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Venice Commission standards and the Romanian party system: imperative mandate and majoritarian tyranny

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Abstract: Since its founding in 1990, the Venice Commission has advised post-communist states, including Romania, on constitutional reforms. Although Romania was not a full member initially, it received guidance during the drafting of its first democratic constitution. This research examines how well Romanian legislation aligns with the Commission's standards on democratic governance and political party regulation, identifying any gaps or inconsistencies. Given Romania's totalitarian past, special focus is placed on protecting political opposition, freedom of expression within parties, and the limits of imperative mandates. The study uses legal analysis, case studies on political controversies and Constitutional Court decisions, and reviews from think tanks—especially following the 2015 political party law reform. It concludes by proposing legislative directions to better align Romania with European democratic norms.

Keywords: Venice Commission, Romanian party system, democratic governance, imperative mandate, political pluralism

Introduction

This paper aims to explain the complex interactions between the new, post-communist normative body regarding the organization of political parties and the communist legacies upon which these regulations were imposed, contributing to a broader discussion about the slow consolidation of the party system and the absence of genuine intra-party democracy. The Romanian legal framework will be studied from the perspective of historical institutionalism, which focuses on how individual choices concerning reform are shaped by institutions, making them resistant to change (Hall & Taylor, 1996). By adopting this historical-institutionalist perspective on post-communism and political culture and values, the study will focus on how the

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various iterations of the law on the organization of political parties have responded to the Venice Commission's recommendations and shaped collective behaviours, expressed through the statutes adopted by parties and, subsequently, the decisions of party executives. Leaning on older contributions to the argument that law is a paradigmatic example of institutionally embedded values and that courts are political institutions, with a lasting impact on policy-making, state building or the legitimation process (Shapiro & Stone, 1994), this article will also provide an assessment of the concrete impact on party politics that this voluntary cooperation body at the European level has had on the development of the regulatory framework.

This article employs a qualitative research design, combining legal-institutional analysis with case studies. Primary data include constitutional texts, party legislation (1989, 1996, 2003, 2015), Constitutional Court decisions, and Venice Commission reports and guidelines. These are complemented by secondary sources, such as academic literature and think tank reports, particularly those analysing the 2015 reform. The study applies process-tracing to follow the evolution of Romanian party law and situates findings within the framework of historical institutionalism, highlighting how communist legacies shape reform trajectories. Case studies of major controversies and rulings were chosen because they illustrate tensions between formal alignment with Venice Commission standards and actual political practices. While this approach allows for in-depth analysis of critical junctures, it is limited by reliance on documentary sources and the interpretive nature of assessing compliance with non-binding international standards. Furthermore, Venice Commission recommendations are often „soft law," so measuring compliance requires interpretation.

To ensure consistency with the entire research on mechanisms for ensuring internal democracy, the study on the degree of conformity of the Romanian regulatory framework with the Venice Commission's recommendations will address the same dimensions regarding organizational structure, candidate and leader selection, and the contribution and control exercised by internal party bodies over the political program and its translation into political action.

Since it was established in 1990, the Venice Commission (the European Commission for Democracy through Law) has served as an advisory body to the Council of Europe, aiming to support constitutional reforms in post-communist countries. Although Romania was not yet a full member, it benefited from recommendations as early as the drafting of its first democratic constitution. The purpose of this research is to answer two questions: to what extent does Romanian legislation reflect the Venice Commission's standards on democratic governance and political party regulation, and whether there are inconsistencies or deficiencies in how Romania applies these recommendations.

This policy area is „so full of policy and courts that one has no choice but to confront them" (Shapiro & Stone, 1994). Given Romania's totalitarian past, as well as that of other non-member states that have received guidance since the 1990s in

strengthening their pro-European path through the promotion of the rule of law, democracy, and the republican model of representative, pluralistic democracy, this paper will pay particular attention to how internal contestation is tolerated or not, from guaranteeing freedom of expression of opinions within political parties to banning imperative mandates. The assumption underlying this study is that the institutionalization of elections and freedoms can be considered synonymous with fulfilling the conditions of „polyarchy" (Dahl, 1971). However, As Guillermo O'Donnell (O'Donnel, 2002) recommends, I will avoid comparing with idealized Western standards of polyarchy consolidation, based on observations of older democracies, which may lead to the generalization of the „underdevelopment" label but, consistently with earlier positions expressed by Radu Carp (2013), I will make a case of thoroughly explaining why current restrictions on legal registration of new political parties are both unconstitutional, limiting the right to vote and be elected, and non-compliant with Venice Commission recommendations.

