Office for Democratic Institutions and Human Rights

ROMANIA
DRAFT LAW ON POLITICAL PARTIES

OSCE/ODIHR REVIEW

Warsaw
13 December 2002

TABLE OF CONTENTS

ROMANIA:

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I. INTRODUCTION

A Draft Law on Political Parties (hereinafter "the Draft Law") was adopted by the Parliament of Romania and has been submitted to the President for signature. The Draft Law would replace the current Law on Political Parties (1996), except for the chapter of the latter related to financing of political parties.[1]

Following passage of the Draft Law, a group of Romanian non-governmental organizations (NGO) expressed concern that the Draft Law would violate the right of free association for political purposes guaranteed by international treaties and the Romanian Constitution. The NGOs referred in particular to new provisions that would require political parties to have 50,000 members, with not fewer than 1,000 members in each of 21 of the country's 42 constituencies. The NGOs contacted the European Commission delegation in Romania with a complaint about the Draft Law. The EC delegation in turn requested ODIHR to provide a review of the Draft Law.

This review will address the main issues presented by the Draft Law on Political Parties. The commentary is based on a reading of the Draft Law, in an unofficial English translation. The review will attempt mainly to analyze the Draft Law in the context of international norms for the regulation of political parties in democratic States.

II. EXECUTIVE SUMMARY

The Draft Law on Political Parties would impose substantial additional requirements for the registration of political parties in Romania. Parties would have to demonstrate a very high level of public support by submitting the names, with signatures, of a large number (50,000) of members distributed widely in the country (at least 1,000 each in 21 of the 42 counties). In addition, parties would be required to show that they remain active, both in terms of their internal functioning and also by regularly running candidates – and receiving a certain minimum number of votes – in elections.

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* This review was prepared for the OSCE/ODIHR by Dr. Daniel P. Finn

1 Draft Law, Art. 56 (Senate versions)

If enacted in its current form, the Draft Law could continue the trend toward concentration in the Romanian political system, both with respect to the number of registered parties and those which are able to achieve parliamentary and other political representation. While marginal parties might disappear, it also seems likely that smaller but genuine parties and parties associated with ethnic minorities or regional interests would also have difficulty maintaining an independent political existence.

International law, as well as the Romanian Constitution, encourage political pluralism and protect political parties from unnecessary restrictions and undue dissolution. Based on comparative experience, international organizations such as the Council of Europe and OSCE/ODIHR have identified standards and best practices to guide States in their approach in this area. These norms address such matters as the constitutional and legal basis for regulation, the exceptional nature and frequency of actions against parties, the importance of judicial involvement, the preference for using measures short of dissolution, and the protections against arbitrary and selective enforcement by authorities.

Registered political parties enjoy considerable privileges in the Romanian civil and political system. The large number of parties which have existed and continue to participate in elections have sometimes caused confusion and made it more difficult for small but serious parties to campaign effectively. Sometimes, little-known parties have emerged during election periods, possibly to manipulate the political system.

A. MAIN ISSUES

1. Membership & Geographic Distribution

The similar, but much smaller, membership and geographic distribution requirements in the current Law on Political Parties (1996) were observed but not objected to by the international community. The new numerical requirements exceed those represented in current comparative practice, but this alone does not necessarily mean that they violate international norms and standards.

Instead, the new requirements in this area must be viewed in terms of the Romanian political situation and possible legitimate purposes of the Draft Law. Clearly, the new numerical requirements could have a major effect on the political system by eliminating parties with marginal or limited support. This might improve the ability of parties with a realistic chance of winning offices to reach the voters during elections, and also help prevent mischief during election periods.

However, it would appear very likely that serious smaller parties would no longer be able to maintain an independent existence under the new numerical requirements. This result could weaken political pluralism in the country by suppressing serious issue-driven and regionally-oriented political formations. It could also lessen the prospects of parties associated with ethnic minorities, such as the Hungarians.

