

Radu Carp**THE RULES ON POLITICAL PARTIES IN ROMANIA
UNDER COMPARATIVE SCRUTINY**

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e-mail: radu.carp@fspub.unibuc.ro**Abstract**

This article is based on two premises. First, the requirements for establishing political parties in Romania are the most restrictive in Europe. When a party has succeeded to register and took a non-ideological position, the electoral participation slightly increased. If the requirements for registering political parties were relaxed, new parties could emerge while greater participation to the elections is under question. The current legal procedure for registering political parties is contrary to Article 40 of the Constitution (the right to association) and the requirement according to which a political party wishing to participate in parliamentary elections must make a deposit is contrary to Article 37 of the Constitution (the right to be elected). Proving the validity of these premises leads to the necessity of changing the current normative framework in the sense of relaxing the requirements for the registration of political parties. This change may be accomplished by a draft law (which is already registered in the parliament) or by the intervention of the Constitutional Court.

Keywords: political parties, registration, elections, participation, freedom of association, representation

I. Introduction

There is some evidence that Romanian legislation is the most restrictive in Europe, and the relatively high number of registered parties is due to poor enforcement of the legal framework. Some additional correlations may be observed in this context. While tightening the registration of political parties and their participation in elections, voter turnout has decreased. When a new party failed to meet the conditions for registration and positioned itself non-ideologically, the turnout increased slightly. If the requirements for party registration were relaxed, new parties would certainly emerge and this could encourage a higher turnout.

However, the most controversial issue related to Romanian legislation in this respect is the fact that the procedure for registering political parties, as currently regulated, is unconstitutional, in relation with Article 40 of the Constitution on the freedom of association, and the requirement to make a deposit for each political party that wishes to participate in elections is unconstitutional in relation with Article 37 of the Constitution – the right to be elected.

II. Romanian legislation on political parties' registration from a comparative perspective

Political parties are vital instruments of expressing citizens' will in contemporary democracies. Despite the anti-party critique that is widely spread in the democratic theory since the first attempts of Moisey Ostrogorsky, Robert Michels, and Max Weber to establish a theoretical framework for political party analysis, they are considered as "*sine qua non* for the organisation of modern democratic polity as well as for the expression and manifestation of political pluralism" (Van Biezen 2003, 1). In particular when a transition occurs from an authoritarian regime to a democracy, political parties can make "a critical contribution for the stability and legitimacy of the new democratic system" (Van Biezen 2003, 2). This article is not focused on the role of political parties in a democracy, in the process of transition to democracy, or in a particular country, but its intent is to emphasise the importance of legal rules regarding the political parties in determining their behaviour and therefore the nature of the political system.

The influence of legal rules on political parties has not been the core of Romanian political party analysis, an area where one may rely on substantial contributions (Alexandru, 1999; Ionescu, 2009; Preda, Soare 2008; Soare 2004). This is the reason why this article focuses on this particular aspect, by providing an interdisciplinary framework of analysis based on both public law and political science instruments.

From the table below (Appendix 1) where 22 countries are taken into consideration¹, one can draw some interesting conclusions. First, the Western model sees the functioning of political parties as part of the right to freedom of association and, therefore, the requirements for the establishment of a political party are not more restrictive than those referring to the establishment of an association. These regulatory provisions did not lead to the representation in parliament of a large number of parties – in general, the Western countries examined (UK, Finland, France, Germany, Italy, Spain, and Hungary) work on a political system based on "two and a half parties" (the phrase belongs to Blondel 1968, 180 - 203): two traditional parties representing the right and the left, plus an anti-system party benefiting from the trust of at most half (in average) of the party voters in the first category. The respect of the right to freedom of association, by a maximal extension of the understanding of its content, did not generate an excessive fragmentation of the composition of parliament. This is due to the fact that some parties strictly focus on representing locally the willingness of citizens who actually rally for the traditional parties when they vote at

¹ The criteria used for choosing these countries are the variety of rules. Countries with rules that are more or less similar to the ones included in the table were not taken into consideration.

parliamentary elections. The UK appears to have understood best that the liberalisation of the process of local political party establishment does not lead to an excess of parties at the central level. The presence of *minor parties* and their participation in local elections did not generate any transformations of the parties represented in parliament. Voters have realised the fact that a party with national ramifications cannot achieve goals that are strictly achievable by organisations representing the interests of local communities. Nevertheless, in order to be effective, such organisations need political party status, so that they are able to gain the type of representation a non-governmental organisation does not have access to. The British example was partially adapted in Hungary, a country allowing the creation of “benefit organisations” that may only participate in local elections. An expected outcome, given the attraction of the British political system model has always exercised and still exerts on the Hungarian political elite – see the complete support for the existence of customary constitutional rules that are to be different from those written, as well as the rejection of the 19th-century French model in terms of civil law structuring.

Extensive interpretation of the freedom of association in Western countries subject to this analysis is closely related to the requirement of strict adherence to constitutional order. Party establishment is not conditioned by the existence of a large number of members, but once a political party is recognised, it must strictly comply with the rules of the political system within which it acts. Failure to follow these rules results in severe penalties, up to the banning of the political party. Germany offers such an example. According to German law, a party does not need, in order to be established, a minimum number of members, the requirement of having three members referring only to participation in federal elections, thus making it the most liberal way to guarantee the right to freedom of association in political parties. As a matter of fact, this legislation has worked alongside the prohibition, by the Constitutional Court, of the Socialist Party of the Reich (1952) and the Communist Party (1956). In the first case, the Federal Constitutional Court’s argument deserves to be quoted:

“If the internal organization of a party does not comply with democratic principles, it can be concluded that the party seeks to impose to the State the structural principles it implemented in its organization.”

However, the Federal Constitutional Court added, “Whether this conclusion is justified or not should be checked in each case”. In other words, a party cannot be placed outside the law just because of the political ideologies it promotes, but only following a thorough examination of its internal organisation. A party called “fascist” or “communist” is not *per se* condemned to not be registered or stand for election. Such a view has led to the registration of the far-right National Democratic Party, as the same Federal Constitutional Court rejected a complaint against it in 2002. The Court pleaded that its internal organisation reached a certain democratic level (it was discovered, with the analysis of this case by the Federal Constitutional Court, that several prominent leaders of the party were actually undercover agents of the Agency for the Protection of the Constitution, the state body which aims to prevent and counter any action that may threaten constitutional order). A similar case was argued in Poland, where the Constitutional Tribunal rejected an appeal that accused the Polish Christian Democrat Party of having violated the Constitution.

