislation implies the active involvement of the civil society. We

<sup>1</sup> The foundation of the Permanent Electoral Authority as a result of the law 67/2004 was a notable exception.

consider that a comprehensive electoral reform is an inclusive public consultation process, which cannot happen throughout a few months' time.

We therefore believe that the Romanian electoral legislation needs reformatations taking into consideration the standards and international good practices, at the same time respecting the commitments made within ratified international conventions. These formulate and explain the elements necessary for adopting and implementing a legal framework which would ensure transparency and fairness of the electoral process.

### I.3. Electoral procedures for Romanians abroad

The discussions over the reform of the electoral legislation must pay special attention to the representations of Romanians abroad. For several years, the vote of the diaspora mattered too little in establishing the winner of elections, especially due to the fact that the number of Romanians abroad was small. The situation changed in 2009, when 147.754 people voted at the presidential elections and in 2014, when 377.651 Romanians voted in the second voting round of the elections. The impor-



tance of this segment of the electorate mainly derives from the significant raise in the number of Romanians who have migrated, especially to Western European states, in the last 15 year. Although the number of polling stations grew, being associated with the number of possible voters from every country (except the elections for the members of the European Parliament) and with the predictions regarding the number of voters expected at polling stations, the most recent elections have proved that the current voting infrastructure does not facilitate the access to vote to Romanians abroad, but it does the opposite. From this point of view, it is essential that the electoral legislation reform take into consideration the growing number of polling stations and their re-organization, at the same time re-starting the technical discussions over the introduction of new methods that would facilitate the vote of people abroad, the main instruments considered being postal voting and electronic voting. The technical means through which these are put into practice are very important, as they have to consider the principle of the secret vote and they have to ensure a fair counting of each vote expressed in this manner.

115 states worldwide grant voting rights to the diaspora (IDEA 2007). The way in which these rights are granted varies significantly. Romania is one of the few countries in which the right to vote is granted in legislative, European Parliament, presidential elections and referendums along with Moldova, Poland, Portugal, Slovenia and Austria. In these states there are no special regulations for benefiting from the right to vote. The most invoked and inclusive condition is being a citizen of the country of origin. Some countries apply restrictions on the time spent abroad (Canada 5 years, Germany 25 years or the United Kingdom 15 years) or they grant voting right only to the diplomatic staff.

There are five frequently used methods for external voting. These are, in the order of their popularity, (1) personal voting at polling stations in embassies, consulates and other specially designed places, (2) postal voting, (3) proxy voting and (4) electronic voting. We will further refer to methods 1, 2 and 4.

	Potential advantages	Potential disadvantages
<b>Voting by proxy</b>	Low costs	The principle of electoral equality is not sufficiently guaranteed
<b>Voting in diplomatic missions</b>	Increased transparency of electoral procedures	Increased financial and organizational costs Many voters do not live close to a diplomatic mission
<b>Correspondence voting</b>	Lower financial and organizational costs Can be used by most voters	The transparency of the voting procedure is problematic Is dependent on an efficient postal service
<b>Long-distance electronic voting</b>	Immediate results Available anywhere in the world Eases the counting of the votes	Security issues High implementation costs

**Table 4. Advantages and disadvantages of implementing procedures for voting from abroad<sup>1</sup>**

<sup>1</sup> Source: The study „The vote of Romanians abroad, personal voting and alternative procedures” – L. Bretea, N. Salanțiu, GRSP Society, Octombrie 2010, adapted after IDEA 2007

### I.3.1. Elections in the polling stations abroad

The last two rounds of presidential elections have had difficulties not only for voters, but also for the staff in the polling stations in some European states when there is a massive presence. On the other hand, we must take into account the fact that presidential elections are an exception, Romanians being present in much larger numbers until now than in any other type of elections. For this reason, a more flexible system seems desirable, as it would allow a reflection of the voting presence in such a manner that organizing polling stations would guarantee access to all voters present there, without involving a disproportionate amount of financial and human resources.

A study on the 2010 vote of the diaspora revealed that the electoral logistic for voting abroad was highly problematic<sup>2</sup>. Its authors noted that: “In some cases, authorities do not manage to organize enough polling stations to allow willing voters to cast their vote. Moreover, analyzing the number of voters in each polling station at the second voting round of the 2009 presidential elections, we can observe that nine out of ten polling stations with the largest number of voters are abroad.” As opposed to 2009, in 2014, of the first 100 polling stations as number of voters, more than 90 were abroad. Considering that the electoral law provides two polling stations to each municipality with over 1500 inhabitants, in 2014, in the Coslada polling station, in Spain, voted 4795 people. The large differences between vote attendance and the number of polling stations seem to be the result of the fact that, when polling stations are organized, authorities take into account the number of voters from the elections for the members of the European Parliament or legislative elections. These elections, however, do not draw so much attention than presidential elections.

Moreover, there is an obvious connection between the growing number of polling stations and the growing number of voters abroad. Although there is no signal of a significant growth at the level of each polling station (in some stations the attendance is dropping), for each polling station added, the number of voters increases by a few hundred.

Therefore, in order to avoid situations such as those from the presidential elections in November 2014, when organizing polling stations, authorities should take into consideration the number of voters present at the last elections similar to the ones organized (for instance, presidential, referendum). The authorities should calculate a progression in the presence rate of more than 20% for each electoral cycle. New polling stations must emerge in every place where the number of voters at the last elections exceeded 1000. Romanian communities which are at considerable distance from a polling station should be encouraged to request the establishment of a new polling station, in accordance with the number of Romanians living in the area.

Another administrative limitation is the number of the staff in polling stations and their equipment. Polling stations abroad are often made up from less than the standard number of 7 members. Also, the electoral material is very limited: 3-4 voting booths, 3-5 stamps. These limitations reduce the number of voters who can express their voting rights. It is for this reasons that polling stations should be equipped with enough electoral material for at least 1000 voters.

<sup>2</sup> Bretea, L. & N. Salanțiu “The vote of Romanians abroad, personal voting and alternative procedures”, GRSP Society, October 2010



Finally, an issue which displeased voters abroad, both in 2009 and in 2014, concerns the procedures for closing the polling station. These procedures have to be applied in accordance with the international good practices, according to which voting is permitted to all the voters who are queuing to vote at the time of closing the polls, and the voting should be extended for as long as necessary.

### 1.3.2. Postal voting

Every country that uses postal voting has an electronic registry which is updated before every election. The electronic electoral registry was completed by the PEA in 2013 and it was used at the 2014 elections. Despite the fact that, according to the law, voters abroad should be enlisted in this registry, six years after the law was adopted, Romanians abroad continue to vote on additional lists. The bills on postal voting (PDL – 2011, PMP – 2014, PNL – 2015) propose actively registering voters abroad, meaning that instead of being automatically registered by the authorities, voters must meet the formalities to get registered. Two or three months prior to the elections, Romanian citizens abroad who wish to exercise their right to vote should notify the authorities (PEA or embassies) in writing. Afterwards, the voter should send a registration request, along with certified copies of the documents attesting his/her citizenship, as well as his/her domicile or residence abroad.

With regard to voting, the three suggestions promote the same system: the PEA or the embassies send to the voter an envelope which contains the voting documents and two other envelopes. In order to prevent possible attempts to violate vote secrecy, in the bill of the PDL there was a personal responsibility statement which has to be signed by the voter and sent along with the vote. After voting, the voter introduces the ballot in an anonymous envelope and then the personal responsibility statement, a copy of the identification document and the envelope with the ballot into another envelope, pre-addressed and pre-paid<sup>1</sup>. This last envelope is sent to the PEA or to the nearest embassy.

We must be clear on the fact that all existing suggest postal voting as an alternative voting method, which would coexist with personal voting.

#### Challenges of the postal voting system

The most important issue of the bills discussed until now is the complexity and the high cost of the postal registration procedure provided by all the bills. Although this is allegedly a simplified process, postal registration is actually a redundant and expensive process for most voters. Certified copies of identification documents abroad can be made only by consulates, and the cost of certifying is 30 euro. If two certified copies are requested, the registration cost increased to 60 euro. Additionally, the voter must go to the nearest consulate in order to certify the document.

The law should introduce the possibility of registering within consulates, without additional costs for certifying identification documents.

<sup>1</sup> This is the procedure described by PNL in its 2015 project, while PDL and PMP projects involved the envelope being sent as a certified mail, with all expenses covered by the voter.

In the case of elections with two voting rounds, such as presidential ones, voting ballots should be sent to voters, who will have to return them in less than two weeks. To balance this problem, the initiators of the PNL project have suggested that voters abroad should vote on the ballots used in the first voting round. We believe this is a reliable solution which does not breach international good practices.

Some voice contested the possibility of breaching the secrecy of the vote through postal voting. The 2015 PNL initiators of the project proposed introducing the personal responsibility statement. This statement, however, can be filled under external pressure. This is why we recommend that the law should include the possibility of canceling the vote through a written statement, received until polling stations close. This new statement of personal responsibility can be sent via mail or can be made in front of the staff in the nearest embassy. The voter should declare he/she was forced to vote or that his/her vote was forged and he/she should request its cancellation.

Although introducing postal voting would be a necessary step in dealing with the issues of polling stations abroad at the 2014 presidential elections, we should be aware that usually this procedure does not lead to an increased vote participation.

Therefore, postal voting offers a new manner of expressing the vote to people who vote personally anyway and does not necessarily lead to the stimulation of participating to vote for the people who previously did not express their right to vote. As a result, because of the high costs and the weak results on voter participation, some states have excluded postal voting. This is one of the risks of implementing a new voting method: the first ones to apply it are the migrants who are already voting.

### 1.3.3. Internet voting

Internet voting is currently a promising but distant perspective. As the authors of a recent IFES<sup>2</sup> book on electronic vote outlined, the introduction of internet voting does not simply involve an extensive trial period, but also a very well-thought one. Moreover, even if this is just an experiment, any failure of this type of experiment can turn the decisive factors and the population against this method of voting in a fashion that can be difficult to fix later.

Until this moment, Estonia remains the only country that offers the possibility of internet voting in national elections to all voters (not just to those from the diaspora). Other countries (France, Switzerland, Norway and the US) also practice internet voting in this type of elections, but at a smaller scale. For instance, at the 2012 legislative elections, all French citizens in the diaspora could vote via internet, but the process did not lack problems and criticism<sup>3</sup>. In Norway, trial studies that tested the utility of internet voting provoked controversy, not only because of security mechanisms, but also because of the fact that

<sup>2</sup> <http://www.ifes.org/Content/Publications/Books/2013/Implementing-and-Overseeing-Electronic-Voting-and-Counting-Technologies.aspx>

<sup>3</sup> <http://elections.lefigaro.fr/presidentielle-2012/2012/05/22/01039-20120522ARTFIG00597-inquietudes-autour-du-vote-par-internet-des-expatries.php>





the introduction of internet voting (outside polling stations) “would affect the sanctity of the vote”<sup>1</sup>. Because of all these reasons and taking into consideration the country’s tradition to find consensus in all major issues of electoral politics, the Norwegian government has decided to postpone the project.

A necessary condition for the introduction of internet voting is ensuring a proper legal and institutional framework, as well as an adequate infrastructure. A 2008 study<sup>2</sup> enumerates the four key ingredients that granted the success of this method in Estonia: (i) broad internet access, (ii) a legal framework which regulates all internet activities (including the voting procedure) in a detailed manner, (iii) a political culture that favor the use of internet for various political and administrative activities, and (iv) the existence of identification documents that allow the digital identification of the voter. At least from the perspective of internet access, Romania is currently far from meeting this requirement.

From another perspective, the main institutional and logistic obstacles against the introduction of digital identification cards have already been excluded (the government emergency ordinance no. 82/2012)<sup>3</sup>. We therefore recommend that internet voting be explored as an alternative voting method for Romanians in diaspora, but that its implementation take place after careful analysis and after a trial period.

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<sup>1</sup> <https://www.regjeringen.no/en/dep/kmd/id504/>

<sup>2</sup> Alvarez, Michael, Thad Hall & Alexander H. Trechsel, “Internet Voting in Comparative Perspective: The Case of Estonia”, PS: Political Science & Politics 2009

<sup>3</sup> [http://depabd.mai.gov.ro/comunicat\\_presa\\_finalizare.pdf](http://depabd.mai.gov.ro/comunicat_presa_finalizare.pdf)



## II. The founding and functioning of political parties

Despite the fact that most citizens of former communist countries are mistrustful of political parties, their existence is fundamental for a representative democracy to function. Political parties have the role of aggregating citizens' interests and transposing them into public policies. Therefore, it is essential for Romania to benefit from a legislative framework which facilitates this mechanism by imposing not only objective and reasonable criteria regarding establishing and organizing them, but also some means of institutional control over their activity.

This section addresses the following **two elements** currently found on the political agenda:

- The legal framework regarding founding political parties and regulating their activity
- The legal framework regarding financing political parties and election campaigns

**Principles** for building a sustainable legal framework for the foundation and functioning of parties:

1. Easy legal association in a party of any group of citizens who want this.
2. Setting clear and least restrictive conditions for party de-registration, in accordance with the terms established by the Constitution.
3. Lawfully ensuring the necessary financial and logistic conditions for any party to enjoy organizational sustainability.
4. Imposing clear and transparent rules for financing parties, so they would not be tempted to bend the law in order to have access to resources.

### II.1. The founding and functioning of political parties

From 1989 to May 2015, the law of political parties was modified in the sense of stricter rules which allow the founding of new parties. The law 14/2003 increased the necessary founding members to 25,999, distributed in at least 18 counties and the city of Bucharest, with a minimum number of 700 persons per county. A comparison with other European countries reveals that, of all European democracies, Romania is the country with the most restrictive framework regarding political party registration<sup>1</sup>. Moreover, comparative research on party legislation shows that an extensively restrictive regulation inhibits not only the establishment of new parties, but also the entrance of new parties in Parliament<sup>2</sup>. From this perspective, Romania has again represented a paradox, because in the last two legislatures there have been parties established at the initiative of

MPs, thus directly benefiting from parliamentary representation, such as the National Union for the Progress of Romania, the Popular Movement Party, the Liberal-Reforming Party or the United Romania Party.