2. Registration, Re-registration & Dissolution

In general, it cannot be said that requiring existing parties to re-register after six months, and to make regular submissions showing that they meet the specified (new) levels of support and fulfill other requirements, violates the right of association. Registration of political parties is a status, and requiring the parties to maintain it actively is not unreasonable – assuming that the procedures are not unduly onerous and enforcement reasonable and non-selective.

The issue with respect to the registration requirements is rather whether they are unfair, threatening or subject to abuse. Several factors should be examined in this connection:

Registration proceedings under the Law on Political Parties are judicial in nature, and while they are conducted by a regular court (the Tribunal of Bucharest) there are provisions for appeal as well as for referral of appropriate cases to the Constitutional Court.

Organization of the signature list by town and village could cause concern by voters that their support for a party could result in their being identified and harassed.

Review of signature lists would occur very quickly and in the absence of any definite standards. The lack of a definite approach to this task could make the action of the Tribunal in this respect arbitrary or selective. Specific procedures should be included before enactment of the Draft Law; a possible approach is recommended.

Mandatory updating of various party registration materials – including signature lists, which would have to be updated by the end of the year prior to scheduled elections – is understandable in terms of the presumed purposes of the Draft Law. Parties could inadvertently miss the deadlines, however, especially during busy pre-election periods. Failure by parties to update their registration materials could also be the basis for selective action against them by the authorities or their political opponents.

Other grounds for dissolution contained in the Draft Law include activities which are unconstitutional, illegal or contrary to public order; and lack of activity, including failure to hold meetings or nominate candidates for election. These two elements appear acceptable in terms of international norms, assuming that the relevant principles are followed.

Another ground for dissolution, however, is failure to obtain a minimum number of votes (50,000 nationally) in two successive elections. This provision is problematic, especially since the requirement would have to be met in at least every other general election (including national as well as local elections) – so that a party's strength at the polls, like its membership appeal – would normally be tested approximately every other year.

B. OTHER ISSUES

1. Political and Election Alliances

The provisions in the Draft Law on associations of political parties may result, directly or indirectly, in election coalitions having to make registration applications to the Tribunal and not merely submitting joint lists to the election authorities. If so, this would greatly limit the flexibility of parties to compete in elections and could also provide the authorities and their political opponents a means of obtaining information about their coalition activities and potentially taking legal action against them.

2. Internal Democracy

The provisions in the Draft Law on internal democracy (party meetings, secret ballots and the like) are largely unchanged from the current Law. During past Romanian elections, the observation has been made that local and regional organizations had very little influence within their parties, including with respect to nomination of candidates on district election lists.

3. Additional Points

A provision that would give the parties discretion whether to admit members appears to be a positive one. A requirement for a sworn statement by members that they are not members of other parties may cause concern. Party youth structures would no longer be specifically authorized, but it is not clear if they would still be permitted. The provisions on reorganization (including succession) appear to be valuable in terms of allocating party assets and liabilities in this case.

III. BACKGROUND: APPLICABLE LAW, GUIDELINES AND BEST PRACTICES

The right of free association is positively recognized in general international law through the International Covenant on Civil and Political Rights.[2] Development of the law on this subject has occurred mainly through regional conventions and related international organizations, however. The earliest of the regional conventions is the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR"), which is enforced through the Council of Europe (CoE) and European Court of Human Rights. Paralleling the later provision on this subject in the Covenant, the primary relevant provision of the ECHR states:[3]

> 1. Everyone has the right to freedom of peaceful assembly and freedom of association with others …

[2] Art. 22: "(1) Everyone shall have the right to freedom of association with others.… (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order …, the protection of public health or morals or the protection of the rights and freedoms of others.…"

[3] Art. 11 thereof

> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.…

In the US, Canada, Europe and Eurasia, further political commitments concerning democratic institutions as well as human rights have been made by participating States through the Organization for Security and Cooperation in Europe (OSCE). The most important source for these commitments is the Document of the Copenhagen Meeting on the Human Dimension (1990). In that document, the participating States committed themselves, *inter alia*, to:

> **7.5** - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
>
> **7.6** - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities[.]