To reach this conclusion, the Constitutional Tribunal analysed the internal structure of the party and decided that it met the democratic requirements (for a general presentation of these cases, see Dorsen, Rosenfeld, Sajó and Baer S. 2003, 1276 - 1287).

This entire concept of the freedom of association regarding political parties, coupled with severe penalties that actually apply and are not only mentioned in a bill, is based on the concept of “militant democracy”, introduced by Karl Loewenstein in 1937 (Loewenstein 1937, 417 - 432) and currently employed by several authors (Sajo 2003). Fear of terrorist threats or of the practice of Islamic *sharia* law justifies certain measures restricting the right to freedom of association in political parties, in the sense of strict monitoring and application of sanctions.

On the contrary, in the model which makes the establishment of a political party dependent on the existence of highly restrictive rules, sanctions against a political party that could lead to its banning from the political scene exist, but never apply. In Romania, for example, under Law no. 14/2003² (Articles 44 - 46), political parties can be dissolved by the Constitutional Court or, where appropriate, the Bucharest Court, for violation of certain provisions of the Constitution or of this law, but this procedure has never been put into practice. Political parties such as the Party of Communists, United Left Party, and the Socialist Alliance Party (left-wing), as well as the Party “Everything for the Country” (far right), are still listed in the Register of Political Parties.³

From the analysis of the data presented in Appendix 1, there is a second category of countries (Bulgaria, the Czech Republic, Lithuania, Poland, and Slovakia) where the right to freedom of association in political parties was recognised with the imposing of minimal restrictions. In none of these states the registration of a political party is as simple as the establishment of a non-governmental organisation but, on the other hand, the requirements do not differ by much. In some of these countries, there is a requirement on the minimum number of founders, while in others a minimum number of people whose existence is to be confirmed upon registration is required, and in one case (Bulgaria) the existence of a minimum number of participants at the party establishment congress is checked, which indicates that the internal organisation of a political party is closely related, in this view, to its behaviour in the political arena, in the sense shown by the German constitutional court. All these countries had to face the existence of a single party or false multiparty system throughout the period of the communist regime, followed by a sudden liberalisation of the presence of political parties which, coupled with the lack of a threshold or a low threshold, made possible the emergence of parliaments consisting of several parties with a low number of representatives. The chosen solution to stop excessive fragmentation of the political spectrum, as it endangered the existence of stable coalition, was the increase of the threshold and not the restriction of the right to freedom of association by imposing prohibitory conditions on the registration of political parties. The result of more than two decades of the multi-party system in these countries is the imposition of more restrictive rules than in Western countries for party registrations, but these do not affect the right to freedom of association. The fact that few disputes relating to party registration have come

² Official Journal no. 25 of 17 January 2003.

³ Available at <tmb.ro/index.php/partide-politice> [Accessed on 20 February 2015].

to be judged by the constitutional courts in these countries or by the European Court of Human Rights, prove that the chosen model has by no means harmed the process of structuring private interests in the public space in the form of political parties.

A third model of political party registration is the one in which the number of founding members must be larger than 2,500. In this category we find several countries, including Portugal, the Republic of Moldova, Ukraine, the Russian Federation, Romania, and Kazakhstan. With the exception of Portugal, it is required that a minimum number of founding members come from the administrative divisions of the state. In one case (the Russian Federation) there is also the requirement of having subsidiaries of the party in the administrative units. There is a reason to impose such rules linking the recognition of a political party to its distribution throughout the state. The Republic of Moldova, Ukraine, and the Russian Federation are countries facing the inability of the central government to control the whole territory and/or secessionist movements. Even under such circumstances, it should be noted that in the Russian Federation the number of members required to register a political party fell from 100,000 to 40,000. The somehow natural tendency of political parties in these countries is to speak on behalf of a certain region or to ask for territorial autonomy or even secession. It is by no coincidence that the main political party in the Ukrainian Parliament (Verkhovna Rada) that supported the former President Viktor Yanukovich until 2014 has been called the Party of Regions, in order to emphasise the unity of the country and its opposition to any secessionist project between the country's East and West. Thus, restrictions on the registration of political parties can be justified by the same concept of "militant democracy". Dissolution of the state in these countries is equivalent to the danger represented by radical political movements or to terrorist threats in the countries of the first category.

Three of the mentioned states actually form a special group. In Portugal since 2003, 7,500 signatures are required, as well as the proof of 5,000 members, in order to register a political party, and this legislation has been considered in accordance with the Constitution by the Constitutional Court in a 2007 decision. Even more restrictive rules apply in Romania: 25,000 founding members residing in at least 18 counties and in the Bucharest Municipality, as many as 700 people in each county and Bucharest. Note that the previous condition of registration, that of 10,000 members, working between 1996 and 2003, was much more restrictive than the most restrictive registration procedures currently practiced in the European Union. Kazakhstan has the most restrictive legislation regarding the registration of political parties: they require a minimum number of 40,000 members nationally and at least 600 in each region of the country. Previously, the rules applicable to political parties were even more restrictive: the law was amended in 2009 to take this form, after prolonged pressure on the country, exercised among others by the OSCE and Freedom House. Restrictions on the registration of a political party in Kazakhstan should be viewed in the broader context in which the right to freedom of association is restricted more intensely than in other countries, even if only by reference to the Caucasus, while other areas of the right to freedom of association have a similarly restrictive status – religious organisations must have a minimum of 5,000 members, of which 300 must be in every region of the country, in order to be recognised (Bayram).

If we compare the minimum number of members required to register a political party in the three countries to the total population, the most restrictive law is in Kazakhstan:

State	Total Population	Minimum number of persons required to register a political party	Maximum number of parties that can be registered depending on population
Kazakhstan	17,500,000	40,000	437
Romania	19,000,000	25,000	760
Portugal	10,500,000	7,500	1,400

Romanian law may not be the most restrictive in the world but certainly it is the most restrictive in Europe. In addition, if the restrictions could be justified in the cases of other countries by the necessity to preserve territorial integrity in contexts of latent conflicts based on ethnic or social cleavages, there is no such reason in Romania's case. It is not clear why the legislature chose to have such a high minimum number of members for each county. Romania's case is particularly interesting, as the other aspects regarding the right to freedom of association are not regulated by such restrictive laws. To establish a non-governmental organisation, a trade union, or a religious organisation, those willing to join are not required to fulfil so many formalities as those wishing to set up a political party. There is virtually no justification for the Romanian legislator's option to tighten the registration of political parties twice, successively, in 1996 and 2003.