Therefore, the legislation that has been effective for more than a decade switched the accent from similar ideological orientation or from the common interests of a group of individuals to the availability of human, organizational and financial resources, necessary for meeting the criteria of establishing the party. The difficulty of creating new parties has caused severe difficulties in representing interests outside the political system.

The Party Law in Modern Europe project, carried out by the University of Leiden, summarizes the criteria for the founding of parties in other states<sup>3</sup>. Despite the fact that in most consolidated democracies the rules of restricting the competition between parties are very few, they exist nevertheless. These rules concern founding, nominating candidates, financing electoral campaigns and the message of the party. Thus, France, Sweden and Ireland do not regulate party establishment, but there are countries, such as Romania, which clearly mention these rules. In the post-communist space, Bulgaria represents a rather permissive example where, in accordance with the 2009 law of parties, a party is established after the constitutive assembly and the permission of at least 50 citizens with voting rights. In Croatia, the requirements are of 100 adults, according to the law enforced in 1999, and another example is Estonia, where a party can be registered if it has at least 1000 members, according to the 1994 law. Outside Europe, in Mexico the requirement is of 3000 geographically distributed party members, in Canada of 250 members, and in Australia of 500 members, with at least one MP.

An equally important aspect is the criteria regulating the activity of parties, after their founding. In Italy or Germany, for historical reasons, the constitutions mention the condition of respecting democratic principles or they explicitly forbid fascist parties<sup>4</sup>. In post-communist Europe, Bulgaria is again an example where fascist parties are forbidden. Preventing the emergence of parties that can de-stabilize democracy is either stipulated by the constitution or by the organic law: the constitutionality of the program and of the activity of parties is examined either by local judicial institutions, or by national courts, such as supreme or constitutional courts<sup>5</sup>. For instance, article 42 of the party law in Poland stipulates the following: "examining cases of non-compliance with the constitutional

<sup>1</sup> Casal-Bértoa, F. & Ingrid van Biezen, "Party regulation and party politics in post-communist Europe", *East European Politics*, Vol. 30, Issue 3, 2014, p.308

<sup>2</sup> van Biezen, Ingrid & Ecaterina Rashkova, "Deterring New Party Entry? The Impact of State Regulation on the Permeability of Party Systems," *Party Politics*, 2012

<sup>3</sup> <http://www.partylaw.leidenuniv.nl/party-law>

<sup>4</sup> van Biezen, Ingrid & Gabriela Borz, "Models of Party Democracy: Patterns of Party Regulation in Post-War European Constitutions", *European Political Science Review*, 2012

<sup>5</sup> A comparative analysis of constitutions and party laws can be found on Biezen and Borz (2012) and Casal-Bértoa et al (2012)

provisions of party objectives and activities is under the jurisdiction of the Constitutional Tribunal". Romania already has similar provisions, introduced by article 144 paragraph I of the Constitution, which mentions the role of the Constitutional Court in ruling over constitutionality disputes of a party, and by article 40, which refers to the right of association and which provides conditions regarding the unconstitutionality of parties.

In this context, the Romanian civil society has promoted a series of amendments regarding the introduction of more relaxed founding criteria. The "Politics without Borders" campaign launched the idea of establishing parties with only three founding members, invoking the right to free association provided by the Constitution. In February 2012, the Constitutional Court ruled that the criteria of the law 14/2003 were unconstitutional. Parliament accepted the idea of founding parties with just three members, a principles introduced by the new law, adopted in early May and promulgated by President Klaus Iohannis.

A more indulgent law encourages pluralism, electoral competition and a representation that is more faithful to the interests of the citizens, at least on the political agenda. We salute the fact that Parliament accepted the amendment of the law to this extent. On the other hand, civil society has drawn the attention that the new law contains restrictive elements regarding the de-registration procedures, which would eliminate the merits of a laxer founding mechanism. Although the establishment of a party with just three members, and, consequently, the elimination of the geographic criterion, allows the emergence of parties that only want to manifest at the local level, which is perfectly normal for a western type of democracy, article 47 of the new law forces parties to participate with candidates at least in county elections, otherwise being subject to de-registering. This criterion can prove difficult for newly established parties and it could create situations in which a party that has won a mayor mandate or local seats at the elections for the local council would be de-registered after the legislative elections. Thus, the new legal framework would allow not only the founding, but also the relatively easy dissolution of parties, which could cause instability within the party system and it could render futile the idea of political parties.

We therefore consider that the efficiency of the new legislative framework should be re-evaluated after 2016, when there will be the first two rounds of elections – local and legislative – during which we will witness the emergence of new parties.

## II.2. Financing political parties

Nine years after the law 344/2006 was enforced, the reformation of regulations regarding financing political parties became essential. This need is explained by the low level of trust of the population in political parties and in the fairness of elections, and also by the recommendations of international organizations that monitor elections and the electoral legislation. The law 113/2005 for amending the law 334/2006, adopted by Parliament and promulgated by the President after a request of re-examination, does not deal with the existing problems, but it actually creates new ones.

The main objectives of the legislative reform regarding the

current activity and the electoral activity of political parties in Romania should consider three key dimensions: transparency, sustainability and organizational autonomy. We consider that political parties should have the good faith presumption. They should also benefit from all the financial and legal methods to carry their activity and to be able to play their part in a good democracy, in order to avoid the temptation of finding methods to bend the law. At the same, however, the fact that the law itself leaves room for interpretation is rather discouraging.

### The current framework of financing political parties in Romania

According to a report published by The Group of States against Corruption (GRECO), the legislation regulating the functioning and financing of Romanian political parties is rather opaque, especially concerning collecting, reporting and spending financial resources. GRECO, part of the Council of Europe, has analyzed the legal framework of financing political parties in Romania<sup>1</sup>. The conclusion was that the law 334/2006 contains many provisions that are difficult to apply and it made a series of 13 recommendations for the modification of legal regulations. Another important aspect is that the activities of the foundations and of the associations surrounding the parties whose financing are not subject to the law of financing political parties must be monitored in case they become involved in electoral campaign activities. Furthermore, financing electoral campaigns is the only type to be published, and the Permanent Electoral Authority (PEA) does not expressly request annual balance sheets. Tax authorities are the only ones that do this, and they do not cooperate with the PEA.

Also, the law does not sanction harshly enough deviations from the existing procedures. An opaque and irresponsible accounting of financial sources creates the proper framework for the emergence of clientelism relations between party members who hold public office and the party donors, mechanisms which often include local and central state institutions<sup>2</sup>. These types of relations encourage corruption, they undermine citizens' trust in institutions and parties and they lead to the implementation of public policies which disregard the interests of citizens<sup>3</sup>.

Therefore, among the biggest problems with regard to financing political parties there currently are ensuring a true accounting, controlling the income sources and the expenses of political parties, as well as applying the necessary sanctions by the Permanent Electoral Authority (PEA). A significant informal financing element is noticeable, one which is not accounted nor monitored by existing specialized organisms, as well as a serious lack of transparency of the manner in which party resources are being used, not only for financing the electoral

<sup>1</sup> GRECO, „Raport de evaluare a României privind Transparența Finanțării Partidelor Politice”, 2010, disponibil la [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Greco-Eval3%282010%291\_Romania\_Two\_RO.pdf], accessed on January 10, 2015

<sup>2</sup> Gherghina, S. & C. Volintiru, „A New Model of Clientelism: Political Parties, Public Resources, and Private Contributors”, European Political Science Review (upcoming), 2015

<sup>3</sup> Volintiru, C., „Clientelism: electoral forms and functions in the Romanian case study”, Romanian Journal of Political Sciences, (01), 2012, pp. 35-66



campaign<sup>1</sup> but also for the current activity<sup>2</sup>.

### The transparency of administering financial resources

Most corruption and electoral clientelism issues exist because of the superficiality of the system of finance reporting that a candidate benefits from during and outside electoral elections. Therefore, not only during the electoral campaign, when there are specific expenses for its organizations, but also for the period between elections, when there are functioning and organizing expenses, rigorous and transparent administering of resources has to be developed through coercive means and much more. The finances of political parties have to obey the same mechanisms of accounting and audit monitoring as any legal entity that does not have the purpose of obtaining a profit (foundations, NGOs). Moreover, transparent reporting of sources of financing as a whole must be correlated with evaluating potential conflicts of interest, especially if the parties control public offices<sup>3</sup>.

### Organizational sustainability

A great part of the expenses of political parties outside electoral campaigns are connected to maintaining the activity of local branches. This component of the expenses of political parties has a positive influence not only over electoral success, but also over aggregating and representing interests at the local level. The reform of the framework of financing political parties and electoral campaigns in Romania must consider ensuring organizational sustainability and their presence in the territory. However, the awareness degree of the Romanian electorate concerning electoral and administrative processes remains reduced in many parts of the country, making it necessary to identify means through which the parties' activity of educating citizens be made more efficient and the logistic and financial support given by the state impact not just the party as an organization, but also the society.

### Organizational autonomy

Taking into account the characteristics of representative democracy, political parties are the main vectors for representing citizens in legislative and executive forums. This is why it is essential to structure their activity so that the electoral and program platforms they put forward to address public interests instead of the private interests of part donors and contributors. The framework of financing political parties in Romania must acquire this main objective of representing public interests. With regard to this issue, the criteria for financing political parties must address the need to ensure a stable and consistent organizational structure and they have to be adapted to variable electoral performances.

<sup>1</sup> For an empirical analysis on the connection between legislative blind spots of financing and the practice of buying votes, see Sergiu Gherghina, „Going for a Safe Vote: Electoral Bribes in Post-Communist Romania”, *Debatte: Journal of Contemporary Central and Eastern Europe* 21 (2-3)/2013

<sup>2</sup> Among the corruption investigations of the DNA prosecutors there is the non-transparent financing of party events, such as local or national conferences, but also of ordinary activities, such as monitoring the appearance in the press.

<sup>3</sup> Volintiru, C. „How Public Spending is Fuelling Electoral Strategies in Romania”, *Südosteuropa. Zeitschrift für Politik und Gesellschaft*, (02), 2013, pp. 268-289

## Financing political parties in other democracies

In practice, there are three main sources for financing a party:

### State subsidies

Although most European democracies grant public subsidies to political parties, either directly or indirectly, this continues to be a problematic source of finances, as this is public money. A tax payer might not agree to financing a certain party. The consensus around this financing method of parties is based on the increased potential to regulate and monitor the activity of beneficiaries. Therefore, it is considered that the higher the level of dependence of parties to public subsidies (as in Sweden or the Czech Republic), the more and deeper can the activity of parties be regulated, by preventing or fighting against the previously mentioned deviations. Usually, state subsidies are granted according to the results of the elections (Austria, Germany, Spain).

### “External” donations

The relations between parties and the society must be supported. Strong parties, rooted in the society, are built on the relation with professional (usually unions for leftists and business associations for rightists) or civic associations, which compensate the decrease of the usual number of party members from the past decades. In order to strengthen this bond, these associations (after internal statutory decision-making) may be allowed to openly finance parties, with the condition that the members of associations who do not agree with the sums being used to support a party, can, as association members, openly express their opinion (the Danish model).

### Contributions

Contributions are the main method for parties to self-finance, but the quantum of the contributions is usually established at a low level not to discourage membership. The sums collected from contributions are therefore insufficient for party activities and are supplemented from private sources. In the current legislative framework, the level of contributions of party members is assigned to each party. The main parties have established theirs through their statute, as a percentage of private incomes.

In Europe there is a large spectrum of shapes a law can take regarding party financing, in terms of transparency and monitoring:

- a. The absence of a clear framework and of state subsidies (the Netherlands, Switzerland, Greece) – parties are practically left to take care of themselves – lack of transparency, absence of monitoring
- b. Weak monitoring and small sanctions (Austria, Spain, Hungary)
- c. Clear monitoring and transparency, stronger sanctions, with the existence of blind spots in terms of deficiencies of the control system (Italy, Luxemburg, Ireland, Germany)
- d. Finally, high standards of transparency and monitoring (Denmark, Norway). In Denmark, the level of trust of the people in parties is the highest in Europe (43%, according to the 2008 European Values Survey).

In terms of donations, there are two extremes on regulation:

- Completely prohibiting private donations (the Canadian model)
- Allowing donations (with certain limits), but they should be





made public, regardless of the quantum or the source (e.g. Denmark). In some states, private contributors have the right to participate to the decision-making process in the parties they donate to.

There is no “right” form regarding a law on party financing in terms of sources or quantum, but we conclude that, in a consolidated democracy, this should not be the main element of the law. Monitoring mechanisms and sanctions for breaking the law should be the focus of the legislation.

### **The new legislative framework in Romania**

The law 95/2014 contains elements that could reduce the dependence between politics and the business environment by introducing the complete reimbursement of campaign expenses, and it pursues the recommendations of the GRECO committee of the Council of Europe. We should appreciate these modifications, but they are accompanied by new regulations which consider contradictory to the spirit of the law and to the international good practices. We mainly refer to the possibility of getting loans. Political parties could borrow very large sums, for undetermined periods of time, from banks, legal entities or individuals. We consider that loans, as they are regulated in the current legislative proposal, represent a procedure contrary to international good practices and which can increase the level of corruption in the political environment.

Second, when comparing the legal framework proposed by the new law with that of other countries with similar systems – such as France or Poland – we notice a discrepancy concerning donation thresholds. Although the current legislative proposal suggests the almost complete coverage of the expenses of political parties, the legislation has not been adopted to reduce the private funds that are available to political parties. We consider that this discrepancy has to be fixed in order to reflect the legislator’s initial intention – that of reducing corruption in politics and the interdependence between politicians and the business environment.