Activities of the two regional organizations referred to, the Council of Europe and OSCE, have further elaborated and applied the principles applicable to the establishment and regulation of political parties in several ways:

- The OSCE, through Election Observation Missions and other activities conducted by the Office of Democratic Institutions and Human Rights (ODIHR), has worked to identify best practices in these areas and monitor compliance with them.[4]

- The European Court of Human Rights has ruled on a number of related complaints, primarily involving the prohibition of political parties or candidates. (Some of the key decisions of the Court in this area are summarized in the CoE and ODIHR reports included in the references hereto.)

- The CoE has addressed this issue through its Parliamentary Assembly, which recently issued a provisional resolution which is directed mainly at prohibition of political parties but also contains important considerations that are also applicable to the registration and regulation of parties.

- The CoE has been assisted in this regard by a report and guidelines on this subject by the European Commission for Democracy through Law (the Venice Commission). The

[4] *See, e.g.,* OSCE/ODIHR Draft Paper, "International Standards and Commitments on the Right to Democratic Elections: A Practical Reference Guide to Democratic Elections Best Practice (November 2002), *esp.* pp. 13-16; and discussion of related issues in numerous election observation reports.

conclusions of the Venice Commission were supported by data submitted by national authorities in response to a questionnaire.

Presenting all the results of this ongoing work is not possible within the confines of this review. Instead, further details will be provided in connection with considering the provisions of the Draft Law itself. Still, at this point it would be beneficial to highlight some of the points included in the recent CoE Parliamentary Assembly resolution:[5]

- "[P]olitical pluralism is one of the fundamental principles of every democratic regime;"
- Restrictions on political parties must be provided for in the Constitution and undertaken pursuant to national legislation;
- In many States legal restrictions against political parties have not been applied, even in cases where that was envisioned. Nevertheless, sometimes it has been felt necessary to dissolve parties;
- Prohibition of political parties should be a responsibility of the judiciary, mainly the constitutional court but sometimes also the supreme court or ordinary courts;
- "[R]estrictions on or dissolution of political parties should be regarded as exceptional measures to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country;"
- "[A] political party should be banned or dissolved as a last resort, in conformity with the constitutional order of the country, and in accordance with the procedures which provide all the necessary guarantees to a fair trial[;]"
- Dissolution of political parties may be avoided through the use of other, less extreme, means including fines, administrative measures, withdrawal of state subsidies, boycotts by other political factions, and (in certain cases) bringing offending members of a political party to justice; and
- "[T]he legal system in each member state should include specific provisions to ensure that measures restricting parties cannot be used in an arbitrary manner by the political authorities."

The Romanian Constitution contains several provisions relevant to political association and the role of parties. These include the following:

- Art. 8 – "(1) Pluralism in the Romanian society is a condition and guarantee of Constitutional democracy. (2) Political parties shall be constituted and shall pursue their activities in accordance with the law. They contribute to the definition and expression of the political will of the citizens, while observing national sovereignty, territorial integrity, the legal order and the principles of democracy."

[5] Restrictions on political parties in the Council of Europe member states, Res. No. 1308 (2002), adopted by the Standing Committee on 18 November 2002.

- Art. 20 – "(1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with … the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on fundamental human rights Romania is a party to, and internal laws, the international regulations shall take precedence."
- Art. 37 – "(1) Citizens may freely associate into political parties … and other forms of association. (2) Any political parties which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional. ..."

IV. MAIN ISSUES

Before assessing the provisions of the Draft Law, it will be useful to mention some characteristics of the Romanian political situation that pertain to the regulation of parties. This will enable not only a review of the provisions of the Draft itself, but an assessment of how they should be viewed with reference to application of the international standards and practices summarized above.

A detailed discussion of Romanian election laws and the political system more generally are outside the scope of the present review. A brief description of some relevant factors will, however, greatly assist in an understanding of the operation and effect of the Draft Law. For this reason, the following tentative observations are offered:

Political development in Romania following the collapse of the former Communist regime has been characterized by a very large number of parties, which numbered over 250 in the early years of transition. Both the 2000 and 1996 ODIHR election reports took note of this fact, and that the numerical and distribution requirements on membership contained in the Law on Political Parties (1996) were a response to that situation. The provisions of the 1996 Law were not questioned by the ODIHR election observation missions (EOM) in their reports.