Thus, by Decree-Law no. 8/1989 for the registration and operation of political parties and public organisations in Romania,⁴ 251 members were needed to register a political party. Subsequently, by the Law on political parties no. 27/1996, at least 10,000 founding members residing in at least 15 of the counties were needed, but not less than 300 in each district, a requirement that was repealed in 2003.

The number of parties represented in Parliament today has evolved as follows:

1990	21
1992	12
1996	13
2000	7
2004	7
2008	4
2012	4

Thus, the restrictive requirements for political party registration did not generate a decrease in the number of parties represented in parliament, but it was the introduction of the 3% threshold in the 1992 parliamentary elections that had this effect – the number of parties decreased from 21 to 12, considering that of the 21 parties represented in

⁴ Official Journal no. 9 of 31 December 1989.

parliament in 1990 only three obtained over 3% of the vote – and subsequently by 5% in the 2000 elections – the number of parties halved from 13 to 7. The adoption of the 10,000 members minimum condition for registering a party took place before the increase of the number of parties represented in parliament from 12 to 13, and the increase of this number to 25,000 took place while the number of parties represented in parliament remained similar after the 2004 elections to the number of parties resulting from the 2000 elections. Therefore, a cause-effect relation between the progressive increase in the minimum number of members and the evolution of the number of parties represented in parliament cannot be established.

Also relevant is the number of parties in the Register of Political Parties, correlated with the number of parties participating in the parliamentary elections (Nanu 2009, 409; updated information according to the official websites of the Bucharest Municipal Tribunal (tmb.ro/index.php/partide-politice) and of the Central Electoral Office (www.becparlamentare2012.ro), accessed on 20 February 2015):

Date	Registered Parties
28 January 1990	30
20 May 1990	80
27 September 1992	155
15 July 1993	159
1 October 1994	161
1 January 1996	200
3 November 1996	75
26 November 2000	73
28 November 2004	64
30 November 2008	35
1 December 2012	47
9 December 2012	12

In February 2015, there were 43 parties enrolled in the Register of Political Parties, a slight decrease from the number of parties in the last parliamentary elections.

Political parties reached the maximum number of 200 a few months before the entry into force of Law no. 27/1996,⁵ and this particular law had an immediate effect: a decrease to more than half of the number of parties participating in elections since that time. The new 2003 Law on Political Parties involved a decrease in the number of parties that have applied, although not as severe as in 1996. Currently, the number of parties that can be found in the Register of Political Parties is 43 (see Appendix 2), but the ratio between this number and the parties that have applied to the most recent parliamentary elections is approximately 4:1. Approximately one in four of the registered parties have not made any official list of candidates for the parliamentary elections in 2012, which shows that the parties' cancellation procedure described by the current law is inadequate.

⁵ Official Journal no. 87 of 29 April 1996.

Interestingly, all parties listed in the Register of Political Parties were established or re-established after the Law on Political Parties no. 14/2003 began to take effect. This Law provides by Article 53 that within six months of its entry into force, all political parties must register at the Bucharest Tribunal. Therefore, there are 66 political parties (added to the initial number of 43 are 23 political parties registered after the entry into force of the Law no. 13/2003, which were cancelled or merged afterwards) that have managed to meet the highly stringent requirements of the law. This is due to faulty application of the law, especially to the superficiality by which the 25,000 signatures lists were checked. If the procedure had been fully compliant with the law, the registered number of parties would undoubtedly have been much smaller. Therefore, Law no. 14/2003 has highly restrictive, unjustified provisions regarding the registration of political parties, which nevertheless are erroneously applied.

In 2014 a draft law for changing Law no. 14/2003 was registered in parliament.⁶ According to this draft law, the number of citizens needed for the establishment of a political party would decrease from 25,000 to 500. A number of 50 founders are needed in at least 10 electoral constituencies (counties or the town of Bucharest) or from nine electoral constituencies plus the electoral constituency for the Romanian citizens residing abroad. The reason for such a difference is that each electoral constituency corresponds, in geographical terms, with a *judet* (county) or with a Bucharest *sector* (administrative unit), except for the constituency for the Romanian residing abroad that do not correspond to any county. The draft law decreases the number of founders of a political party and also their geographical dispersion, but keeps the latter criteria. Therefore, if this draft law is adopted in the current form, the foundation of local parties would be still prohibited.

According to its authors, the reason for this draft law is that the current law “creates a monopoly on the market of political ideas and governance projects, because a competition between different political parties is lacking and the Romanian citizens are limited in their right to freely elect and to be governed by the political organisations that they consider appropriate for their values and interests”. They also argue that the requirement of 500 founders is reasonable in accordance with the freedom of association guaranteed by the Charter of Fundamental Rights of the European Union, and they offer comparative data about registration of political parties from a comparative perspective. The debate around this draft law has not yet started in parliament.

At first glance, there seems to be no connection between the marked decline in the number of voters in parliamentary elections, as visible from the data presented below (Appendix 3), and the requirements for registering a political party. The turnout in elections cannot be explained only by the application of the rules regarding the party registration – there are other factors that are necessary to be taken into account, such as the quality of the electoral campaign, the power of the candidate to convince voters, the level of political culture, etc. However, the emergence of new parties is a process that has gone in Romania, for a certain amount of time, in parallel with an increase in the number of voters, and this leads to the question of whether there is a coincidence or a valid connection between them.

⁶ <http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=14013>. [Accesed on 20 February 2015].

We are taking into consideration only parliamentary elections, without discussing other type of elections. The reason is that in the case of presidential elections, the candidate profile is a crucial factor, besides the party support, in the case of local elections local matters without relevance at the national level could have a decisive influence on the turnout and in the European Parliament elections the turnout is constantly weak in the three rounds that have been organised since 2007. Nevertheless, analysing the relationship between regulations on political parties and turnout taking into consideration all type of elections could bring very valuable results, but it involves more comprehensive research.

The number of voters slightly increased in 2012 (41.72%) compared to 2008 (39.2%). Compared to the vote 20 years ago, with 76.29% of voters participating, the 2012 elections recorded a decrease of 34.57%. Elections in 2012, unlike 2008, were attended by two electoral alliances: USL (PSD + PNL) and ARD (PDL + FC + PNȚCD). In 2008, PNL, PSD, and PDL ran separately. The tendency to simplify voters' choice by postulating an ideological cleavage between left and right, made the two alliances address particularly moderate voters without extreme political options. This trend was countered by the emergence of a new party, PPDD. The movement toward the centre of USL and ARD determined a large number of voters who initially supported one of the two alliances for ideological reasons rather than wishing not to vote. This pattern of absenteeism was only partially offset by PPDD, which attracted voters from the electoral pool of USL and that of ARD. Any new party that emerges in Romania, registering and participating in elections, could achieve the same effect as PPDD: an increase in the number of voters that do not recognise themselves in the behavior of the existing parties.