Taking into account the growing number of corruptions charges draw attention over illegal financing practices, we consider that more attention should be given to sanctioning political parties. Currently, only those found responsible of crimes are sanctioned. We believe that the parties which tolerate illegal practices in the electoral or in the financial field have to be sanctioned by having their state financing restricted in a proportional manner with the gravity of the crime, the extreme punishment being cutting state financing in case of repeated offenses.



### III. Reforming Parliament and adding efficiency to complementary citizen representation mechanisms

A package of measures meant to improve political representation in Romania must take into consideration introducing or adding efficiency to instruments and procedures through which citizens can influence not only the political agenda, but especially the decision-making process. The instruments used are at the borderline between direct and representative democracy. Moreover, reforms cannot avoid the fundamental institutions of representative democracy, where laws and public policies with a direct impact on democracy and on the quality of citizens' lives are adopted – Parliament, local and county councils.

This section addresses a series of **topics** which are not found on the political agenda yet:

- Parliament reform
- The reform of the referendum legislation
- The reform of the citizens' legislative initiative

Legislative reforms and the revision of the Constitution should originate from the premise that Parliament is the main pillar of a representative democracy.

It is necessary to create an institutional framework that would attribute the Parliament with the main law-making role and efficient control mechanism in relation to the government. The referendum and citizens' legislative initiative must be a reachable mechanism to citizens, and the will expressed through these instruments must be put into practice without leaving room for interpretation.

#### III.1. Parliament Reform

Parliament is a fundamental institution to democracy even if, as in the case of political parties, the level of trust of Romanians in this institution is very low. A set of measures meant to improve the quality of political representation in Romania cannot avoid a Parliament reform in terms of structure, number of members or attributions.

Romania's Parliament is currently bicameral, with a low level of asymmetry, induced by the 2003 constitutional reform. In consolidated democracies, one of the decisive elements of bicameralism is the federal organization of the country. Since Romania is not a federal state, bicameralism would be mainly justified as a mechanism of improving the legislative process by introducing the double law-making principle and the mutually exercised control of the two chambers. We consider that the current type of bicameralism is one that needs to be amended on the occasion of the constitutional reform, but the direction of the new structure of Parliament should be established according to other important institutional factors, such as the administrative-territorial structure of the state and the electoral formula.

Among the factors influencing the number of MPs, the determinant most frequently discussed in literature (and the most intuitive) is the size of the population. Less clear is the formula to obtain the "ideal" number of representatives according to the population. The most frequently disputed formula is the so-called "cube root rule", according to which the number of representatives (in unicameral parliaments or in the lower chambers of asymmetrical bicameral parliaments) should approximate the cube root of the number of inhabitants. According to recent studies, oversized legislatures cause excessive bureaucratization and a raise of corruption levels. The current Romanian legislative framework is obviously oversized, mainly as a consequence of the electoral formula used at the 2012 elections (related to the distribution of votes between electoral actors), but also because of the faintly asymmetrical bicameralism.

Any debate on the number of chambers and of MPs should take into account the most relevant initiative that considered these two aspects: the referendum of November 22nd, 2009, in which voters agreed with the proposal of reducing the number of MPs and adopting a unicameral system, and the debates surrounding this moment. We must mention the legislative proposal of the PNL, which would have reduced the number of MPs while maintaining the bicameral system (217 deputies and 99 senators). The fact that the structure of Parliament (as number of chambers) and the cut in the number of MPs were on the political agenda of the recent years involves the materialization of a new structure of Parliament which would make it more efficient.

The specific **recommendations** in this regard are discussed below:

- From the point of view of the attributions of Parliament, we consider that the institutional relations between Parliament and the executive branch need re-thinking in the context of a broader discussion over the democratic regime type. Most authors from the field of political science converge towards the idea that more efficient democracies are based on a parliamentary regime, especially if one takes into consideration the fact that Parliament and the political parties represented in it have the fundamental role of aggregating the interests of the citizens and of transposing them into laws and public policies (in the context in which, of course, both the Parliament and the parties play these roles de facto, not just formally).

- Reforms must also include more concrete elements of the law-making process and of the control mechanisms that Parliament has in relation with the Government. We can recall the issue of government emergency ordinances, an instrument abused by all post-communist governments, through which the Government replaced Parliament as the main law-making forum. Moreover, the methods of control of the MPs, such as questions and interpellations addressed to ministers, simple or no-confidence motions, must gain efficiency.



• In addition to the previously mentioned elements, we must address the poor communication between MPs and voters, which is one of the contributing factors for the low confidence of citizens in Parliament and in the political class in general. An IRES 2012 survey reveals that over 60% of Romanians did not know the names of the MPs representing their constituencies<sup>1</sup>. We consider that the mechanisms of measuring the efficiency of the activity of MPs should be identified not just from a quantitative perspective (the number of signed legislative proposals or the number of addresses), but especially from the perspective of the efficiency of their activity and of their capacity to transpose the interests of the citizens they represent into the political agenda and into public policies.

### III.2. The Referendum

The referendum is a democratic instrument which maintains and translated the principles of direct democracy in the contemporary context of representative democracies. Far from being a substitute for representative democracy, the referendum adds the mechanisms associated to it and it can be a means of adjusting the deficit of the government's responsiveness toward the articulate wishes of the society<sup>2</sup>.

The inherently democratic merit of the referendum is that of offering a method of consulting the population on politically and socially relevant issues. Additionally, the referendum can help increase the citizens' knowledge of current issues and their trust in the possibility of influencing public decisions<sup>3</sup>.

On the other hand, there are some difficulties and limitations that can be created by an insufficiently regulated or irresponsible practice of the referendum<sup>4</sup>. Tierney (2014) mentions in this regard (1) the danger that the referendum is conducted by the elite, (2) the fact that referendums most likely lead to aggregating pre-formed opinions to the detriment of authentic deliberation, and (3) the so-called "tyranny of the majority", meaning that the decision taken by referendum involves a losing part, represented by the interests of the minority<sup>5</sup>. From this perspective, possible objections against the referendum do not necessarily refer to its democratic principle, but to its possible

limitations of its application, which can be prevented with a clear and careful regulation in constitutional provisions and in the legislative framework.

### The Referendum in other democracies

A 2008 IDEA report<sup>6</sup> on the direct democracy mechanism involved in various countries presents the variety, in practice, imposed by the referendum in different political contexts. With regard to the topics of consultation by referendum, the IDEA report noted that in Europe (just as in Australia), most referendums refer to major political or constitutional issues (for instance, major institutional changes, European integration), consulting on specific policy elements being far less frequent. This tendency is different from that in the United States where, at the level of each state, referendums involve a much more diverse field of topics relevant to internal politics. A particular case is that of Switzerland, the European state with the highest frequency of referendums, where citizens are called to express their opinions on very specific topics, such as the retirement age or refugee policies.

An important aspect, regulated differently in various states, regards the possibility of citizens having the means of initiating a referendum. At least in Europe the existence of this opportunity is desirable, from a normative viewpoint. Therefore, the recommendation 1704/2005 of the Parliamentary Assembly of the Council of Europe<sup>7</sup> contains a specific reference to the need of offering and regulating the possibility of citizens' initiating the referendum.

The effective practice varies from state to state depending on the status of an issue from the viewpoint of law-making. In Switzerland, when there is a law that is about to be adopted, citizens have the possibility of rejecting it (50.000 citizens – approximately 1% of the electorate – or the councils of at least 8 cantons can request a referendum to dismiss a new law)<sup>8</sup>. Parliament verifies the validity of the people's initiative and it has 30 months to decide on its approval or its dismissal<sup>9</sup>. There are no requirements concerning the participation quorum for referendum validation. In the case of an optional referendum (the one initiated by citizens), in order for a proposal brought to consultation to be accepted, a majority of votes is necessary, and the results of the referendum are mandatory from a judicial point of view<sup>10</sup>.

<sup>1</sup> Gândul, IRES survey: nearly two thirds of Romanians do not know the MPs nor the candidates of the elections on December 9th. Available at [<http://www.gandul.info/politica/sondaj-ires-aproape-doua-treimi-dintre-romani-nu-si-cunosc-parlamentarii-si-nici-candidatii-la-alegerile-din-9-decembrie-10352929>] (15.01.2015)

<sup>2</sup> Qvortrup, M. Referendums around the world: continued growth of direct democracy, London, Palgrave Macmillan, 2014

<sup>3</sup> Bowler, S. & T. Donovan. "Democracy, institutions and attitudes about citizen influence on government", British Journal of Political Science 32, 2012, pp. 371-390

<sup>4</sup> Budge, Jan, "The New Challenge of Direct Democracy", Electoral Studies, 1997, sau Daniel Lewis, Direct Democracy and Minority Rights: A Critical Assessment of the Tyranny of the Majority in the American States. Routledge, 2013

<sup>5</sup> Tierney, S. Europe is entering the "age of referendum", but there is nothing to fear for European democracy if referendums are properly regulated, 2014, <http://blogs.lse.ac.uk/europpblog/2014/09/02/europe-is-now-entering-the-age-of-the-referendum-but-there-is-nothing-to-fear-for-european-democracy-if-referendums-are-properly-regulated/>

<sup>6</sup> International Institute for Democracy and Electoral Assistance (IDEA). Direct Democracy. 2008, [http://www.idea.int/publications/direct\\_democracy/upload/DDH\\_in-lay\\_low.pdf](http://www.idea.int/publications/direct_democracy/upload/DDH_in-lay_low.pdf)

<sup>7</sup> Council of Europe. Parliamentary Assembly. Recommendation 1704, Referendums: towards good practices in Europe, 2005, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/EREC1704.htm>

<sup>8</sup> International Institute for Democracy and Electoral Assistance (IDEA). Direct Democracy, 2008, [http://www.idea.int/publications/direct\\_democracy/upload/DDH\\_in-lay\\_low.pdf](http://www.idea.int/publications/direct_democracy/upload/DDH_in-lay_low.pdf)

<sup>9</sup> Council of Europe. Electoral Law. Strassbourg, Council of Europe Publishing, 2008. Secțiunea "Referendums in Europe – An Analysis of the legal rules in European States"

<sup>10</sup> <http://www.idea.int/elections/dd/country.cfm?country=42>





In Italy there is the abrogative referendum version, which is frequently mentioned in the discussions on referendums initiated by citizens. There, a referendum initiated by citizens can be started at the request of 500.000 voters or of 5 regional councils, and the consultation can refer to any law, regardless of the period of time when it was in force<sup>1</sup>.

The referendum cannot take place if the Parliament intervenes to modify the law representing the object of the disagreement<sup>2</sup>. The referendum cannot be on tax, budget, amnesty or pardon regulations nor on a law ratifying an international treaty. For the validation of the referendum there is the requirement, explicitly mentioned in the Constitution, of the presence at polling stations of the majority of people with voting rights, as well as the condition of obtaining the majority of valid votes<sup>3</sup>. The results of the referendum are mandatory, therefore a law that is the object of a referendum will not be promulgated if it is not approved with a majority of votes<sup>4</sup>.

Referendums initiated by citizens are not frequent in Western consolidated democracies (with the notable exceptions mentioned above – Switzerland, Italy, to which can be added Liechtenstein)<sup>5</sup>. On the other hand, a large number of new post-communist democracies have included in their constitutional regulations the possibility of citizens initiating the referendum. The requirements vary, for instance in Lithuania the minimum number of necessary signatures being 500.000 and in Latvia the adhesion of 10% of the voting population is needed<sup>6</sup>. Another example is Slovenia, which included in its regulations a model similar to the referendum of dismissing a law that can be initiated by citizens in Switzerland. There, there was a major controversy regarding to the participation quorum (turnout) and the approval quorum, which ended by leaving out the minimum participation threshold and by establishing a threshold of 20% of the voters against the law for its validation<sup>7</sup>.

It is worth noticing the existence, in several countries, of a somewhat moderate system of popular initiative of the refer-

<sup>1</sup> International Institute for Democracy and Electoral Assistance (IDEA), Direct Democracy, 2008, [http://www.idea.int/publications/direct\\_democracy/upload/DDH\\_in-lay\\_low.pdf](http://www.idea.int/publications/direct_democracy/upload/DDH_in-lay_low.pdf)

<sup>2</sup> Council of Europe. Electoral Law. Strassbourg: Council of Europe Publishing, 2008. Secțiunea "Referendums in Europe – An Analysis of the legal rules in European States"

<sup>3</sup> Aravantinou Leonidi, G. "The Abrogative Referendum in the Italian Constitution: Threat or Opportunity?", World Congress of Constitutional Law, OSLO, 2014. <http://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws16/w16-leonidi.pdf>

<sup>4</sup> <http://www.idea.int/elections/dd/country.cfm?country=110>

<sup>5</sup> Poldojnak, R., "Constitutional Reforms of the Citizen Initiated Referendums: Causes of Different Outcomes in Slovenia and Croatia." The XIth World Congress of IACL Oslo, 16-20 June 2014, Direct Democracy (Workshop No. 16)

<sup>6</sup> Council of Europe. Electoral Law. Strassbourg: Council of Europe Publishing, 2008. Secțiunea "Referendums in Europe – An Analysis of the legal rules in European States"

<sup>7</sup> Poldojnak, R., "Constitutional Reforms of the Citizen Initiated Referendums: Causes of Different Outcomes in Slovenia and Croatia", The XIth World Congress of IACL Oslo, 16-20 June 2014, Direct Democracy (Workshop No. 16)

endum, resulting in the citizens' possibility of requesting a state authority to initiate referendum procedures based on collecting signatures. E.g.: Poland (500.000 citizens can ask the Sejm to organize a referendum), Portugal (75.000 necessary signatures), Hungary (100.000)<sup>8</sup>.