There have been suggestions over the years that some parties have registered and participated in elections in order to manipulate the political and election system, such as by advancing the interests of other parties. The means that could be employed for these purposes include confusing or misleading the public; crowding out legitimate parties and their representatives on election bureaus and in facilities, including polling stations; limiting access to the state media by genuine parties; and generally making it more difficult for genuine parties with limited resources to compete.

Registered parties in Romania enjoy a number of official privileges and benefits: Under the parliamentary election law, they are not required to submit signature lists in connection with nominations of candidate lists in the different constituencies. They receive state benefits to maintain their facilities and operations, although parties which do not achieve representation in Parliament receive only limited direct support.

While some parties undoubtedly do not maintain minimum membership and distribution nor meet other requirements, there is little information to suggest that the dissolution provisions of the current Law on Political Parties have been applied to them.

Despite existing requirements for regular general meetings and establishment of a territorial administrative structure, the major parties are often highly centralized and non-transparent in terms of their decision-making, including with respect to the nomination of candidates for inclusion in party lists at the constituency (county) level.

A. NEW MEMBERSHIP & GEOGRAPHIC DISTRIBUTION REQUIREMENTS

Perhaps the most striking new requirement contained in the Draft Law is the increase in the requirements concerning the number of members of political parties, and geographic distribution of the membership. This is the issue that was highlighted by the Romanian NGOs in their concern with the Draft.

The current Law on Political Parties (1996) requires parties, as a condition of their registration, to submit the signatures of at least 10,000 members, with at least 300 members in each of 15 of the country's counties. In Romania, there are 42 longstanding administrative subdivisions, referred to as counties or *Judet.*[6] The counties also function as separate election districts, or constituencies, in the country's system of parliamentary representation based mainly on multi-district proportional representation.

The Draft Law would elevate these numerical requirements to the following: 50,000 members, with 1,000 of whom being residents of each of at least 21 counties. These numbers are certainly imposing, and appear to go well beyond anything reported in comparative studies. (See below.) In fact, even the lesser requirements in the current Law exceed reported international standards.

Nevertheless, it is impossible to reach a definitive conclusion whether these requirements *ipso facto* violate the internationally-recognized right of political association, or related norms. Rather, it is also necessary to assess the purposes of these requirements against their likely effects on that right; and whether the balance struck in the Draft Law is consistent with international standards and practices.

On the latter point, the report of the Venice Commission (1998), based on its survey of national practices, notes that it is not uncommon for states to require parties to register, and demonstrate their popular support. In several countries, the required showing is something of a formality; for example, in Austria, Spain, Uruguay and Norway the required number of signatures is reported to be 5,000. In Estonia, the number of signatures required is reportedly 1,000, and in Canada, 100; Latvia, 200; Lithuania, 400; and Belarus, 500.

Also, according to the Venice Commission information, other means are employed by countries to ensure that political parties retain sufficient political support. In Canada, parties which do not

[6] Actually, there are 41 Judets and the municipality of Bucharest.

nominate candidates in at least 50 single-mandate parliamentary districts are struck off the register. In Hungary a party may be dissolved if it has been inactive for a year and the number of its supporters has been below the legal minimum throughout that period.

By the standards of other countries cited, the current and especially the proposed numerical/distribution requirements for Romanian parties are very substantial. It is impossible to contrast them directly, however, since it is difficult to compare the political situations in those countries with those in Romania (as tentatively described above) without considerable further research.

Questions could be raised, however, concerning the impact of the new requirements on the political system – in terms the ability of legitimate smaller parties, including regional ones, to form or even continue operating. It is not known how many political parties are currently registered in Romania. In the last parliamentary elections, in the year 2000, five formations (including six parties) achieved representation, a significant drop from the 12 parties which obtained mandates in 1996.[7] While this trend appears to reflect diminishing electoral support for smaller parties, it cannot be said that many of the smaller parties do not make a valuable contribution to political pluralism in the country. It is therefore of concern that small but genuine parties may be excluded from the political system through the new registration requirements.