This effect is very much connected with a validated political science model resulting from analysis of the behaviour of voters and political parties. Based on the economic model developed in 1929 by Harold Hotelling (Hotelling 1929, 41 - 57), Anthony Downs (Downs 1957, 163) argued that voters are evenly distributed along an ideological axis, from the far left (0) to the far right (100). In a two-party system, each party moves towards its competitor because extremists at the nearest end of the axis prefer that particular party to the opposing one, as it is closer to their positions. The most effective way to get more support for a party is to go towards the other extreme, so that it attracts more voters. As the parties approach each other, they become moderate regarding the policies they wish to implement. If no other party emerges, the two parties will eventually meet at juncture 50. Albert Hirschman (Hirschman 1970, 83 et seq; Carp 1999, 197 - 207) brought an amendment to this model, considering that the disproof (*voice*) slows down the speed at which parties advance towards the centre, even in a two-party system. In other words, if a two-party system does not turn into a multiparty one, voters finally begin to express their views through protest rather than vote. Giovanni Sartori also made an outstanding contribution in discussing this model (Sartori, 1976, 324 - 327).

The Downs-Hotelling model is based on voters and not on a party's distribution along an ideological axis. The fact that parties follow the path of less political ideology in their public behaviour does not mean that they do not want to attract voters with very clear ideological behaviour. It is true that parties in Central and Eastern Europe are still weak in terms of cleavage structures and institutional orientations (Van Biezen 2003, 35 - 37) but it does not mean that they abandon the willingness to emphasise their ideological identity for

maximising electoral performance. In the case of Romania, the parties are not distributed on an left-right axis, but rather on an axis of “political families”. There are nine such “political families” in Central and Eastern Europe: ecologists; communists and the extreme left; agrarians; social-democrats; liberals-conservatives; Christians; national-populists and the extreme right; defenders of particular interests; ethnic minorities representatives (Vandermotten, Medina Lockhart 2002, 17 - 34). Parties that have the membership of a European political party are more stable than parties without this affiliation (Preda, Soare 2008, 108 underlines this connection between national parties and European ideological affiliation). Only parties that are based on a clear political doctrine shared with other parties belonging to the same political family may survive in the long run.

According to Downs, new political parties fall into two categories: those which are established in order to influence existing ones and position themselves between a party and its former supporters, and parties which are set in order to win elections and seek to position as the centre, in order to attract a large number of voters, the views of which are not expressed by any of the existing parties. The Romanian context allows the emergence of both types of parties, given the large number of voters who preferred not to express their option. PPDD belongs to the second category described by Downs, but currently we have no party belonging to the first category. However, PPDD does not exhaust the second category, as its number of votes is 1,111,532, out of a total of 7,613,238 votes cast (41.72% of the total number of 18,248,414 voters), while the number of those enrolled in the electoral process who did not vote in parliamentary elections in 2012 totalled 10,635,176. Of the total electorate who did not vote for USL, ARD, or UDMR, those who voted for PPDD represent only 9.46%. The rest of over 10.6 million voters did not find answers in the offer of any party and may be mobilised by new parties in both categories. Relaxing the registration of political parties could lead to the emergence of new parties that have a potential electorate to address. The requirement of their success is described by Anthony Downs as follows: “New parties may be most successful if they occur soon after a major shift in the distribution of voters’ ideological visions.”

III. The rules on political parties and the constitutional freedom of association

The establishment of political parties is considered to be part of the freedom of association, expressed specifically in the text of the Romanian Constitution, Article 40, paragraph 1, which states that: “Citizens may freely associate into political parties.” The same view is shared by the human rights perspective of the Council of Europe. Article 11 of the European Convention on Human Rights provides that everyone has the right to freedom of association, including the right to form and join trade unions. At first glance, it may seem that association in political parties is excluded, but the European Court of Human Rights has made it clear that in reality the conjunction “including” proves that it is an example, among others, of the forms in which the freedom of association may be exercised, and therefore political parties can rely on Article 11 of the Convention.⁷ The Charter of

⁷ ECtHR 30 January 1998, Case No. 19392/92, *United Communist Party of Turkey and others v. Turkey*.

Fundamental Rights of the European Union also considers in Article 12 that “Everyone has the right ... to freedom of association at all levels, in particular in political ... matters.”

Are the provisions of the Law no. 14/2003, regarding the registration of political parties unconstitutional in relation with Article 40, paragraph 1 of the Constitution? The Constitutional Court has not yet had the occasion to rule on this issue. It did, however, by reference to the earlier 1996 law. The Constitutional Court has not ruled on the substance of the matter, which, correlated with the confinement of the conditions for registering a political party operated in 2003, leaves the above question open.

The Constitutional Court has been asked, among other provisions of the law on political parties, to determine whether the provisions of the draft law regarding the registration of a political party representativeness (10,000 signatures from at least 15 counties but no less than 300 in each county) are or are not contrary to the Constitution. The authors of the inquiry believed that “the established threshold was too high”, meaning an “artificial barrier” to the free exercise of the right of association in political parties, in relation to the condition of representativeness of the initial legislative proposal of only 2,500 signatures from at least 10 counties but no less than 100 in each district, a provision that would be, according to the authors of the referral, “more rational and weighted”. Therefore, this was not a dispute over the provisions of the draft bill in relation to the constitutional provision that guarantees the right to freedom of association, but by reference to the initial article governing the registration of political parties. The Constitutional Court noticed this fact in Decision no. 35/1996:⁸

“The provisions of Article 17 letter b) of the law are not considered unconstitutional because they would hinder the right of association, but only because they would be >>an artificial impediment to the exercise of the fundamental right of freedom of association of citizens in political parties<<. Assessing the appropriateness of a certain threshold of representativeness is not a constitutional issue, while the established threshold does not cause the suppression of the right, following only, as in the present law, that the association of citizens in political parties has the significance of institutionalizing a current without which the resulted party cannot fulfil its constitutional role [...] to help define and express the political will of the citizens. Even the authors of the referral view that the previous laws >>were too permissive, resulting in a true inflation of associative political subjects<<. It is considered, however, that the >>phenomenon of party devaluation<< should not be countered by the provided condition of representativeness, but by the >>threshold<<. Those arguments also do not concern the constitutional legitimacy of the contested provision, but the dispute over its political opportunity [...] In conclusion, the criterion of representativeness is not itself unconstitutional, and it is generally accepted in the exercise of the right to associate in political parties, considering their role in the expression of the political will of the citizens. This criterion could be unconstitutional if, by its effects, it led to the suppression of the freedom of association or if it were synonymous with such suppression”.