## The Referendum in Romania

In Romania, national referendums – except those that are mandatory for the impeachment of the President or for revising the Constitution – can be organized to consult the population with regard to "matters of national interest"<sup>9</sup>. The practical experience of referendums in Romania has triggered debates especially on the validation requirements regarding the minimum turnout. In 2013, the quorum was reduced from 50% to 30%, a decision that generated both positive and negative feedback. Moreover, it was specified that "the result of the referendum is validated if the validly expressed options represent at least 25% of those registered on permanent electoral lists"<sup>10</sup>.

There are, however, certain aspects that were brought into discussion at different moments, such as the possibility for citizens to forward a request for referendum. For instance, Pârvulescu considers desirable the possibility of citizens initiating referendums, especially abrogative ones (such as the one in Italy), but organizes and carefully regulated in order to prevent political instability or their organizing by extremist groups<sup>11</sup>. According to the same author, the referendum initiated by citizens is also suitable for the local level.

Recently, the project of revising the Constitution includes the proposal of amending article 90 of the current Constitution, which refers to referendum initiation. Therefore, the project adds to the initial provision, through which the President calls the population for consultation, the possibility of initiating a referendum at national level by a number of 250.000 citizens. The 2014 report of the Venice Commission appreciates this addition, which eliminated presidential exclusivity over initiating the referendum nationally, but it also points to the issue that can be generated by the ambiguity of the expression<sup>12</sup>. The mentioned document recommends, in this regard, clarifying specific technical aspects concerning, for instance, establishing if the petition for the referendum includes the questions, who has the responsibility of formulating the questions

<sup>8</sup> Council of Europe. Electoral Law. Strassbourg: Council of Europe Publishing, 2008. Secțiunea "Referendums in Europe – An Analysis of the legal rules in European States"

<sup>9</sup> Defined and enumerated in Art. 12 of the Law on organizing and holding referendums (the law 3/2000, amended by the law 341/2013). In 2009, through a presidential decree (1507/2009), the object of the referendum referred to switching to a unicameral Parliament and reducing the number of MPs to 300.

<sup>10</sup> The Law 341/2013

<sup>11</sup> [http://adevarul.ro/news/politica/cristian-parvulescu-e-mare-potential-reprezentare-unui-curent-neo-legionar-romania-1\\_50aca2927c42d5a66387494d/index.html](http://adevarul.ro/news/politica/cristian-parvulescu-e-mare-potential-reprezentare-unui-curent-neo-legionar-romania-1_50aca2927c42d5a66387494d/index.html)

<sup>12</sup> European Commission for Democracy through Law. Opinion on the Draft Law of the Review of the Constitution of Romania. Adopted by the Venice Commission. 21-22 March 2014, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282014%29010-e>





representing the object of the consultation and what is the role of the Constitutional Court in this process<sup>1</sup>.

In its current form, the referendum law provides the possibility of organizing local and county referendums. The proposals of issues subject to referendum can be made by the mayor, by the president of the county council or by a third of the local/county councilors<sup>2</sup>. The citizens' petition for organizing local referendums is possible if they request the impeachment of the mayor or the dissolution of the local council<sup>3</sup>. For example, if the issue at hand is the impeachment of the mayor, organizing the referendum needs a request from the prefect, originating from at least 25% of the total number of voting inhabitants of that municipality. Additionally, there is the requirement that specifies that "this percentage must be fulfilled in each of the composing localities of the commune, city or municipality"<sup>4</sup>. There are practical obstacles in the situations when electoral lists are not updates. This task has to be performed by mayors<sup>5</sup>.

### Recommendations for Romania

- Taking into consideration the debates regarding the revision of the Constitution and the signals of European courts, which appreciate a more consistent citizen input when it comes to initiating consultations, we find it appropriate to introduce the possibility of organizing the referendum as a result of citizens' initiative.

- The activity of various states which allow citizens to initiate referendums indicates significant variations in terms of minimum number/percent of signatures collected for the initiation of the procedure (Switzerland 1%, Latvia 10%). In the case of Romania, the Constitutional revision project suggests 250.000 signatures (approximately 1.3% of the voting population). Establishing a minimum signature threshold should consider two effects as a result of adopting this decision: requesting a very large number of signatures can lead to slim chances of the initiative to materialize, due to mobilization difficulties. On the other hand, in certain conditions, a smaller number of requested signatures could generate suspicions regarding the organization of this procedure by groups with specific private interests.

- Most post-communist countries which included this option in their legislation followed either the model of Switzerland or that of Italy. Regardless of the model, introducing citizens' initiative for referendum requires the clear specification in the text of the law of the following elements:

- The initiation conditions (e.g. number of citizens)
- The issues which cannot be decided upon through referendum
- The role of state institutions (especially Parliament and Constitutional Court) throughout the entire process

<sup>1</sup> European Commission for Democracy through Law. Opinion on the Draft Law of the Review of the Constitution of Romania, 2014, p. 23

<sup>2</sup> Organizing a local referendum is mandatory if there are bills or legislative proposals regarding changing territorial limits of communes, cities and counties

<sup>3</sup> The law 286/2006 for amending the 215/2001 law on local public administration

<sup>4</sup> The law 286/2006

<sup>5</sup> The law on organizing and holding a referendum (the law 3/2000, amended by the law 341/2013, article 17, paragraph 2

- Quorum requirements
- The legal status of the results

- Regardless of whether or not the citizens' initiative for referendum will be included in the future legislation, according to the recommendations of IDEA (2008) and of the Code of Good Practice in Referendums, elaborated by the Council of Europe (2007)<sup>6</sup>, it is preferable to explicitly express the legal status of referendums in the text of the law. For instance, in the case of an optional referendum, especially if it is initiated by the authorities (which is currently the case in Romania), if it meets the validation conditions but the citizens' opinion does not have tangible effects, the result may be not only the erosion of the credibility of authorities, but also an alteration of the relevance of consultation and the discontent of the population. In the case of Romania, there is the precedent of the 2009 referendum, concerning reducing the number of MPs and introducing unicameralism. The text of the law should be clearer regarding the mandatory or the consultative nature of the referendum.

- One is aware of the importance of formulating questions with a format able to influence not only the significance given to the text by voters, but especially the answer. In the current state of the legislation, this element is less elaborated, leaving room for interpretation. A clearer specification of these elements in the law would reduce ambiguities, especially given the possibility of citizens' initiation of referendum.

- Regarding local referendum, a major difficulty now is the proper update of voter lists, which is the mayors' responsibility. The shortcomings at this level have direct consequences on the possibility of initiating this process for dismissing local officials, given the conditions mentioned by the law regarding a minimum signature threshold. To that effect, it is preferable to regulate the voter list updating process more strictly, either by introducing a means of control and strict sanctions, or increasing the input that prefects or other competent institutions might have in this process.

### III.3. Citizens' legislative initiative

As a practice of direct democracy, citizens' initiative<sup>7</sup> can increase the inclusion and participation degree of policy-making processes. As all the actions involving a collective mobilization of citizens, chance inequality resulting from the unbalanced resources of the citizens is noticeable<sup>8</sup>. Furthermore, for procedural reasons that could limit the real chance of mobilizing and acting, a part of the initiated projects had very low chances of taking all the necessary steps to discussing them in Parliament.

<sup>6</sup> Council of Europe. Resolution 235 /2007. Code of Good Practice on Referendums (adopted by the Council for Democratic Elections and the Venice Commission) <https://wcd.coe.int/ViewDoc.jsp?id=1133019>

<sup>7</sup> The literature mentions a difference between full-scale initiatives (which involve organizing a referendum as a last step) and agenda-initiatives (when initiatives are taken over by the legislative body, which follows the procedures provided by law). See Setälä, M.&T. Schiller, 2012. Citizens' legislative initiative are part of the second category

<sup>8</sup> Setälä, M. & T. Schiller, Eds. Citizens Initiatives in Europe: Procedures and Consequences of Agenda-Setting by Citizens. Palgrave MacMillan, 2012



## Citizens' legislative initiative in other democracies

The practice of the legislative initiative from citizens varies in a few significant ways, such as: the possibility of using this instrument at the national and/or local level, the minimum number of adhesions of the citizens supporting the initiative, the topics which cannot make the object of initiatives, the deadlines that have to be respected throughout the process and the procedures applied by legislative assemblies to which these initiatives are forwarded<sup>1</sup>. According to IDEA (2008), 22 European countries allow citizens' legislative initiatives, the number of states offering this possibility at the local level being significantly smaller (7). According to the same study, only two European countries (Georgia and Montenegro) allow legislative initiatives at both levels, namely national and sub-national. Regarding the minimum adhesion threshold, their number varies in each case, in Slovenia the requirement being 5000 signatures, 50.000 in Italy and Lithuania, and 100.000 in Austria and Poland<sup>2</sup>.

In Europe, Austria is the country with the most intense practice of citizens' legislative initiative (IDEA 2008). Of post-communist countries which have frequently put into practice the legislative initiative, there is Poland, where this type of initiative can concern any object, except tax law and Constitutional amendments. The 2008 IDEA report notes that among citizens' legislative initiatives there were projects on improving teacher training programs, improving the legislative framework for environmental protection, offering financial support to single parent families. In Poland, reaching the number of necessary adhesions involves two steps: collecting 1000 signatures to register the initiative and collecting 100.000 signatures, in 3 months time from its publication, if the initiative received notice of legality. The signature lists are verified by the National Electoral Commission, and after validation, the legislative project is sent to Parliament for debate.

## Citizens' initiative in Romania

In Romania, the citizens' initiative is regulated for two situations: legislative initiative and the revision of the Constitution. Both situations are detailed by the Constitutions and they involve specific conditions of gathering a minimum number of adhesions. Therefore, a number of 100.000 signatures of voting citizens are necessary for the legislative initiative. Furthermore, article 74 highlights the need for the citizens who support the proposal "to come from at least a quarter of the country's counties, and in each county and in Bucharest, respectively, there have to be at least 5000 registered signatures supporting this initiative."<sup>3</sup> Not surprisingly, the conditions are more restrictive in the case of citizens' initiative for the revising of the Constitu-

tion<sup>4</sup>. This needs the support of 500.000 voting citizens, with the additional requirement that they come from at least half of the country's counties, and in each of these counties or in Bucharest there have to be at least 20.000 registered signatures supporting this initiative"<sup>5</sup>. Article 74, paragraph 2 of the Constitution also provides that "tax issues, international issues, amnesty and pardon cannot make the object of citizens' legislative initiative".

The law on the exercise of the legislative initiative by citizens (the law 189/1999 republished in 2004), describes certain procedures associated to each step of the process, including the deadlines that have to be respected in each of these steps. To resume, the legislative proposal is promoted by an initiative committee comprised of 10 voting persons, who will represent the citizens supporting the legislative project through their signatures. The committee is responsible for registering the proposal in Parliament, after maximum 6 months from its publication in the Official Gazette of Romania. The publishing in the Official Gazette of Romania is made only after the Legislative Council has given its approval for the proposal<sup>6</sup>. There are certain aspects concerning collecting signatures (for which the initiators have 6 months' time) and certifying the list of supporters, this being the attribution of mayors<sup>7</sup>. The Constitutional Court checks supporter lists and the constitutional character of the legislative proposal and it rules "in 30 days' time from the notification of the legislative proposal and in 60 days' time from the notification of the proposal to revise the Constitution."<sup>8</sup>

With regard to the actual practice, a 2011 analysis of Clean Romania<sup>9</sup> notices the modest use of the citizens' legislative initiative in Romania – partly a consequence of the delay that accompanied the adoption of a specific legislative framework that would regulate the procedure (the law was adopted in 1999) – and the procedural difficulties surrounding this process at the level of implementation. In this respect, the mentioned analysis specifies the two citizen legislative initiatives that concerned financing education (2004 – proposal for setting the education budget at minimum 6% of the GDP) and health, respectively (2009- proposal for attributing 6% of the GDP to the health system). In these two legislative projects, the main difficulties regarded, according to the Clean Romania analysis, the restrictive conditions generated by the minimum number of necessary signatures (especially in terms of the rules of their

<sup>1</sup> International Institute for Democracy and Electoral Assistance (IDEA), Direct Democracy, 2008, [http://www.idea.int/publications/direct\\_democracy/upload/DDH\\_inlay\\_low.pdf](http://www.idea.int/publications/direct_democracy/upload/DDH_inlay_low.pdf)

<sup>2</sup> The Resource Center for Public Participation, Public participation in Parliaments of European countries, 2007, <http://www.ce-re.ro/upload/publicatie%209.pdf>

<sup>3</sup> Article 74, paragraph 1 of the Romanian Constitution

<sup>4</sup> The requirements that have to be met – as number of signatures – for the initiatives regarding Constitutional amendments tend to be stricter in other countries as well. For examples in Lithuania, a legislative initiative requires 50.000 signatures (approximately 1.84% of the electorate), while for the initiative of revising the Constitution there are necessary over 300.000 signatures (approximately 11.03% of the electorate). According to the 2008 IDEA report, p. 88

<sup>5</sup> Art. 150, paragraph 2 of the Romanian Constitution

<sup>6</sup> Article 3, paragraph 2 of the law 189/1999, republished, Official Gazette No. 516/June 8 2004

<sup>7</sup> Article 5, paragraph 1 of the law 189/1999 provides that, in urban municipalities, certifying signature lists can be made "also through officers of the city hall invested by mayors with this specific purpose"

<sup>8</sup> Article 7, paragraph 3 of the law 189/1999

<sup>9</sup> The efficiency of the citizens' legislative initiative must increase. ARC ANALYSIS: is participative democracy functioning in Romania?, <http://www.romaniacurata.ro/eficienta-initiativei-legislative-a-cetatenilor-trebuie-sa-creascaanaliza-arc-functioneaza-in-romania-democratie-participativa/>



geographical distribution), and the insufficient information on the citizens' legislative initiative at the local level, which can cause applying verification procedures and certifying signature lists in a late or wrongful manner.