One other major negative consequence which might result from adoption of the proposed requirements would certainly be of concern under international norms and standards. This would be its potential effect on the formation of political parties associated with minority groups. In Romania, recognized minorities are able to achieve symbolic political representation through special elections. At least one minority-based party – the Democratic Alliance of Hungarians in Romania (UDMR) – however, also functions as a major political party in its own right and competes seriously within the general election system. This enables it to control a significant number of votes in Parliament and sometimes to enter into governing coalitions, thus advancing the interests of its constituents more effectively.

It cannot be said at this point whether a party like the UDMR would be able to meet the proposed new requirement on distribution of membership in fully half of the counties in Romania. The party's base is in Transylvania, only one of the three major regions of the country, but it has a significant number of supporters elsewhere, including Bucharest. Even if the party could qualify to re-register under the new requirements, its operations might be impeded and its identity affected.

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[7] *See* OSCE/ODIHR, year 2000 election report, p. 22.

B. REGISTRATION, RE-REGISTRATION AND DISSOLUTION

1. In General

A more general question relates to the acceptability of requiring parties to maintain the specified levels of support in order to register, and be subject to dissolution in the event that their support falls below those levels. A related question is the provision in the Draft Law that would require currently-registered parties to re-register under the new provisions within six months of the effective date of the new Law.[8]

As seen previously, there is nothing uncommon about requiring political parties to register and demonstrate a certain level of public support. Also, requiring parties to maintain that support in order to continue their registrations in effect does not appear uncommon. The particular requirements in the Draft Law on this subject are somewhat onerous, but do not appear to be unrelated to the purposes of the Law; they will be examined in further detail below. After all, registration is a status, which normally could be withdrawn under established procedures, if the applicable requirements do not continue to be met.

Is there something especially problematic, in this connection, about requiring parties which are already registered to re-register within six months? Once again, it would appear not. In fact, the current Law on Political Parties contains a similar provision,[9] which required parties registered at the moment of its enactment (1996) to meet the new requirements within the same period of time. In addition, since the re-registration mechanism would be applicable to all parties equally – and would be enforced through a judicial body (the Tribunal of Bucharest) – it would not appear to present a special danger of political manipulation.

2. Specific Provisions

Perhaps the real issue in connection with application of the new numerical requirements, then, is whether – taken in combination with the very high standards for overall membership and geographic distribution – the procedures that would be adopted through the Draft Law are unfair, threatening or unduly subject to abuse. These will be considered individually and collectively in what follows.

a. Registration; Judicial Proceedings

The provisions of the Draft Law[10] concerning the judicial proceedings at the time of registration are quite similar to those of the current Law.[11] In general, they include a formal proceeding preceded and followed by public notice. The Draft Law would add the requirement that three

8 Art. 53 thereof
9 Art. 46 thereof
10 Chap. IV thereof
11 Chap. III thereof

founding members of the organization seeking registration as a political party appear in person, and that the organization advertise its application for registration. These do not appear problematic, and could enhance the responsibility of the sponsors and awareness of the public.

In general, the fact that the registration process is conducted by a judicial tribunal is welcome, and consistent with the best practices in this area recommended by the Venice Commission and the CoE Parliamentary Assembly. While the tribunal in question is a general civil tribunal, and not one with constitutional law jurisdiction, cases involving the dissolution of a party for reasons related to inconsistency of its purposes, program or activities with constitutional limitations would be referred to the Constitutional Court.[12]

b. Organization of Signature List

The Draft Law would require that the list of signatures (50,000 in all, with at least 1,000 in each of 21 counties) be organized according to individual towns and villages in which the members reside.[13] While this is characterized in the relevant paragraph as a means of ensuring compliance with the numerical requirements – which is certainly could do – it might nevertheless be viewed with suspicion by persons who are contemplating adding their names to a party's signature list. This is for the reason that these persons might feel that it would make it too obvious to the authorities who and where they are – a feeling which might be especially justified in a country like Romania, with its past history of abuse of the political and other rights of citizens by the security forces and state authorities. This consideration could prevent voters from exercising their right to join a party, and make it more difficult for legitimate political formations to obtain the necessary number of signatures.