Therefore, the Constitutional Court considers that the establishment of a minimum number of members by a political party during its registration is unconstitutional and sets

⁸ Official Journal no. 75 of 11 April 1996.

a criterion that should be checked when examining any provision of the law relating to the registration requirements for political parties: those provisions which have the effect of suppressing the exercise of the right of association are unconstitutional. Whether the current provisions, which are more restrictive than those in 1996, have such an effect, remains an open question as long as the Constitutional Court will not be hearing an application with such an object.

In addition to the restrictive requirements for registration, political parties that would like to participate in elections also face a restrictive provision: according to Article 29, paragraph 5 of the Law no. 35/2008:⁹

“On the moment of application, each political party, political alliance, electoral alliance, organization of national minorities, independent candidate must demonstrate a deposit on behalf of the Permanent Electoral Authority, with the value of 5 gross minimum wages for each candidate.”

Thus, a political party willing to make nationwide applications in each electoral college for the 2012 elections had to make a deposit of 1,582,000 RON, equivalent to around 350,000 EUR (there are 452 electoral colleges and the gross minimum wage for 2012 was 700 RON – approximately 150 EUR).

Due to the current requirements imposed by the electoral system, political parties are strongly discouraged to submit candidates only in certain electoral colleges, and thereby they constitute deposits less than the amount of money mentioned above because the distribution of seats in parliament is based on the votes gained by a party in all electoral colleges.

As in the case of the requirements for political party registration, Romania also makes a distinctive note in relation to other European countries, regarding the existence and amount of such deposit. Thus, in Belgium, Denmark, France, Germany, Hungary, Italy, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Hungary, candidates and parties participating in elections are not required to make such deposits. In European countries where there is a deposit requirement, the situation is as follows:

State	Obligations of the candidates or parties wishing to participate in elections to parliament
Austria	Non-refundable fee of 435 EUR
Czech Republic	Deposit of 7,000 EUR
Estonia	Deposit of two minimum wages
Greece	Non-refundable fee of 146,74 EUR
Latvia	Up to 7,100 EUR deposit if lists of candidates in all five constituencies are submitted
Lithuania	Deposit of one minimum wage
Netherlands	Deposit of 11,250 EUR

⁹ Official Journal no. 196 of 13 March 2008.

By establishing a deposit of such high value, Romanian electoral law violates the Code of Good Practice in Electoral Matters of the Venice Commission¹⁰ and assumed by the European Council Parliamentary Assembly by Resolution no. 1320/2003 which provides in Article 1.3, paragraph 9:

“There is another procedure according to which candidates or parties must submit a bond that is reimbursed only if the candidate or party exceeds a certain percentage of votes [...] the amount required for bail and the required number of votes for reimbursement should not be excessive.”

This provision of the Law no. 35/2008 is, in our opinion, a violation of Article 37 of the Constitution which provides the right to be elected, even if the Constitutional Court has decided otherwise in his Decision no. 503/2010. Article 29, paragraph 5 has been challenged by someone who wanted to run as an independent candidate on the partial elections of 2010 for fulfilling one vacant place in parliament. He argues that this provision makes a discrimination based on wealth and the political parties have an advantage because of it compared to independent candidates. He also considered that this provision is not reasonable or proportional and it does not follow a legitimate purpose and therefore is not justified according to ECHR jurisprudence. The Constitutional Court declared that the deposit is a requirement for the registration of the application and is not a “wealth census”, taking into account “the current social and economic level of Romania”, on the one hand and his “accessible amount”, on the other hand. The deposit is justified, according to the Constitutional Court, for the purpose of discouraging applications “lacking seriousness and responsibility”. The meaning of such a deposit is, according to the Constitutional Court, the emergence of “truly determined candidates, able to represent and to fulfil the voters’ interests”. The Constitutional Court has emphasised that it already decided in previous decisions that the constitutional right to be elected may be limited in a reasonable way and that Article 1.3, paragraph 9 of the Code of Good Practice in Electoral Matters leads to the conclusion that “establishing in a concrete way the level of that deposit is the option of the legislator and, as far as it is not excessive, in the sense that it does not preclude the exercise of the right to be elected, it cannot be appreciated as non-constitutional”. Although the existence of such a deposit is not *per se* unconstitutional, its amount is, in our opinion, excessive and leads to an unjustified barrier to the right to be elected. The Constitutional Court, even if it rejected that application based on the unconstitutionality of Article 29, paragraph 5 of the Law no. 35/2008,¹¹ may revise its own jurisprudence on this aspect, either on considering the amount of the deposit as excessive, or to consider the deposit as contrary to Article 37 of the Constitution.

¹⁰ European Commission for Democracy through Law (Venice Commission), Opinion no. 190/2002, *Code of good practice in electoral matters. Guidelines and explanatory report*, CDL-AD (2002) 23 rev.

¹¹ Official Journal no. 353 of 28 May 2010.

IV. Conclusions

The two premises underlying this article have been proved. In order for Romanian electoral legislation to be in line with the Constitution and the rules applied in the field in other European countries with democratic traditions, the current highly restrictive requirements for the registration of a political party have to be changed and the obligation of parties or candidates to make a deposit in order to participate in parliamentary elections have to be eliminated. The existence of a threshold is a sufficient guarantee that certain parties or candidates running *jocandi causa* would not enter parliament. The first change could be achieved either by the adoption of the draft law that has been already registered in parliament, or by the intervention of the Constitutional Court that may decide that Article 19 of Law no. 14/2003 and Article 29, paragraph 5 of the Law no. 35/2008 are not in line with the Constitution. The Bucharest Tribunal has already addressed the Constitutional Court with an exception of non-constitutionality regarding the current legal provisions on the party registration, a case that is still pending.