## Recommendations for Romania

In order to enhance this direct democracy instrument in the sense of making it more accessible, we consider the improvement of the current Romanian practice should target two levels, as it follows:

- Regarding the minimum number of signatures, although the 6 month period during which these can be collected is rather reasonable, the geographic requirements, together with the minimum threshold of 5000 signatures/county may represent obstacles for the citizens who initiate legislative proposals. In this regard, there can be two scenarios:

1a - eliminating the geographical quorum without modifying the threshold of 100.000 signatures (this is the practice of other states regarding citizens' legislative initiative, which allows collecting signatures without additional territorial representation requirements for the signatories<sup>1</sup>)

1b – maintaining the requirement of the origin of signatories from a minimum percentage of counties, while reducing the minimum threshold to 5000 signatures/county and maintaining the general threshold to 100.000 signatures

Although option 1a can simplify the procedure the most, it is associated with the controversy surrounding overrepresentation of territory-concentrated local interests.

Option 1b reduces the size of the previously mentioned controversy (as it maintains the criterion of representation of a specific number of territorial units) and it can truly increase the chances of citizen mobilization.

- The law 189/1999 (republished in 2004), in its current form, contains clear provisions regarding the deadlines that mayors should respect when certifying supporter lists and the sanctions applied if they refuse to certify the lists within the term provided by law (article 5 and article 11). We find it preferable for the legal means of control and the sanctions to be accompanied by positive measures targeting, firstly, informing and making local authorities responsible with the citizens' right to legislative initiative, and secondly, the role of city halls, responsible with the proper course of this process.

<sup>1</sup> See <http://www.direct-democracy-navigator.org/>, for examples of states with legislation that does not impose these requirements.



## APPENDICES

### APPENDIX I.1

#### Technical suggestions for electing MPs

Based on the experience of other European democracies, we consider that an open list proportional electoral system for electing MPs and local and county councilors would be beneficial from the following viewpoints:

- It would increase the competition within parties without affecting their organizational coherence,
- It would eliminate the possibility of creating safe seats,
- It would stimulate all the candidates on the list, regardless of their position, to become truly involved in the electoral campaign,
- It would give all the candidates on the list the opportunity of being elected.

We consider that introducing open lists would complement a more favorable framework for the emergence of new political parties. Founding political parties in an easier manner increases the level of competition within the party system, while open lists would increase the level of competition within parties. The basic principle we would like to invoke is that, just as in the market economy, a higher level of competition between actors works to the advantage of the consumer, in this case the voters.

Taking into consideration the specificity of the Romanian society, we recommend introducing the following procedural elements:

**1.** Voters have a single vote, given either to a party, to a candidate on a party list, or to an independent candidate. The list of candidates that appears on the ballot is controlled by the parties, with each party proposing a fixed number of candidates for each constituency. This number is the product of the size of the constituency multiplied by 1.5 (the result being rounded up to the next integer, where applicable).

*E.g. In a county in which there have to be elected 10 deputies, a party will propose  $10 \times 1,5 = 15$  candidates.*

*In a county in which there have to be elected 4 senators, a party will propose  $4 \times 1,5 = 6$  candidates.*

Certain voting systems involve choosing a candidate from a list of candidates (such as Netherlands), while others allow voting for many candidates from the same party or from different parties (Latvia or the Czech Republic). Also, in some countries (Belgium or the Czech Republic), parties arrange the list and voters can re-arrange the list according to the preferences, while in others (such as Finland) candidates are randomly placed on the ballot, without taking into account the preference of the party.

Our proposal is for a system in which the voters can cast a single vote, for reasons of simplicity not only for voters, but also for the administration of the electoral process. Romanian voters

are used to applying a single stamp on the ballot, either for a party (until 2004), or for a party candidate (2008 and 2012); the same thing occurs at the other types of elections in Romania (local, MEPs, presidential).

Moreover, we recommend that parties propose arranged lists that would reflect their own preferences for some candidates (similar to a closed list). This element allows parties to have a say regarding their own candidates, as it can serve as an indication for those faithful voters of the party who have not made a decision on what candidate to choose from that specific party.

At the same time, we recommend for voters to be given the opportunity to choose between voting a party list without showing preferences for certain candidates (thus expressing a preference for the party as a whole) and voting a candidate from a party list. In case voting for a single candidate would become mandatory, the voters who do not have enough information on them tend to randomly vote from the candidate list of the party. For instance, there are systematic list effects (candidates on top and on the bottom of the list are more likely to be voted).

**2.** We propose the existence of an electoral threshold for individual candidates of 4% of the votes received by the party in a specific constituency, in order to have priority in the seat allocation process.

A few of the countries with an open list proportional system do not impose a minimum threshold for individual candidates (Estonia, Latvia, the Netherlands, Poland and Slovenia). Other countries, such as Austria, the Czech Republic and Sweden have such thresholds. In case of the latter, when a party wins a seat in a constituency but neither of its candidates meets such a threshold, winners are elected from the list proposed by the party. The role of the threshold is to prevent the situation in which very few voters express their preference for a certain candidate, but these preferences would suffice in determining the candidates who receive mandates.

For Romania, we recommend such a threshold of 4% of the votes for a party in the constituency where the list is presented. The threshold is smaller than that in the Czech Republic (of 5%) and in Sweden (of 8%).

*E.g. If in a county, a party obtains 120.000 votes, a candidate must obtain at least 4.800 votes in order to have priority in the process of distributing mandates regardless of his/her position on the party list.*

For instance, when in a constituency a party wins 5 mandates and 3 of its candidates have exceeded the threshold of 4% of the total votes received by the party (meaning the total votes for the party or for its candidates) in that constituency, then (i) the 3 candidates and (ii) another 2 candidates following the party list for that constituency will enter Parliament. If the party



receives 5 mandates but there are 7 candidates on the list who exceeded the individual 4% threshold, then the first 5 candidates with the greatest number of expressed preferences will receive the mandates.

Even if this condition adds an element of complexity and reduces the influence of the voters' preferences in relation to the preferences of political parties, it has the advantage of contributing to the elimination of those situations which, in time, would alter the trust in the electoral system. The absence of a threshold and the fact that people can vote either for a party or for a party candidate could lead to the emergence of situations in which mandates are attributed to candidates who received a small number of preferences.

**3.** We propose a national electoral threshold of 4% for parties and 8% for party coalitions, as well as an alternative electoral threshold of 12% for minimum four constituencies. There are very few countries with an electoral threshold higher than 5%. In Europe there are only three examples: Liechtenstein (8%), Russia (7%) and Turkey (10%). At the same time, the 5% electoral threshold is frequently used in countries which have threshold electoral systems.

In the recent years there have been more and more voices supporting lowering the threshold under 5%<sup>1</sup>. Such a position, but from a wider perspective, is supported by the Resolution 1547/2007 (State of human rights and democracy in Europe) of the Parliamentary Assembly of the Council of Europe, which recommends an electoral threshold of maximum 3% for national elections<sup>2</sup>.

We consider that a 4% threshold would further continue to contribute to the limitation of excessive fragmentation, but it would favor the emergence of new parties. Also, the level of proportionality of results grows as the electoral threshold lowers<sup>3</sup>. Austria, Finland, the Netherlands, Slovenia and Sweden are among the countries with open list proportional systems with thresholds of 4% or less.

### The alternative threshold

At the same time, we recommend applying an alternative electoral threshold that would allow the parties obtaining 12% of the total votes in at least 3 constituencies to enter Parliament. This proposal anticipates the idea of a regional party, which becomes possible with the elimination of the geographic criterion from the law of parties. Moreover, the necessity of exceeding this threshold in three county constituencies limits the

<sup>1</sup> Amann, M., T. Darnstädt & D. Hipp, "Democratic Deficit: Is Germany's Parliamentary Hurdle Obsolete?" *Der Spiegel*. 2013 (8 octombrie). <<http://www.spiegel.de/international/germany/experts-5-percent-parliamentary-hurdle-in-germany-should-be-lowered-a-925817.html>>

<sup>2</sup> In well-established democracies, there should be no thresholds higher than 3% during the parliamentary elections. It should thus be possible to express a maximum number of opinions. Excluding numerous groups of people from the right to be represented is detrimental to a democratic system. In well-established democracies, a balance has to be found between fair representation of views in the community and effectiveness in parliament and government." (Parliamentary Assembly, Council of Europe, Resolution 1547 (2007), "State of human rights and democracy in Europe") <<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/ERES1547.htm#1>>

<sup>3</sup> Lijphart, Arend. *Electoral Systems and Party Systems in Twenty-Seven Democracies, 1945-1990*. Oxford: Oxford University Press, 1994

possibility for a powerful local leader to start a party that would act in a single local electoral fief.

The idea of an electoral threshold is present even now in the electoral legislation (6 deputy mandates and 3 senator ones obtained with over 50% in uninominal colleges), therefore this proposal adapts this principle to the context of the voting lists and to the elimination of electoral colleges. 12% is a value proposed after the Swedish model, where the national threshold is of 4%, but a party, if it obtains 12% in an electoral constituency, can obtain seats in Parliament for that specific constituency.

**4.** We recommend laxer conditions regarding the establishment of organizations representing ethnic minorities, as well as imposing a minimum number of three candidates on the list of each ethnic minority organization which runs for election, in order to increase the level of competitiveness in electing minority representatives.

According to the Romanian Constitution, article 62, paragraph 2, "the organizations of citizens belonging to national minorities, which fail to obtain during elections the number of votes necessary to be represented in Parliament, each have the right to a deputy seat, in accordance with the conditions of the electoral law. The citizens of a national minority can be represented by one organization."

We recommend maintaining some of the conditions applied until the present moment. In this manner, ethnic minorities would be represented by organizations that are part of the National Minorities Council or by legally established organization that presents to the Central Electoral Bureau, in 30 days from the date when the election day is set, a list of members containing a number of at least 15% of all the citizens who, at the last census, declared they are part of that minority.

We support the elimination of the following condition, present in the 2008 electoral law: "If the number of necessary members is larger than 20.000 persons, the list of members has to contain at least 20.000 people residing in at least 15 counties and in the municipality of Bucharest, but no less than 300 persons for each." This provision wrongfully imposes an extra condition to minorities who are geographically concentrated, offering an unjust advantage to the organizations which are in the National Minorities Council. Eliminating this provision would increase the equality of chances to represent other national minorities.

Regarding the election of a deputy by national minorities, we support maintaining the threshold of 10% of the average number of valid votes cast in the country for a deputy.

Additionally, in order to capitalize the advantage of the open list, we recommend imposing a number of minimum three candidates on the list of every national minority organization competing in the elections. This would be a first step toward increasing the level of electoral competition in terms of choosing minority representatives. There are studies that reveal that these have an overall weak parliamentary activity compared to the other MPs<sup>4</sup> and that their voting is dominated by clientary practices which alter the idea of competition<sup>5</sup>.

<sup>4</sup> Călușer 2008

<sup>5</sup> King, R. & C. Marian. "Minority Representation and Reserved Legislative Seats in Romania", *East European Politics and Societies*, Volume 26, Number 3, 2012, pp. 561-588



5. We suggest that, in order to clear the results, independent candidates be treated similarly to parties with a single candidate, without requiring them to exceed the national or the alternative threshold.

In order to be included in the electoral competition, independent candidates should be voted by at least 4% of the total number of voters registered on the permanent electoral lists of their constituencies. A frequent approach is that in which each independent candidate is perceived as a party with a single candidate, without being subject to the condition of a national threshold.

We recommend applying this approach in such a manner that an independent candidate be declared winner when he/she obtains in the constituency the necessary number of votes to win a seat in the competition with the other parties or independent candidates.

## 6. Counting ballots and attributing mandates

Using a system based on open lists would somehow increase the complexity level of the process of ballot counting. After polling stations close, ballot counting involves two steps: (1) counting the votes obtained by each party (as until now); (2) counting the preferences within very list. Our proposal allows taking these two steps simultaneously, without having to count the same ballots twice.

In order to simplify the ballot counting process, each party and each candidate should receive a code. For example, depending on their order on the ballot, parties would receive the code 01, 02, 03, etc. Each candidate on each list will also have a similar code. The first candidate on each list will have the code 01, the second will have the code 02, etc. A vote for a party, without expressing a preference, will receive the code 00, thus each ballot will contain a unique code, depending on the location of the stamp. For example, code 0507 would mean a vote for the 7th candidate on the list of the 5th party on the ballot. 0300 would mean a vote for the third party on the ballot, without indicating any preference. All codes would be centralized in the official report concluded at the polling station.

Some states that use the open list system, such as Sweden, leave the task of counting the ballots for parties to the polling station staff, while counting the preferences inside every list is the responsibility of regional or central electoral authorities. In Romania's case, however, we consider it would be beneficial to handle the entire ballot counting process, including counting preferences within lists, inside polling stations, after they close. The number of votes representing 4% of all the votes obtained by that party has to be calculated at the level of the constituency in order to establish the minimum number of preferences that a candidate has to obtain in order to be attributed with a mandate irrespective of his/her position on the party list. Party candidates exceeding this threshold individually are then arranged according to the number of preferences, the distribution of mandates being done depending on the number of mandates each party is entitled to in a certain constituency. In terms of national redistribution, our recommendation is for mandates attributed in this step to be attributed only to the candidates who exceeded the individual 4% threshold in their own constituency, but who did not receive a mandate after the first stage. Parties would arrange all their candidates in this situation according to the number of preferences, therefore outlining a national list, and mandates would be attributed at

national level depending on this list. This rather complicated process of counting ballots raises issues of organizing polling stations. It is known that legislative elections are the most demanding in terms of ballot count, due to the large number of parties and candidates. Our proposal of limiting the number of party candidates on electoral lists would partially resolve this issue. Taking into consideration the magnitude of the effort that comes with administering the voting process in the polling station on election day and counting all the ballots for parties, writing official reports and communicating the results, introducing an additional element to the responsibility of the polling station staff could generate problems with counting ballots.

Apart from all the other attributions and procedures involved in the electoral process, this procedure raises the issue of training and even professionalizing the polling station staff. It would therefore be beneficial to establish a permanent structure attached to the Permanent Electoral Authority to handle the continuous training of electoral officials.