c. Review of Application; Signature Lists

The Bucharest Tribunal, which reviews party registration applications and other motions regarding party registrations, would have 15 days to decide on an application.[14] How the Tribunal could review the massive signature lists is not clear, although a challenge to this or other application materials could be lodged by the Public Ministry or an individual or legal entity permitted to join the proceeding as an intervenor.[15]

The absence of standards and procedures for the review of signature petitions is especially troubling, especially since it could result in selective treatment by the relevant authorities and others. In terms of the standards, would it be enough for the applicant to submit enough correct names, regardless of the number of errors in the list? Or should errors in the list lead to its rejection despite the presence of a sufficient number of other valid names? Above all, how should the Tribunal decide what approach to take if a contestation were made?

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12 Draft Law, Arts. 44-45
13 *Id.*, Art. 19(4)
14 *Id.*, Art. 21(1)
15 *Id.*, Art. 20 (1)-(2)

These questions are similar to those which relate to signature lists submitted during election periods by parties seeking to nominate lists of candidates. Under the Romanian presidential election law, candidates are required to submit 100,000 signatures; for the last elections, in the year 2000, that number was increased to 300,000 by an emergency ordinance.[16] All candidates duly made huge submissions, which were received by the Central Election Bureau but not reviewed except in a *pro forma* manner. Meanwhile, press inquiries resulted in the revelation of massive irregularities in the lists.

The uncertainty in the Draft Law concerning the standards and procedures to be followed in the examination of signature lists raises issues concerning potential unfairness and selective enforcement of the Law. Further elaboration could be included on these points prior to its coming into force.

Election experts tend to favor a self-enforcing approach to signature lists. Under this approach, a submitter must provide the minimum number of signatures but no more than a certain maximum. In the absence of evidence of deliberate fraud, a list is considered valid unless investigation causes the removal of enough names so that the minimum number is not retained. In this way, primary responsibility for the accuracy of the lists is shifted to the submitter.

d. Mandatory Updating of Registration Materials

The Draft Law adds an enforcement mechanism to the provisions of the Law on Political Parties related to the updating of registration materials by registered parties. In such cases, the Public Ministry may bring an action requesting the Tribunal to dissolve the party in case the required updates are not filed.[17]

Under the Draft Law, parties would be required to supply documentary evidence of the holding of general conventions and documents regarding candidate nominations received from election authorities within 30 days.[18] Party statutes or programs duly amended by the means provided in their statutes would also have to be reported to the Tribunal, although the precise time period is not specified.[19] Finally, parties would have to update the membership lists submitted to the Tribunal by the end of the year prior to scheduled elections. Whether this refers only to national elections or also to local elections is not clear, but it would appear to apply to both.

These notification provisions plainly have a *rationale*, in terms of providing a mechanism for the enforcement of the requirements of the Law. However, they are somewhat burdensome – especially the regular resubmission of membership lists – and mistakes or omissions could lead to unwarranted dissolution of parties for failure to meet procedural requirements. While it would not appear that dissolutions have been ordered unfairly in recent years, technical violations,

16 *See* OSCE/ODIHR, 2000 election report, p. 6.
17 Draft Law, Arts. 24-27
18 *Id.*, Art. 24
19 *Id.*, Art 25

especially in the frantic period before elections, could provide an occasion for selective enforcement by the authorities.

e. Other grounds for dissolution

In addition to the registration-related requirements discussed above, the Draft Law also contains a chapter addressing the potential dissolution of parties for other reasons:[20]

Activities that are unconstitutional, illegal or against public order:[21] In the absence of a particular case, it is difficult to assess whether these provisions could or would be applied inappropriately. As the European Court for Human Rights has held,[22] it may be justifiable to prohibit activities by parties for such reasons. However, as recommended by the CoE Parliamentary Assembly in its recent resolution and by the Venice Commission based on its research and analysis, such actions should be carefully limited.