Note: On 26 February 2015 the Constitutional Court has approved by the Decision no. 75/2015 the exception of non-constitutionality related to the Article 19, paragraph 3 of the Law no. 14/2003 (Official Journal no. 265 of 21 April 2015). According to this provision, a political party need in order to be registered "at least 25,000 founding members, having their domicile in 18 counties and the Bucharest municipality, but not less than 700 people in each county and the municipality of Bucharest". According to the Article 147, paragraph 1 of the Constitution, if a legal provision is declared non-constitutionnal, the Government or the Parliament has the obligation to reconcile that provision with the Constitution. Therefore, a new draft law has been initiated in April 2015 in order to change the Law no. 14/2003. This draft law became Law no. 114/2015 (Official Journal no. 346 of 20 May 2015). The main provisions of this law are the following: the possibility to establish new parties that may function only at the local level (Article 4, paragraph 1); the possibility of register a political party with only 3 founding members (Article 18, paragraph 1, letter d). The adoption of the Law no. 114/2015 by the Senate has been done only one day after the publication of the Constitutional Court decision in the Official Journal.

The Law no. 35/2008 has been abrogated by a new electoral legal framework, the Law no. 208/2015 (Official Journal no. 553 of 24 July 2015). According to this new law, there is no need of a deposit for the individuals or legal persons willing to participate to the parliamentary elections.

Appendix 1. Requirements for establishing political parties in different states

State	Requirements of Establishment	
	Minimum number of supporters / members to establish a political party	Possibility of establishing parties / political associations locally
Countries that provide extensive freedom of association in political parties		
Great Britain	Registered political party with at least 3 members / unregistered party can be formed by a single person	YES ¹²
Belgium	Association of at least 3 people	NO
Finland	Association of at least 3 people with at least 5,000 supporters	NO
France	Association of at least 3 members	NO
Germany	Political party of at least 3 members ¹³	NO
Italy	Association of at least 3 people	NO
Netherlands	Association of at least 3 people	NO
Spain	Political party with at least 2 founding members ¹⁴	NO
Hungary	Non-profit organisation of the civil society with at least 10 founding members	YES ¹⁵
States that subject the freedom to association in political parties to minimal restrictions		
Bulgaria	Political party with: – At least 2,500 members in total required for registration; – At least 500 founding members attending the first constitutive congress; – At least 50 founding members of the party's project.	NO
Czech Republic	Political party formed by a committee of at least 3 founding members and a petition signed by at least 1,000 Czech citizens requesting party registration	YES
Lithuania	Political party of at least 1,000 founding members	NO
Poland	Political party of at least 3 founding members, with 1,000 supporters	YES
Slovakia	Political party of at least 3 founding members and at least 10,000 signatures	NO

¹² British law provides for the establishment of *minor parties*.

¹³ *The Political Parties Act* of 24 July 1967 provides no requirement on the minimum number of supporters to set up a party. On the other hand, in Article 18. 2 of the Federal Election Law it is stated that a party must have at least three members in order to function legitimately.

¹⁴ There is no requirement under the Political Parties Act of 2002 or in the previous 1978 Act concerning the minimum number of founding members or supporters, but the law talks about founding members in the plural, where it is inferred that at least two founding members are required.

¹⁵ Hungarian law provides for the establishment of benefit organisations – political associations that are distinct to political parties and can participate only in local elections, not in the parliamentary and presidential elections.

States that subject the freedom of association in political parties to some restrictions justified by the fear of ethnic separatism or the low capacity of central authorities to control the entire territory		
Armenia	Political party with a minimum of 200 founding members from at least one third of Armenia's regions, including the capital Yerevan	NO
Georgia	Political party of at least 1,000 founding members	NO
Republic of Moldova	Political party of at least 4,000 founding members residing in at least half of the second-level administrative units, but no less than 150 in each of those administrative territorial units.	NO
Russian Federation	Political party with at least 40,000 founding members, with branches in more than half of the regions that are the subjects of the Russian Federation	NO
Ukraine	Political party with at least 10,000 supporters from at least two-thirds of the regions of Ukraine and the cities of Kyiv and Sevastopol and from the Autonomous Republic of Crimea	NO
States that subject the freedom of association in political parties to unjustified restrictions		
Portugal	Political party with at least 7,500 signatures, of which 5,000 are members ¹⁶	NO
Romania	At least 25,000 political party founding members residing in at least 18 counties and in Bucharest and no less than 700 people from each of the counties and Bucharest	NO
Kazakhstan	Political party with at least 40,000 members nationwide and at least 600 in each region ¹⁷	NO

Appendix 2. The Register of Political Parties from Bucharest Tribunal on 20 February 2015

1. NATIONAL LIBERAL PARTY / PARTIDUL NAȚIONAL LIBERAL – P.N.L.
2. SOCIAL-DEMOCRATIC PARTY / PARTIDUL SOCIAL DEMOCRAT – P.S.D.
3. NATIONAL PEASANT CHRISTIAN-DEMOCRATIC PARTY / PARTIDUL NAȚIONAL ȚĂRĂNESCU CREȘTIN DEMOCRAT – P.N.Ț.C.D.
4. NEW DEMOCRACY PARTY / PARTIDUL NOUA DEMOCRAȚIE – P.N.D. Current title: ECOLOGIST ALTERNATIVE PARTY / Partidul Alternativa Ecologistă, abbreviation P.A.E. (18.03.2008)
5. CHRISTIAN-DEMOCRATIC PARTY / PARTIDUL CREȘTIN DEMOCRAT – P.C.D.

¹⁶ According to the 2003 Law on political parties.

¹⁷ Since 2009.