In the medium term, the manner to efficiently administer using open lists involves the use of electronic voting machines and, consequently, of digital ballots. Once the ballot is inserted in the voting machine, it will attribute the vote to a party as well as to a candidate on the list, so counting ballots would be significantly easier.

7. In order to better inform the citizens about the mechanism of the open list system, the PEA (Permanent Electoral Authority) should assume the task of writing a voter's guide, which would explain, among other, the procedure on election day. The guide would be available in a printed version, distributed to all electoral constituencies and mailed to voters, but also as an electronic version available online.

## APPENDIX I.2

### **Viewpoint on the LP 131/2014, a legislative proposal for electing the authorities representing local government, but also for amending the public administration law no. 215/2001, as well for amending the law no. 393/2005 regarding the statute of local electees**

Our proposals concern three elements which have already been discussed in the report in appendix I.1:

- I. *Electing mayors in two voting rounds*
- II. *Electing country council presidents in two voting rounds*
- III. *Introducing open lists for electing local and county councils*

We will further explain other elements of principle:

#### **IV. *Eliminating the threshold from the electoral formula for voting local and county councils.***

In the case of local elections, we consider that eliminating the electoral threshold would be beneficial. Although we support the existence of an electoral threshold in legislative election, we perceive the existence of the threshold as unnecessary in local elections, not only for local, but also for country councils. Any party or independent candidate with sufficient votes to meet the electoral coefficient should obtain a mandate. In the case of local or county councils, the issue of political fragmentation is less acute than in the case of national parliaments, where a high level of fragmentation – meaning the presence of





an overwhelmingly large number of parties with few mandates – can provoke difficulties in the law-making process, because of the need to form majority coalitions with several partners, which could lead to prolonged negotiations and the difficulty of balancing a large number of different interests.

From the same perspective, the presence of a large number of parties at the law-making process at local level may be beneficial for the efficiency of local government, by placing on the local political agenda several debate issues and by involving many actors in the decision-making process. This element is in accordance with the possibility of emergence, at the local level, of new political parties, with interests limited to the local level, in accordance with the provisions which are about to be introduced in the law of political parties. Therefore, if there is a real intention of parliamentary political parties to lower barriers regarding not only the emergence of parties, but also their access to public office, eliminating the electoral threshold at local level is a necessary step that has to be associated with the provisions surrounding the conditions for entering the competition (especially a necessary number of supporters) and for financing electoral campaigns (especially regarding the necessary number of votes for discounting expenses from the state budget).

#### *V. Eliminating the possibility of simultaneously running for local and county council*

Candidacy for occupying different positions in public office encourages certain “safe seats” for candidates supported by the party, a phenomenon which is however allowed through closed lists, provided by the legislative proposal for the local council, as well as for the county council. A candidate occupying a top position in the party list, depending on the size of the party, has a guaranteed mandate. Moreover, a candidate elected in both a local and a county council would then have the possibility to choose the public office he/she wants.

Also, the place of a candidate who obtained a mandate as a local or as a county councilor and then renounces will be taken by other candidate from the list, in accordance with the closed party list principle. Therefore, placing a high ranked candidate on top of the list to draw votes, followed by his/her renouncing at the mandate, is the equivalent of misleading the electorate and it can raise legitimacy issues for those who take on the mandate as “replacement”.

From another point of view, a person's option to run for a public office of his/her choice (local councilor, county councilor, mayor, even county council president) should be based on the person's option for a certain institution, weighing personal competences and political projects with the attributions and profile of each institution. The fact that one person is given the possibility to candidate for several offices at the same time would show that, in the case of the candidate in this type of situation prevails the desire to hold political office, its nature being of secondary importance. All these elements can alter the purpose of electoral competition for each institution.

At the same time, we consider that the possibility for a person to run for mayor and for local councilor, respectively for county councilor and county council president should continue to be allowed within the same electoral constituency. A candidate who wished to activate on the local administration of a city or a county but who belongs to a party with slim chances of ob-

taining a mandate for mayor and for county council president respectively should have the possibility of obtaining a mandate of local councilor, and of county councilor respectively.

#### *VI. Clarifying the concept of “representing both sexes” on party candidate lists*

Article 7, paragraph 1 of the current legislative proposal provides the necessity of both sexes being represented on the party lists of candidates. However, in the absence of a clear understanding regarding the number or percentage of women who should be on the lists and of possible indications on their position on these lists, this provision is vague and leaves room for interpretation, which dilutes its purpose: that of enhancing women's access to the electoral competition and, implicitly, in the public offices of their choice. In the current wording, a possible interpretation of the term interpretation could either mean party candidate lists reflecting the percentage distribution of the two sexes in a certain electoral constituency, or the simple introduction of a female candidate on the list. We consider that Romanian electoral laws should provide the introduction of gender quotas of minimum 30%, together with the identification of a formula which would ensure access to the same percentage to local legislative elections or to the national election<sup>1</sup>.

#### *VII. Re-thinking the way in which the airtime is distributed to party candidates and electoral alliances, respectively to independent candidates.*

Through the current legislative proposal, article 68, paragraph 1, parliamentary political parties have a preferential treatment compared to non-parliamentary parties or to independent candidates, regarding free access to public services of radio and television. The access should be free in a quantum proportional to the number of cities in which there are submitted candidate lists (without being limited to minimum 50% of the county) or the costs should be calculated according to the same unit for both parliamentary and non-parliamentary parties.

We also consider that the broadcasting time for independent candidates, as regulated by the current proposal at article 68, paragraph 7, is not in accordance with the principle of an electoral competition equitable for all competitors. The access of independent candidates to territorial studios should be identical to that of the other electoral competitors (parties or alliances). A total 5 minute broadcasting time for the entire period of the electoral campaign is insufficient for an independent candidate to present his/her electoral message.

Additionally, if an independent candidate must meet the same conditions as a party or an electoral coalition regarding the number of necessary supporters for entering the competition, allotting less airtime would mean discriminating the independent candidate. We consider that the airtime offered to independent candidates in an electoral constituency should not be shorter than the shortest airtime given to a party or to an electoral alliance, according to the results of the calculations made by the Romanian Television Corporation and by the Romanian Radio Broadcasting Company, after the establishment of candidatures, according to article 68 (1) of the present legislative proposal.

<sup>1</sup> In practice, this would involve a combination between “legislated quotas” and “reserved seats”. A third possibility is creating a legal framework that would encourage parties to introduce “voluntary quotas” base on internal regulations, which can differ from one party to another.



### VIII. *Introducing measures to increase the level of transparency of the electoral process.*

We have elaborated a series of proposal meant to increase the level of transparency of the electoral process, proposals with regard to the access of observers to the electoral process, as well as the functioning of electoral bureaus.

Apart from the amendments to the articles from the present legislative proposal, we annex to this document a set of proposals and broader principles, elaborated by Expert Forum and by the Center for the Study of Democracy, supported by other 4 organizations of the civil society and by 15 Romanian international electoral observers. This document has already been sent to the parliamentary Commission in charge with the elaboration of electoral laws.

### **Articles from the legislative proposal and proposed amendments**

#### Article 1(4)

Is amended in terms of introducing county council presidents among the positions elected by direct voting, in county electoral constituencies, through uninominal voting.

#### Article 1(5)

Is amended in the sense of eliminating county council presidents from the positions elected through indirect voting by county councils.

#### Article 7(1)

The article has to be modified in order to clarify the following provision: "Candidate lists for electing local and county councils must be drawn in a manner that would ensure representation of both sexes, except the ones containing a single candidate."

#### Article 7(5)

Is amended in terms of eliminating the possibility for a person to run at the same time for local councilor and county councilor, respectively for mayor and county councilor.

#### Article 15(1)

Is amended in terms of introducing the election for county council presidents in the same polling stations with mayor, local councilor and county councilor elections, according to the principle of electing county council presidents by direct voting.

#### Article 26

Is amended in terms of introducing representatives of independent candidates among the members of Electoral Bureaus, at paragraphs (2), (3), (4).

Paragraph 5 is amended in order to allow adding persons from the list of electoral bureaus from the constituency which do not have enough members. The following text is added in this sense:

"Additional members of electoral constituency bureaus are elected from this list, in the cases when the total number of representatives submitted according to paragraph 14 is smaller than the number of members of the electoral bureau."

Paragraphs (12), (14), (15), (16) and (18) are amended to introduce the terms "independent candidate" to the list of electoral competitors.

Paragraph 15 is amended to reduce the number of representatives of the same list of candidates or of the same candidate to an electoral constituency bureau. With this regard, the follow-

ing text is eliminated:

"If the total number of submitted representatives, according to paragraph (14), is smaller than the number of members of the electoral bureau, the process of assigning representatives is repeated until all the positions are filled. Only political parties, political or electoral alliances and citizen organizations belonging to national minorities who have proposed multiple representatives for the same electoral bureau are included in this stage. A political party, a political or an electoral alliance cannot have more than 3 representatives in the electoral bureau of the same constituency." The text will be replaced with the following: "A political party, a political or an electoral alliance cannot have more than one representative in the electoral bureau of the same constituency."

Also, the following text will be added: "but no more than one representative for each electoral alliance, parliamentary political party or citizen organization belonging to national minorities."

Paragraph (17) is eliminated.

#### Article 30

Paragraph (4) is amended to replace the penultimate phrase with the following text:

"The persons referred to in the list, who are not assigned presidents or president deputies, are available to the president of the tribunal for the replacement, in special cases, of holders established according to paragraph (2) and for the completion of electoral bureaus, in case the number of representatives proposed by electoral competitors is smaller than the number of members of the electoral bureau of the polling station."

Paragraphs (7), (8) and (14) are amended to introduce the terms "independent candidate" in the list of electoral competitors.

#### Article 38(5)

The following text will be added: "but no more than one representative for every electoral alliance, parliamentary political party or citizen organization belonging to national minorities."

#### Article 43

Paragraphs (1) and (2) are amended to introduce the terms "independent candidate" to the list of electoral competitors.

#### Article 48

Is amended in term of eliminating the exception through which a person is allowed to run at the same time for local and for county council in the same constituency.

#### Article 49 (1)

Is amended in term of introducing the county council president among the offices for which electoral competitors can submit candidatures, according to the principle of electing county council presidents through direct voting.

#### Article 68(1)

Is amended in the sense of eliminating the stipulation of free access of non-parliamentary political formations to public territorial radio and television services conditioned by submitting candidate lists in minimum 50% of the electoral constituencies on the territory of the county found on the coverage area of those specific electoral studios.

Also, the same article and paragraph is amended in the sense of eliminating the conditioning of free access of non-parliamentary political formations to national public radio and



television services by submitting candidate lists in minimum 50% of the electoral constituencies in 15 counties.

#### Article 68(7)

Is amended in terms of increasing the airtime at territorial studios for independent candidates for maximum 5 minutes, added up throughout the entire electoral campaign, to a level identical with that of other political formations registered in the competition.

#### Article 83

Is replaced with the article proposed by the coalition of NGOs and international observers through the letter addressed to the common Commission of the Chamber of Deputies and of the Senate for the elaboration of legislative proposals of electoral laws, on April 16th, 2015.

Following article 83, we recommend introducing an article with the following content:

Article x. – (1) The persons accredited under the present law, together with the members of the electoral bureaus, may assist to all the electoral procedures of electoral bureaus.

(2) In the sense of the present law, the understanding of “accredited persons” is the following:

- a) internal and external observers;
- b) internal and external representatives of mass-media;
- c) delegates of political parties, of citizen organization belonging to national minorities, of electoral or political alliances, as well as of other independent candidates participating in the elections

(3) Representatives of non-governmental organizations that have as object of activity defending democracy, human rights or observing elections, which are legally constituted with at least 6 months before election date, can be accredited as internal observers, along with representatives of parties, of political formations or of independent candidates.

(4) The persons designated by the management of mass-media institutions as internal representatives of the mass-media can be accredited. The persons designated by these institutions as internal representatives cannot be politically affiliated. The institutions requesting the accreditation must present the documents attesting the activity on the field of mass-media no later than 10 days prior to election day.

(5) The accreditation of internal observers and of mass-media internal representatives, political party delegates, citizen organizations belonging to national minorities, political or electoral alliances, as well as independent candidates is done by the Permanent Electoral Authority. The registration is done by petitioning the Permanent Electoral Authority in writing or via electronic mail starting with five days prior to the formation of the Central Electoral Bureau and no later than five days prior to the elections/voting round. The application is made by the management of non-governmental institutions or of county organizations of political parties, political and electoral alliances or of independent candidates.

(6) The accreditation of external observers and of mass-media external representatives is made by the Permanent Electoral Authority, at the suggestion of the Ministry of Foreign Affairs, beginning with five days prior to the formation of the Central Electoral Bureau and no later than five days prior to the elections/voting round.

(7) The accreditation is available for all electoral constituencies. Accreditations for the first voting round are available for the second one as well.

(8) Accredited internal and international observers are given a unique identification number and an accreditation document, which they will have to present as an original document or as a copy in order to identify themselves as legitimate accredited persons.

(9) For the centralization of accredited internal and international observers, as well as for the internal representatives of mass-media institutions, the Central Electoral Authority will establish an Electronic Registry of Observers. The registry will be published on the website of the institution and it will include the name, the institution or the organization requesting the accreditation, as well as the identification numbers of the accredited persons.

(10) Accredited persons have the right to assist to all electoral operations performed at all levels by electoral bureaus or administrative institutions involved in electoral operations and at the meetings of electoral bureaus. Accredited persons can in no way intervene in organizing and coordinating elections. Any act of electoral propaganda, as well as breaking the accreditation act in any way leads to legal sanctions, the electoral bureau that took act of the illegality suspending the accreditation, and in the day of the elections the accredited person is immediately removed from the polling station. Accredited persons have the right to consult and request copies of electoral documents and official reports of electoral bureaus and they also have the right to signal verbally and in writing any irregularity to the president of the electoral bureau, which immediately examines the situation. Informing the author of the notification is mandatory.