"Lack of activity":[23] This is defined in the Draft Law to include failure to hold a general assembly for five years, or failure to present candidates (singly or as part of an alliance) in two successive parliamentary elections. These elements are also contained in the current Law,[24] except that the Draft Law would require candidacies under the latter clause to be run in 21 rather than 10 constituencies (counties).

Based on information from the Venice Commission, several countries prescribe the dissolution of parties which are inactive, including as evidenced by failure to hold general meetings or nominate candidates for election. In addition to the other examples cited, this is also the case in Ireland (requirement to function as "a genuine political party") and Croatia (failure to hold general meeting within a period twice as long as that required under the party statute).

Minimum number of votes received:[25] More problematic is the new provision in the Draft Law that requires registered parties to receive a minimum number of votes in at least one of two successive elections.[26] The elections in question include those for county councils, local councils, the Chamber of Deputies and the Senate, and the number of votes in question is 50,000. There are two main issues with respect to this provision: First, there is no clause determining how to apply the votes received by electoral alliances. Second, since the provision applies to all sorts of elections, the cycle during which a party would have to obtain the requisite number of votes could be very short – probably usually no more than a 2-year period.

V. OTHER ISSUES

In addition to the main issues identified in the previous section, a range of other issues that arise from the provisions of the Draft Law may be worth to note.

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20 *Id.*, Chap. VII (Arts. 44-50)
21 *Id.*, Art. 46 (a)-(c)
22 *See, e.g., Refah Partisi* (The Welfare Party), Erbekan, Kazan & Tekdal v. Turkey, Application Nos. 41340/98, 41342/98, 41343/98 & 41344/98 (31 July 2001).
23 Draft Law, Art. 46(e)
24 Law on Political Parties (1996), Art. 31
25 Draft Law, Arts. 47(b)
26 *Id.*, Art. 48

Political Alliances: The provisions in the Draft Law on associations of political parties, to form a political alliance, are essentially similar to the current Law, although this chapter has been redrafted and expanded.[27] A new provision makes it clear that post-election coalitions, to form a government, are excluded from the provisions on political alliances, which include registration and reporting requirements.[28]

The provision on coalitions does not clarify, and may in fact make more problematic, the question whether registered parties may form election alliances without previously having registered as a political alliance under the Law on Political Parties. Election alliances have been accepted by election authorities in the past, but under the temporary model of election administration in Romania future election authorities may not necessary take the same approach.

In addition, the specific exclusion for post-election coalitions could raise the negative implication that pre-election coalitions or alliances are not excluded. Requiring political parties to register their alliances in advance of election periods, through the separate civil procedures established through the Law on Political Parties, would greatly reduce the flexibility of parties to form and operate winning coalitions for elections. This would also be the effect of the new provision in the Draft Law that requires changes in the structure or protocol of a political alliance to be filed in the same manner as a party registration submission.[29] These provisions could also provide the State a means of obtaining information about the development of opposition political alliances, and a way for the authorities or political opponents to attack them legally.

Another provision which suggests that political alliances may have to be registered in advance with the civil authorities in order to operate as election alliances is a new clause in the chapter on the "Record of political parties and political alliances".[30] This paragraph provides that "The political alliances register is the legal instrument for recording political alliances", but does not specifically state that it is the exclusive instrument, including during election periods.[31]

In connection with the question of election alliances, it should also be noted that Romanian law requires them to show a higher level of support at the polls than parties running singly. Under the parliamentary election law, single parties must pass a legislative threshold (share of the total vote) of 3%, and coalitions between 5-8% depending on the number of parties included. During the 2000 elections, the single-party threshold was raised to 5%, and the thresholds for coalitions as follows: two parties, 8%; three parties, 9%; and four or more parties, 10%.[32]

Internal Democracy: The provisions on internal democracy of registered political parties are largely the same in the Draft and current Laws.[33] For example, both require secret ballots for the

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27 *Compare Id.*, Chap. V, *with* Law on Political Parties (1966), Chap. IV.
28 Draft Law, Art. 36.
29 *Id.*, Art. 34
30 Draft Law, Chapter VIII
31 *Id.*, Art.52(1)
32 Emergency Ordinance No. 129 (30 June 2000)
33 *Compare* Draft Law, Arts. 12-14, *with* Law on Political Parties (1966), Arts. 11-13.

election of representatives to party general assemblies and territorial organizations. As indicated earlier in the tentative description of aspects of the Romanian political situation relevant to the Draft Law, however, there have been instances in previous elections in which apparent deviations from internal democracy have occurred, including with respect to the selection of candidates for inclusion on party lists and also other matters.