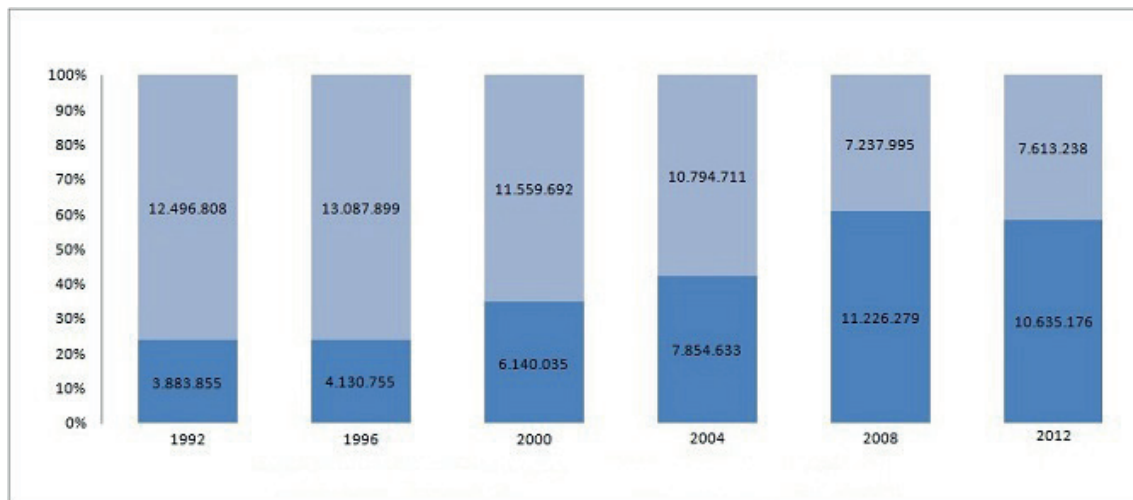
6. SOCIALIST PARTY OF NATIONAL RESURRECTION / PARTIDUL SOCIALIST AL RENAȘTERII NAȚIONALE – P.S.R.N. – cancelled on 22.10.2003
7. PENSIONERS' AND SOCIAL PROTECTION PARTY / PARTIDUL PENSIONARILOR ȘI PROTECȚIEI SOCIALE – P.P.P.S. Current title of the party THE POPULAR AND SOCIAL PROTECTION PARTY / PARTIDUL POPULAR ȘI AL PROTECȚIEI SOCIALE (12.12.2006)
8. GREATER ROMANIA PARTY / PARTIDUL ROMÂNIA MARE – P.R.M.
9. ROMANIAN HUMANIST PARTY (SOCIO-LIBERAL) / PARTIDUL UMANIST DIN ROMÂNIA (SOCIAL LIBERAL) – P.U.R. – S.L. Current title is CONSERVATIVE PARTY / Partidul Conservator (14.09.2005)
10. ROMANIAN ECOLOGIST PARTY / PARTIDUL ECOLOGIST ROMÂN – P.E.R.
11. ROMANIAN NATION'S UNITY PARTY / PARTIDUL UNITĂȚII NAȚIUNII ROMÂNE – P.U.N.R.
12. PRIVATE PEOPLE PARTY. ROMANIAN TRADITIONAL SOCIO-DEMOCRATIC PARTY / PARTIDUL PARTICULARILOR PARTID SOCIAL DEMOCRAT TRADIȚIONAL ROMÂN – P.P.P.S.D.T.R. Current title of the party is FORCE OF JUSTICE / FORȚA DREPTĂȚII (24.03.2004)
13. NATIONAL DEMOCRATIC-CHRISTIAN PARTY / PARTIDUL NAȚIONAL DEMOCRAT CREȘTIN – P.N.D.C.
14. ROMANIAN POPULAR PARTY / PARTIDUL POPULAR DIN ROMÂNIA – P.P.R. Current party title is POPULAR PARTY / PARTIDUL POPULAR – P.P (01.09.2010)
15. NEW GENERATION PARTY / PARTIDUL NOUA GENERAȚIE – P.N.G. modified to – NEW GENERATION CHRISTIAN DEMOCRATIC PARTY / PARTIDUL NOUA GENERAȚIE CREȘTIN DEMOCRAT – P.N.G. – C.D. (15.09.2006)
16. NATIONAL DIGNITY PARTY / PARTIDUL DEMNITĂȚII NAȚIONALE – P.D.N.
17. ROMANIAN DEMOCRATIC FORCE PARTY / PARTIDUL FORȚA DEMOCRATĂ DIN ROMÂNIA – FDR – currently DEMOCRATIC FORCE / Forța Democrată (30.05.2007)
18. "FOR THE HOMELAND" PARTY / PARTIDUL "PENTRU PATRIE" – P.P.P. – title changed to "ALL FOR THE COUNTRY" PARTY / PARTIDUL "TOTUL PENTRU ȚARĂ" – T.P.Ț.
19. NATIONAL DEMOCRATIC BLOCK / BLOCUL NAȚIONAL DEMOCRAT – B.N.D. – changed title to CHRISTIAN-SOCIAL UNION / Uniunea Creștină Socială – U.S.C. (04.10.2005)
20. NATIONAL DIGNITY PARTY / PARTIDUL DEMNITĂȚII NAȚIONALE – P.N.D.
21. NATIONAL INITIATIVE PARTY / PARTIDUL INIȚIATIVA NAȚIONALĂ
22. GREEN PARTY / PARTIDUL VERDE P.V.
23. UNITED LEFT PARTY / PARTIDUL STÂNGII UNITE (PSU)
24. POPULAR AGRARIAN PARTY / PARTIDUL POPULAR AGRAR (P.P.A.) on 15.06.2012 changed title to GREEN-DEMOCRATS AGRARIANS' MOVEMENT / "Mișcarea Verzilor-Democrați Agrarieni" abbreviation "MV-DA"
25. ROMANIAN CONSERVATORY MOVEMENT / MIȘCAREA CONSERVATOARE DIN ROMÂNIA (MC)

26. POPULAR SOCIAL-CHRISTIAN UNION / UNIUNEA POPULARĂ SOCIAL CREȘTINĂ – U.P.S.C.
27. EUROPEAN ROMANIAN PARTY / PARTIDUL ROMÂNIEI EUROPENE – P.R.E.
28. HUNGARIAN CIVIC PARTY / PARTIDUL CIVIC MAGHIAR – MAGYAR POLGARI PART – PCM – MPP
29. ROMANIAN ECOLOGIST UNION PARTY / PARTIDUL UNIUNEA ECOLOGISTĂ DIN ROMÂNIA – U.E.R.
48. NATIONAL UNION FOR THE PROGRESS OF ROMANIA PARTY / PARTIDUL UNIUNEA NAȚIONALĂ PENTRU PROGRESUL ROMÂNIEI – U.N.P.R.
30. HUNGARIAN POPULAR PARTY IN TRANSYLVANIA / Erdélyi Magyar Néppárt – Partidul Popular Maghiar din Transilvania (abbreviation E.M.N.P.-P.P.M.T.).
31. PEOPLE'S PARTY / PARTIDUL POPORULUI (abbreviation P.P.-L.C.).
32. PEOPLE'S PARTY – DAN DIACONESCU / PARTIDUL POPORULUI – DAN DIACONESCU (abbreviation P.P.-D.D.).
33. PRODEMO PARTY / PARTIDUL PRODEMO – abbreviation P.PRO
34. NATIONAL REBIRTH PARTY / PARTIDUL RENĂȘTERII NAȚIONALE - abbreviation : PRN
35. SOCIAL JUSTICE PARTY / PARTIDUL DREPTĂȚII SOCIALE (PDS)
36. NEW REPUBLIC PARTY / PARTIDUL NOUA REPUBLICĂ
37. NATIONAL PARTY FOR ENVIRONMENT / PARTIDUL NAȚIONAL AL MEDIULUI
38. PARTY THE DEMOCRATIC CHRISTIAN UNION OF ROMANIA / PARTIDUL UNIUNEA CREȘTIN DEMOCRATĂ DIN ROMÂNIA (UCDR)
39. PARTY MOVEMENT OF THE AGRICULTORS OF ROMANIA / PARTIDUL MIȘCAREA AGRICULTORILOR DIN ROMÂNIA (MAR)
40. PARTY ROMANIAN DEMOCRATIC UNION / PARTIDUL UNIUNEA DEMOCRATĂ ROMÂNĂ (UDR)
41. PARTY POPULAR MOVEMENT / PARTIDUL MIȘCAREA POPULARĂ
42. PARTY THE SOCIALIST ALTERNATIVE / PARTIDUL ALTERNATIVA SOCIALISTĂ – abbreviation: P.A.S.
43. PARTY THE DEMOCRATIC ROMA ALLIANCE / PARTIDUL ALIANȚA DEMOCRATĂ A ROMILOR