(11) Complaints regarding the accreditation or the rejection of the accreditation request can be submitted after maximum two days from publishing the decision at the Court of Appeal having jurisdiction over the entity and are resolved by it in maximum two days from its registration. The ruling is definitive.

(12) Complaints regarding the Permanent Electoral Authority rejecting the accreditation request are submitted in maximum two days from communicating the response to the Bucharest Court of Appeals and are resolved in two days from their registration. The ruling is definitive

Within transitory and final provisions, we recommend introducing the following provision:

In maximum 90 days from the enforcement of this law, the Permanent Electoral Authority will elaborate the Observer's Code, containing a detailed presentation of the articles of the present law.

#### Article 92(2)

Amended with the text: “Voters who, at 21,00 are waiting in the polling station or outside it can exercise their right to vote.”

#### Article 100(1)

Amended in terms of eliminating the electoral threshold.

#### Article 100 (22)

Amended in the sense of introducing the “open list” principle, according to which voters can express their preferences for the candidates on electoral lists.

#### Article 101(2)

Amended in the sense of introducing a compulsory addition of a second round of voting, if neither candidate obtained a majority of votes in the first voting round. Therefore, the candidate who obtains at least 50%+1 of all valid votes is declared mayor.





If neither candidate reaches this threshold, a second round of voting is organized two weeks after the first round, when the first two candidates with the largest number of votes won in the first round will compete against each other.

In case two or more candidates occupying the first position have won the same number of votes in the first round, all candidates in this situation will participate to the second voting round.

In case two or more candidates occupying the second position have won the same number of votes in the first round, all candidates in this situation will participate to the second voting round, along with the candidate occupying the first position.

#### Article 136(9)

Article 101 of the law 215/2001, including subsequent amendments and additions, is amended in the sense of introducing the majority vote with two rounds for electing county council presidents, after the method explained in the situation of electing mayors through two rounds of majority voting.

#### Article 138(1)

Article 2 of the law 393/2004, including subsequent amendments and additions, is amended in the sense of introducing county council presidents among the offices chosen through direct voting and eliminating them from the offices elected through indirect voting.

### APPENDIX I.3

#### Technical suggestions concerning the procedures of organizing elections

Besides the utilized electoral formula, elements of electoral procedure are equally important when discussing the legitimacy of electees in a democracy. The electoral legislation does not currently offer complete transparency of the process and it leaves room for onerous practices, which maintain the suspicion referring to the fairness of the elections, amplify the people's lack of interest in participating to elections and cast a shadow over the entire mandate of those elected.

We consider that the electoral legislation in Romania should be reformed taking into account the standards and the international good practices, respecting the commitments assumed within signed international conventions. These formulate and explain the necessary elements for the adoption and implementation of a legal framework that would ensure the transparency and fairness of the electoral process.

More specifically, we formulate the following recommendations:

- *Publishing a unitary Electoral Code, containing the entire electoral legislation*

We recommend harmonizing the electoral legislation in a single Electoral Code that contains the legislation on every type of vote and on organizing referendums. The Permanent Electoral Authority had this initiative in 2011, but its Electoral Code has not been subject to voting. We recommend printing the Electoral Code by official printing institutions and periodically publishing a large number of copies to encourage the correct information of voters and electoral competitors.

Complementary, we recommend printing and distributing guides on the voting procedure before electoral campaigns, as

we have explained in the previous section.

- *Lawfully forbidding the adoption of government emergency ordinances that change the electoral legislation*

Before every election, the Government approves through government emergency ordinances (GEO) decisions that alter organizing elections, without subjecting them to Parliament or to public debate. In 2012, according to the OSCE, three GEOs were adopted, amending the electoral legislation in terms of changing the requirements for registering voters, using voter cards, defining who can vote abroad and defining electoral gifts<sup>1</sup>. These amendments make of the government the law-making body of the elections, organizing them and taking advantage of their results. Additionally, this practice of amending the legislation near the elections is constant and it contradicts international standards. Consequently, we recommend eliminating the possibility of amending the electoral legislation through government emergency ordinances and centering the changes in legislative amendments subjected to Parliament.

- *Adopting a calendar of updating the electoral legislation respecting international standards*

In most cases, electoral reforms were introduced in parliamentary discussion with maximum 18 months prior to the elections affected by that certain reform. Moreover, a 2012 electoral bill was adopted six months prior to the elections, although such an action was completely in contradiction with international standards and commitments. We recommend virtually adopting a fix calendar of updating the electoral legislation, in which public consultations for reform are initiated two years before the elections that are affected by legislative amendments.

- *Amending the legislation to allow a more transparent and more inclusive activity of Electoral Bureaus*

The Electoral Bureaus – of which the most popular is the Central Electoral Bureau – are temporary institutions composed of PEA members, judges and a majority of members originating in political parties. They handle the decision-making part of the electoral process – they approve the list of electoral competitors, of the observers and of the media, they centralize the results of the elections and declare the winners, they have the first ruling over complaints, etc. From this point of view, our recommendations are the following:

- *Granting equal access to candidate representatives who are not present in Electoral Bureaus, and to internal and international observers to all the meetings of the Electoral Bureaus and to electoral activities. Online publishing of transcripts of the meetings of Electoral Bureaus*

Although there is no negative public perception over the activity of electoral Bureaus, international and internal observers have drawn attention on the lack of transparency. In practice, this means that the access of observers or of the media to the meetings of the Electoral Bureaus is forbidden and that sometimes observers are not allowed to observe the centralization of results<sup>2</sup>. These practices are not in accordance with international standards, which provide observers complete access to the meetings of Electoral Bureaus and they break the electoral law, which grants observers access to all the activities of electoral authorities.

<sup>1</sup> Romania, Parliamentary Elections, 9 December 2012: Final Report, OSCE, 2012, <http://www.osce.org/odihr/98757>

<sup>2</sup> OSCE, Romania, Parliamentary Elections, 9 December 2012: Final Report, 2012, <http://www.osce.org/odihr/98757?download=true>



A second aspect is the lack of transparency regarding the decision-making process inside the Electoral Bureaus. The public has no way of knowing of the members of the Electoral Bureau voted, what was the position of the PEA representatives or of the judges present there, what was the vote of the political parties. Electoral Bureaus are dominated by representatives of (usually parliamentary) political parties. In the absence of other information, we can speculate that, in theory, a better relationship between political party representatives can influence the decisions of the Central Electoral with respect to issues affecting the results of the elections (such as extending the vote).

- *Amending electoral legislation in order to allow independent candidates to nominate representatives for the selection of members of Electoral Bureaus. These would be included in the selection of non-parliamentary party representatives. Additionally, a single representative should be allowed for each electoral alliance*

Independent candidates are not included in the selection of members of the Electoral Bureaus, although they are electoral competitors with full rights. At the same time, two or more parties from the same electoral alliance can be represented at the Central Electoral Bureau (CEB). At the 2014 presidential elections, both Victor Ponta and Klaus Iohannis were each represented by two agents representing parties from the electoral alliance supporting each of them. Meanwhile, the next three candidates of the first voting round had no representatives in CEB, two of them being independent and the third coming from an extra-parliamentary party.

- *Completing the electronic electoral registry*

The most important aspect concerning the electoral registry is the complete implementation of the legal provisions in this regards. In 2014, six years after the enforcement of the law 35/2008, the Permanent Electoral Authority succeeded in rendering the Electoral Registry operational. For the moment, however, even if the electoral registry functions at the national level, there has not yet been found a solution for registering voters with the domicile or residency abroad in the electronic registry according to their domicile/residence and erasing them from the polling stations in Romania for those specific elections.

Although Romanians have the possibility of declaring their domicile abroad, just few of them do this because this procedure implies losing the identification documents. When a Romanian citizen declares his/her domicile outside Romania, the authorities retain his/her identity card and mention in the passport “resident abroad”. Only an identification document allows opening a bank account and other formalities in Romania, which is why many Romanians prefer to declare their domicile in Romania. This issue makes it impossible for local population services to obtain accurate information on Romanians residing abroad.

Considering the experience of other states that have tried to find a solution to the problem of voters living abroad (such as France, Iraq, Turkey or Tunisia), we can conclude that there are no simple or inexpensive to succeed in including voters abroad.

- *We recommend a campaign to register voters, administered by the PEA in collaboration with the Ministry of Foreign Affairs*

With this campaign, we recommend the two institutions to contact the ministries of administration and interior of all the countries with a significant number of Romanian immigrants and to

request information about their number and even their identification information<sup>1</sup>.

- *We also recommend to the Ministry of Foreign Affairs and to the AEP to organize information campaigns for the Romanians with the domicile/residence abroad, encouraging them to register in the electoral Registry*

A 2011 bill of the Ministry of Foreign Affairs<sup>2</sup> proposed registering through postal services, with all expenses covered by voters. Although this initiative deserves appreciation for its will of finding a reliable solution, Romanian institutions should find procedures that would not involve costs for voters abroad.

- *Modernizing electoral logistics*

The cost of the 2014 presidential elections was of 39 million euro<sup>3</sup>. It is a significant cost, taking into account that Romania does not use expensive tools – electronic or internet voting – and the number of polling stations abroad is relatively small. Analyzing organizing expenses, it is noticeable that most funds are distributed to public institutions to cover salary expenses and the use of the working capital in the election day(s). The largest sum belongs to the Ministry of Administration and Interior (MAI) and to its various institutions. More than half of the election budget was spent on the salaries of the MAI staff and on using the equipment. Of the 1,93 billion lei representing the general budget, less than 10% were given to institutions handling logistics (meaning 142.880.000 for the General Logistics Directory, the Directorate for Persons Record, the National Institute of Statistics and the Permanent Electoral Authority). In the 2013 activity report of the PEA, the institution concluded that “the limited budgetary resources do not allow allocating funds for a possible national program of acquiring modern electoral logistics.”<sup>4</sup> Several activity reports of the PEA reveal that electoral logistics present an advanced degree of moral and physical deterioration, and that fix and mobile ballot boxes, as well as voting booths, are not constructed in a uniform manner. When in 2013, 90% of the electoral logistics was re-used and recovered from previous electoral processes, it is understandable that the expenses on these organizational issues were minimal.

With regard to the printed materials, we cannot formulate conclusions referring to their costs, because the approximated expenses do not reflect the budgets allocated for organizing elections. However, taking into account the poor quality of the paper on which sensitive electoral materials are printed (ballots, official reports, electoral lists), we can conclude that there are no large sums. We believe that the same thing can be asserted about the other elements of logistics (control stamp and with the “voted” inscription, as well as stickers with the “voted” inscription), which are made by state institutions and which do not involve expensive identification and safety elements.

<sup>1</sup> This type of collaboration would not be unique to the European Union. For the elections for MEPs, the member states of the EU transmit the name of Romanians registered on national electoral lists, in order for them to be removed from Romanian electoral lists.

<sup>2</sup> <http://www.mae.ro/node/6980>

<sup>3</sup> <http://www.roaep.ro/logistica/wp-content/uploads/2015/02/situa%C8%9Bia-chelt.efectuate.pdf>

<sup>4</sup> <http://www.roaep.ro/prezentare/wp-content/uploads/2012/11/Raport-de-activitate-2013-doc.pdf>



We consider that the modernization of electoral logistics can significantly improve the integrity of elections and the voters' perception of the possibility of fraud of elections. The costs of modernizing the already existing logistics do not have to be high; with a few exceptions, the recommended improvements can still be made by state institutions. Therefore, we recommend:

• *Modernizing and securing the ballot through the following elements:*

- Printing the ballot in high quality paper, containing security elements, for example a number of control of the ballot, control stub, hologram

Ballots are currently easy to multiply, especially because its model is printed more than one month prior to the elections. The recommendation introduces security elements that will allow identifying ballots brought from outside the polling station, or of ballots stolen from the voting bureau. Also, printing on high quality paper with the introduction of security elements would make reproducing the ballot very difficult.

- Eliminating the control stamp

The control stamp is the only security element applied on sensitive electoral materials, with the purpose of authenticating their validity. The stamp can, however, be easily reproduced, because the model is printed in the Official Gazette with more than one month before the elections and because it has no security element that cannot be easily reproduced. Also, the disappearance/theft of the control stamp can lead to suspending the vote and increasing suspicions of fraud<sup>1</sup>. If security elements were introduced in sensitive electoral materials, the control stamp would be useless.

- Printing the ballot on a single piece of paper

The purpose of this recommendation is that of eliminating the risk of accidentally rendering invalid ballots by printing the ink on several pages and to eliminate the discriminatory placement of political competitors on multiple pages.

- Eliminating the use of the stamp with the "voted" inscription and introducing the vote by ticking the box with a writing instrument or by fingerprinting

The risk of the ink printing on several pages is therefore eliminated. The small number of voting stamps have created difficulties in organizing crowded polling stations at the 2014 elections, their elimination being able to improve the voting process. For instance, in some cases, the fact that stamps were stolen made voting difficult and created suspicions of fraud. Using a writing instrument or a fingerprint can provide a clue of votes defrauded by the same person. Currently, re-counting the votes allows counting recovery, but the ballots do not provide a clue of fraud.

• *Standardizing the model of ballot boxes used nationally through the following elements:*

- Introducing transparent boxes, standardized for all voting bureaus

Acquiring or producing transparent ballot boxes for the approximately 18.500 voting bureaus in Romania and abroad. The boxes will be labeled at every election with the code of the

<sup>1</sup> <http://www.campusbuzau.ro/alegeri-linistite-la-buzau-incident-lanehoiu-unde-s-a-furat-stampila-de-control/>

polling station (from the polling stations Registry), in order to be identified.