***Discretion on Membership**:* The Draft Law would amend the current Law to permit political parties discretion to determine whether or not to accept the application or continue the membership of particular individuals, under the rules contained in the parties' statutes.[34] This should probably be considered a positive provision, since it provides greater autonomy to the parties in this regard; it also reflects development from the previous situation, in which there was great concern over the operation of exclusive parties such as the former Romanian Communist Party.

Prohibition on Multiple Memberships: The Draft Law would continue the prohibition on multiple membership of political parties by voters.[35] A provision has been added, however, which would require persons joining a political party to provide sworn statements that they are not members of another party.[36] This could probably be easily accomplished through an appropriate notation at the top of each page of the signature list. However, the requirement of providing a sworn statement could make individuals less willing to add their names to party membership lists.

***Youth Structures**:* The Draft Law would delete the provision of current Law that authorizes parties to enroll youths at least 16 years of age in youth structures.[37] Members of the youth structures do not have the rights and responsibilities of adult members. It is not known what reasons may have prompted this provision, in terms of the potentially negative effects of politicizing youths. It is also not clear whether removal of this provision is intended to or would have the effect of preventing parties from forming youth structures.

Reorganization: A largely new chapter in the Draft Law provides detailed rules for the reorganization, including succession, of political parties and political alliances.[38] These provisions will probably help avert legal and political battles about party identities, assets and liabilities in case of dissolution or reorganization.

VI. CONCLUSIONS

The Draft Law on Political Parties would impose substantial additional requirements on the registration of political parties in Romania. Most significantly, parties would have to demonstrate a very high level of public support through submitting the names, with signatures, of a large number (50,000) of members distributed widely in the country, at least 1,000 each in 21

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34 *Compare* Draft Law, Art. 16(3), *with* Law on Political Parties, *id.*, Art. 15(3).
35 *Compare* Draft Law, Art. 8, *with* Law on Political Parties, *id.*, Art. 5.
36 Draft Law, Art. 8(3)
37 Law on Political Parties, Art. 6(4)
38 Draft Law, Chapter VI

of the 42 political subdivisions. In addition, parties would be required to show that they remain active, both in terms of their internal functioning and also by regularly running candidates and receiving a minimum number of votes in elections.

If enacted in its current form, the Draft Law could continue the trend toward concentration in the Romanian political system, both with respect to the number of registered parties and those which achieve parliamentary and other political representation. While marginal or even bogus parties might disappear, it seems likely that small but genuine parties and parties associated with ethnic minorities would also have difficulty maintaining an independent political existence.

In general, it cannot be said that requiring existing parties to re-register after six months, and to make regular submissions showing that they meet the specified new levels of support and fulfill other requirements, violates the right of association. Registration of political parties is a status, and requiring the parties to maintain it actively is not unreasonable, assuming that the procedures are not unduly onerous and enforcement is not arbitrary or selective.

The issue with respect to the registration requirements is rather whether they are unfair, threatening or unduly subject to abuse. Several elements of the registration process are of concern; these include: organization of the signature list by town and village; absence of procedures and standards for reviewing the lists; numerous mandatory updates which could lead to parties being dissolved as a result of inadvertent errors; and other grounds for dissolution, especially failure to receive a minimum number of votes in successive elections.

In terms of other issues, note should be taken of the possibility that the provisions in the Draft Law on political alliances would result in all electoral alliances having to be registered in a manner analogous to political parties, and not merely by informing the electoral authorities and submitting a joint candidate list. This would provide the authorities, and other political parties, a means of obtaining information about alliances, and potentially taking legal action against them.

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