Appendix 3. Evolution of voters' turnout (Parliament elections) in Romania 1992-2012

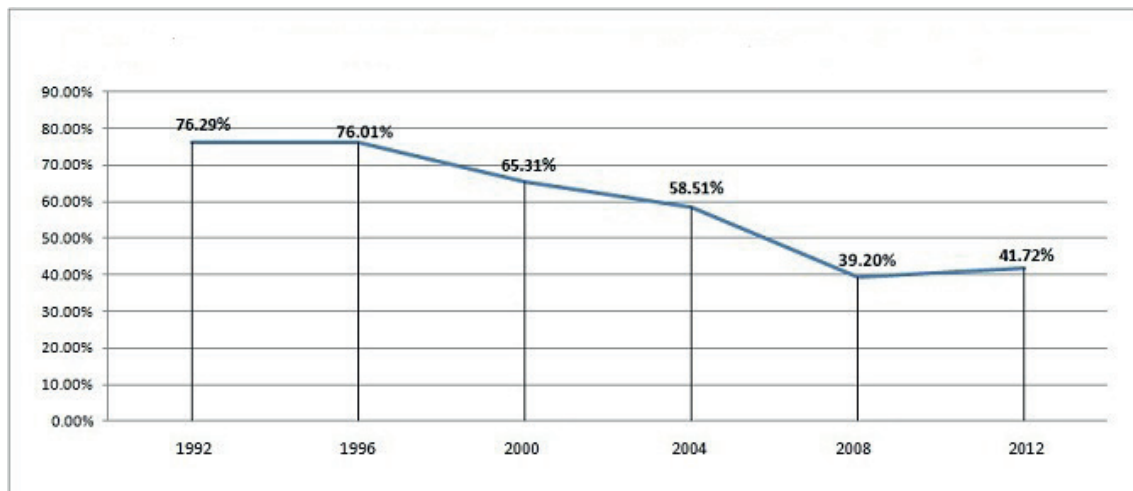
Year	Number of citizens having the right to vote who did not voted	Number of citizens having the right to vote who voted	Total number of citizens enrolled on electoral lists
1992	3,883,855	12,496,888	16,380,663
1996	4,130,755	13,087,899	17,218,654
2000	6,140,035	11,559,692	17,699,727
2004	7,854,633	10,794,711	18,449,344
2008	11,226,279	7,237,995	18,464,274
2012	10,655,176	7,613,238	18,248,414

Evolution of voters turnout (Parliament elections) – the number of voters 1992-2012



■ enrolled persons who did not vote ■ enrolled persons who voted

Evolution of voters turnout (Parliament elections) in percentage 1992-2012



References

- Alexandru R. (1999). *Partidele politice românești după 1989 [The Romanian political parties after 1989]*, București: Paideia.
- Bayram M., *Kazakhstan: Muslim Board Islamic monopoly, Catholic exemption*. Available at <www.rn.org/articles/38567>. [Accessed on 20 February 2015].
- Blondel J. (1968). 'Party Systems and Patterns of Government in Western Democracies'. *Canadian Journal of Political Science*. No. 2

- Carp R. (1999). 'Reformularea modelului Hotelling – Downs în varianta lui Albert Hirschman' [*Reformulating the Hotelling - Downs model from Albert Hirschman perspective*]. In: Hirschman, A. O. (1999). *Abandon, contestare și loialitate. Reacții față de declinul firmelor, organizațiilor și statelor* [*Exit, voice and loyalty. Reactions to the decline of firms, organisations and states*]. Bucharest: Nemira
- Dorsen N., Rosenfeld M., Sajó A. and Baer S. (2003). *Comparative Constitutionalism – Cases and Materials*. St. Paul: Thomson West
- Downs A. (1957). *An Economic Theory of Democracy*. New York: Harper and Row
- Hirschman A. O. (1970). *Exit, voice and loyalty. Responses to decline in firms, organisations and states*. Cambridge, MA: Harvard University Press
- Hotelling H. (1929). 'Stability in Competition'. *The Economic Journal*. XXXIX
- Ionescu A. (2009). *Du parti – État a l'État des partis. Changer de régime politique en Roumanie*. București: Editura Academiei Române.
- Loewenstein K. (1937). 'Militant Democracy and Fundamental Rights', *American Political Science Review*, No. 31
- Nanu D. (2009). *Evoluția sistemului de partide în România după decembrie '89* [*The evolution of party system in Romania after December 1989*], Sibiu: Alma Mater
- Preda C. and Soare S. (2008). *Regimul, partidele și sistemul politic în România* [*The regime, the parties and the political system in Romania*], București: Nemira.
- Sajó A. ed. (2003). *Militant Democracy*. Utrecht: Eleven International Publishing.
- Sartori G. (1976). *Parties and party systems, A framework for analysis*. Cambridge: Cambridge University Press
- Soare S. (2004). *Les partis politiques roumains après 1989*. Bruxelles: Éditions de l'Université Libre de Bruxelles.
- Van Biezen I. (2003). *Political parties in new democracies. Party organization in Southern and East – Central Europe*. New York: Palgrave Macmillan.
- Vandermotten C., Medina Lockhart P., *La géographie électorale de l'Europe centre-orientale*, in De Waele J.-M. ed. (2002). *Partis politiques et démocraties en Europe Centrale et Orientale*, Bruxelles: Éditions de l'Université Libre de Bruxelles
- ECtHR 30 January 1998, Case No. 19392/92, *United Communist Party of Turkey and others v. Turkey*.
- European Commission for Democracy through Law (Venice Commission), Opinion no. 190/2002, *Code of good practice in electoral matters. Guidelines and explanatory report*, CDL-AD (2002) 23 rev.