- Securing ballot boxes with plastic seals with series  
Instead of the paper or wax seals used nowadays, we recommend the introduction of plastic seals. During the elections, the box will be closed in the four corners with seals and the serial numbers on the seals will be mentioned in the official report of the voting bureau. Prior to vote counting, the seals will be taken off to allow opening the box. After counting the votes, the box will be closed with five seals (four for the edges and one for the slot where ballots are introduced in the box). The serial number of the seals will be written in the official report and checked by the Electoral Bureau where the results are transmitted. These seals allow securing the votes and sensitive electoral materials during electoral operations. The already existing seals can be replaced if everyone present at the voting bureaus agrees.

• *Introducing security elements for electoral lists*

- Printing a control number

Currently, there is a single security element place on electoral lists – the control stamp. We recommend printing a control number for each series of electoral lists, number which would contain the code of the polling station. This control number will be correlated with the control number on ballots and with the control number printed on the official reports of the polling stations.

- Printing the Personal Identification Number without the last 2 digits

In the current system, the only way to control the fairness of completing electoral lists is by comparing signatures. We recommend introducing an additional measure of control: in electoral lists the PIN will be printed without the last two digits at the end of the code. The member of the polling station will have to fill these two digits by copying them from the identification document presented by the voter. In the eventuality of a post-electoral control, a large number of inconsistencies will signal a possible fraud<sup>2</sup>.

• *Printing secure official reports*

- Printing a control number on official reports

As in the case of other sensitive electoral materials, official reports are easy to reproduce and do not contain security elements other than the control stamp and the signatures of the polling station members. We recommend introducing a control number which will be correlated with the number on the ballots and on electoral lists. This control number will contain the code of the polling station, in order to allow the identification of official reports and to prevent a fraud. A single set of original, encoded official reports will be distributed to polling stations, with a number of carbon copies meant to be displayed and distributed to candidate representatives and to observers.

- Publishing the results at the exit of the polling station  
To make elections more transparent, international organizations in the field of elections recommend publishing a copy of the official report at the exit of the polling station. This measure will allow immediately informing voters and electoral competitors who did not have representatives in that specific polling station.

<sup>2</sup> This method is currently used in Egypt.





the president of the polling station can decide prolonging the vote. In case of presidential elections, the president of the polling station must close the polling station at 9 p.m., after permitting everyone present in the polling station to vote.

Another article clearly specifies that the access of voters is allowed in the polling section proportionally with the number of available voting booths. These two provisions are translated into a practical barrier so that voters present at the polling station at closing time exercise their right. This provision is against international good practices which recommend closing the polls only after the last voter present around the polling station at closing time has cast his/her vote. Voting can be prolonged for hours, because the right to vote has priority over the efficiency of voting procedures. Also, the polling station cannot be compared to a counter to which voters can show up the next day. They have to be given the permission to vote, as long as they presented in a lawful manner. As revealed by the experience of the 2014 elections from abroad, the long queues forming at closing time are not generated by voters who show up to the polling station at the last minute, but by delays of voting procedures. It is difficult to understand why people are not allowed to vote after closing time. In a system which, in theory, wants to encourage voter participation, barriers of this type are in contradiction with the democratic spirit.

We recommend:

- Prolonging voting hours in order to allow all voters present at 9 p.m. in front of the polling stations to cast their votes

A frequent world practice is that of collecting all identification cards or voter cards of those present, in order to allow the people who arrived late to cast their votes. Voting continues until the last voter exercised his/her right, regardless of the hour when this happens.

- Allowing all candidate representatives to be present in polling stations. An electoral coalition is allowed only one polling station member or one agent in each polling station. As in the case of Electoral Bureaus, parliamentary parties have precedence over non-parliamentary parties in terms of the composition of polling stations, and independent candidates may not have representatives in the station. Also, an electoral alliance can nominate one member of the polling station and one agent in each polling station. These restrictive provisions provoke situations on which some candidates are excessively represented, while others completely lack representation. On one hand, we recommend for a political alliance to have just one polling station member or one agent for each polling station. Also, we recommend that all candidates or political competitors be represented by an agent in each polling station. If the number of agents and of observers is too high, the president of the polling station can instruct agents and observers to be present by rotation in the polling station.

### Provisions referring to complaints and sanctions

Despite the incessant suspicions on the fairness of elections in Romania, until now very few persons have been convicted for electoral offenses.

According to the reports of the OSCE, those found guilty of electoral offenses or crimes are most often fined. Moreover, there are no clues of cases in which the members or the polling

station are found responsible for possible disorders, other than financial sanctions. Because there are not coherent provisions to speed the lawsuits on electoral crimes, the lawsuit on the 2012 referendum is still under way. The main recommendations made by the OSCE missions refer to the deadlines for submitting complaints, deadlines for resolving electoral disputes, clarity with regard to the jurisdiction of electoral cases and provisions for cancelling the results of certain polling stations<sup>1</sup>.

We therefore formulate the following recommendations:

- Amending the legislation in order to unitarily introduce specific deadlines for resolving electoral disputes (complaints and appeals). Moreover, electoral laws should provide a speedy trial of election-related cases, according to international good practices.

- Unitarily introducing the electoral law with a set of clear deadlines for complaints and appeals regarding the election results. The provisions of the law have to stipulate in a clear manner who can submit complaints, to which authority and when.

Currently, the deadlines for submitting complaint or appeals differ from one legislative text to another. Moreover, some deadlines are very restrictive: in case of presidential elections, political parties have only 24 hours to submit a complaint. Also, complaints are supposed to be detailed and accompanied by proof of registration at public authorities. In order to ensure the right of candidates to request efficient and timely remedies, the rules referring to complaints and appeals require more clarity.

- Amending legislation in such a manner that it would clearly establish jurisdiction over disorders which are not criminal offences but which arise during the campaign, as well as possible sanctions

Currently, both Electoral Bureaus and courts have jurisdiction over disorders, which can increase the confusion of the petitioners and of the institutions involved.

- Revising electoral laws in order to include the possibility of canceling the elections in a certain polling station if disorders intervened in a manner that would raise doubt over the integrity and the authenticity of the result

Currently, the electoral law on presidential elections provides only canceling the elections in the entire country by the Constitutional Court. Although the votes in a polling station were defrauded beyond any possibility of establishing a real result, those votes cannot be canceled. This provision, combined with those regarding unrealistic deadlines for complaints and appeals, make the process of contesting the elections a complex and inefficient procedure.

- The electoral legislation must be consistent, as all the decisions of the Central Electoral Bureau, including those referring to complaints against its actions, must be subject to judicial review, according to international agreements.

<sup>1</sup> Romania. Legislative elections of December 9 2012. The final report of the Team of Electoral Experts OSCE/ODIHR, online: <http://www.osce.org/ro/odihr/elections/98930?download=true>  
Romania. The presidential elections of November 22nd and December 6th 2009. The final report of the Election Observation Mission OSCE/ODIHR, online: <http://www.osce.org/ro/odihr/elections/romania/41532?download=true>

## APPENDIX II.1

### Viewpoint on the legislative proposal 135/2015 concerning amendments and additions to the law of political parties no. 14/2003

**LP Article:** Article 14 (3) “For the parties who opt for organizing at the local level, the general assembly of members cannot be done by delegation.”

**Proposal for amending the article:** Local party organizations cannot delegate members of other local organizations to represent them in the general assembly.

**Justification:** The wording is not very clear on the type of delegation. We consider that reformulating is necessary in order to express the intention of the initiator.

**LP Article:** Art. 14 (4) The statute of parties can provide other types of representation.

**Proposal for amending the article:** Party statutes can provide other ways of representing the members of local organizations.

**Justification:** Again, the wording is not clear on the type of representation. Rephrasing is needed.

**LP Article:** Art. 47, Par.1, let. b) “Has not designated candidates, alone or in an alliance, in two consecutive electoral campaigns, except the presidential one, in minimum 75 electoral constituencies in case of local elections, and a complete list of candidates in at least one electoral constituency, respectively, or candidates in at least 3 electoral constituencies in the case of legislative elections”

**Proposal for amending the article:** Art. 47, Par. 1, let. b) Did not respect for 3 years the obligation to publish the situation of contributions, donations and loans, as well as the obligation to financially report to the Permanent Electoral Authority, according to art. 4 (4), 9 (1), 11 (3), 12 (3), 13 (4) 36 (3), 38 (1), 382(1), art 39 (2);

**Justification:** Concerning the procedures of de-registering or de-listing parties, the Venice Commission asserts, in a document adopted in 1999<sup>1</sup>, that the dissolution of parties as a sanction should be a measure applied with maximum precaution and only in exceptional situations. More precisely, the Venice Commission recommends that this measure be used only if a party, as a whole, not only its individuals, pursues political objectives through means that contradict the national constitution. Moreover, the Commission recommends that before the justice system decides on the dissolution of a party, state authorities must evaluate if the party truly represents a threat to democratic stability or to the rights of citizens and if less radical methods can be used for the prevention of the danger. The Constitutional Court formulated the following argument, at point 9 of the decision no. 75 from February 26, 2015, regarding the unconstitutional aspects of the law 14/2003: “the risk of de-valued parties, in the sense of their overcrowding on the political scene, is not sustainable in the Romania of the year 2014, so the means provided by law to counteract it has become obsolete.” The current provisions of the LP on de-registering parties also have the purpose of preventing overcrowding the party system by eliminating parties with no electoral activity. However, de-registering parties at too short

<sup>1</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). GUIDELINES ON PROHIBITION AND DISSOLUTION OF POLITICAL PARTIES AND ANALOGOUS MEASURES. [[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)001-e)]

intervals increases the volatility at the level of the party system and prevents the natural organizational evolution of a newly emerged party.

On the other hand, forcing a party to participate to elections cannot be stipulated by law because, according to the definition given to parties by the law 14/2003 at article 1 and article 2, they can be fulfilled in other ways other than participating to elections.

The provisions referring to founding the party have been modified to respect the right to association, according to its regulation through article 40 in the Constitution. From this point of view, the provision in the LP on de-registering parties can raise constitutionality issues, as it introduces the possibility for an organization established under the right to association be dissolved as a consequence of the fact that it does not actually practice one of the activities characteristic to a party, even if it uses other activities to fulfill the purposes provided by articles 1 and 2.

Also regarding the LP, the phrase “complete electoral list” is ambiguous. We recommend rephrasing it in a manner revealing clearly the significance of “complete”. Also, electing MEPs, for which national lists are submitted, should be included among the exceptions, next to presidential elections.

We consider that, although de-registering should not be decided for reasons regarding the activity of the party, de-registering can be a sanction for breaching legal regulations for political parties. It is for this reason that we suggest replacing the current text of the LP with another one that includes the obligation to update the financial situation at least once every three years. Therefore, judicial dissolution would represent a sanction for failing to meet the obligations of reporting to the PEA and of transparency by publishing the situation of contributions, donations and loans.

## APPENDIX II.2

### Proposals for reforming the legislation regarding financing parties and campaigns

The legislative proposal 95/2014, adopted on March 14 by the Chamber of Deputies with 262 votes “for”, contains elements that could reduce the dependence between politics and the business environment by introducing full reimbursement of campaign expenses and pursues the recommendations of the GRECO committee of the Council of Europe. We should appreciate these changes, but they are accompanied by new regulations that we believe are in opposition to the spirit a la and the international good practices. We first refer to the possibility of using loans. Political parties may borrow very large sums of money, on unlimited periods of time, from banks, legal entities or individuals. We consider that loans, as they are regulated in the present legislative proposal, are a procedure contrary to the international good practices and susceptible to increase the corruption in the political life. We propose limiting loans to bank loans.

Second, comparing the legislative framework proposed by the LP 95/2014 with that of other countries with similar systems – such as France or Poland – we can notice a discrepancy regarding donation limits. Although the current LP proposes almost full coverage of political party expenses, the legislation was not adopted to reduce the private funds available to political



parties. We consider that this discrepancy needs to be amended in order to reflect the initial intention of the legislator – that of reducing corruption in politics and the interdependence between politicians and the business environment.

In the context of an increasing number of corruption lawsuits draw attention on some illegal financing practices, we consider that sanctioning political parties should receive more attention. Currently, only those found guilty of offenses are sanctioned. We consider that parties which tolerate illegal practices in the electoral or financial field should not be subsidized from the state budget.

Lastly, introducing the reimbursement of campaign expenses involved financing politicians with important sums from the state budget. Our calculations reveal that an approximate budget for legislative elections is of almost 30 million euro. Local elections could reach a cost of 300 million euro. We consider that, although this proposal has long term advantages, the concept would have to be subject to public debate over a longer period for the public opinion to understand and possibly accept the proposed expenses and their purpose.

The following recommendations directly refer the legal text adopted by Parliament:

- *We suggest modifying the legislative proposal (LP) 95/2014 by eliminating the following elements from the text:*

- Loans from individuals or legal entities – article 51;
- Donations from legal entities – article 5;
- Confidential donations, regardless of their source or quantum – article 7;
- The provision according to which the donations received with the purpose of acquiring real estate are not limited – article 52.

- *We suggest modifying the LP 95/2014 by introducing or amending the following elements:*

- Political parties can take out loans only from credit institutions with offices in Romania – article 3 (11).
- Political parties have to declare to the PEA and RNB (Romanian National Bank) all the loans and their conditions - article 3 (11).
- The donations received from an individual can represent up to 50 (instead of 200) gross minimum wages per year – article 5(3).
- Publishing the list with all the donors both on the website of the party and in the Official Gazette of Romania – article 9.
- Excluding all parties connected to convictions for electoral offences from the distribution of subsidies from the state budget for a period of up to 5 years – article 14
- Extending the statute of limitations for electoral offences from 3 to 5 years – article 41(5).



**Center for the Study of Democracy** is a think-tank founded in 2006 by the Faculty of Political Sciences at Babeş-Bolyai University in Cluj, Romania. The Center engages in research projects and analyses from a comparative perspective with a solid practical component on issues such as: democratization, migration, ethnicity, civic education, electoral behavior, and institutional design. Our collaborations reach institutions such as the Presidential Administration, the Romanian Parliament, local administrative institutions and organizations within civil society.



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