The study by Schimmelfennig and Sedelmeier (2004) made a lasting impression in Europeanisation studies because it succeeded in advancing a different approach in comparative studies, one that focused less on the results than on the mechanisms by which the European Union succeeded in transferring norms and rules to Central and Eastern European candidate countries during the pre-accession period. Their main conclusion - that the transfer of European rules takes place when conditionality is clear, monitoring is strict, and the costs of non-compliance are higher than those of compliance, or, in other words, that the EU's transformative power depends on the attractiveness of accession and the institutional capacity of candidate states to implement reforms, supports earlier debate over the slow and hesitant adherence to pluralist, democratic norms in the first years of transition.

Democratic conditionality is one of the mechanisms available to the EU, referring to adherence to the union's fundamental principles: liberal democracy, the rule of law, and human rights. This type of conditionality was essential in the 1990s, in the context of post-communist transformations in Central and Eastern Europe, with the main external incentive of strengthening institutional relations with the EU (association and then accession negotiations). However, once accession negotiations began, democratic conditionality became secondary, although the European Commission continued its monitoring. Of all conditionalities, the democratic ones were the weakest, so governments with authoritarian tendencies preferred to reject the offer of accession rather than bargain giving up some or all their power through the adoption of liberal democratic rules. National leaders estimated that the power costs generated by conformation to the acquis conditionality - the transposition of technical and sectoral EU norms- would be lower and would not directly affect internal political power structures, and were, thus, less hesitant in accepting it.

Specifically, regarding the impact of EU conditionality on democratization in Central and Eastern Europe, Schimmelfennig and Sedelmeier's (2004) study highlights a paradoxical effect: during the accession process, legislative activity in

candidate countries focused more on the formal transposition of the EU acquis, resulting in reduced space for substantial parliamentary debate and real competition between political parties. The proliferation of autonomous state agencies, imposed by the technocratic logic of alignment with EU norms contributed to weakening political institutions' accountability to voters. The EU accession thus had an ambivalent impact on democracy: while it contributed to the adoption of formal democratic institutions, it simultaneously undermined them by, transferring power to supranational structures and technocratic agencies, reducing space for internal political deliberation and widespread understanding of and adherence to democratic values.

Heather Grabbe's (2006) work supports a complementary view. According to her study, EU conditionality played a significant transformative role, especially by linking the prospect of EU accession with the adoption of democratic values and institutional reforms. However, she too admits that the EU's impact was often diluted by internal political resistance, authoritarian institutional legacies, and the reduced administrative capacity of some states to implement reforms effectively. In some cases, conditionality only led to formal compliance, where democratic norms were adopted at the legal level but without a profound transformation of democratic practices.

Grabbe (2006) emphasizes that, despite this perception, there are very few clear examples where the European Union has caused democratic change through the direct application of sanctions or by withdrawing benefits. Moreover, during the Eastern enlargement, the EU did not have a well-defined set of political values of its own but rather technocratic models of public policies. Nevertheless, the EU's influence cannot be ignored. The so-called „demonstration effect" of Western democracies had a significant impact in candidate countries, and the attractiveness of EU accession reinforced their commitment to the political values promoted by bodies such as the Council of Europe, especially in the areas of democracy, human rights, and minority protection.

1. The constitutional context – opening the electoral competition after 40 years of totalitarianism

Romania benefited from the guidance of a task force of the European Commission for Democracy through Law as early as 1990, when rapporteurs for Romania issued the first recommendations to the parliamentary committee tasked with drafting the original version of the Romanian Constitution. Simultaneous processes were also underway at the time in Poland, Bulgaria, Albania, Estonia, and Latvia. Following an open dialogue with representatives of the targeted states, to formulate recommendations for institutional arrangements they could adopt, the Working Group on Constitutional Justice researched the mechanisms of constitutional control already in place in older democracies. The report, „Models of Constitutional Jurisdiction" (Steinberger, 1991) presented to the plenary session of

the Venice Commission in May 1991, advanced the recommendation to establish permanent Constitutional Courts, especially in new democracies. Their responsibilities were to include verifying the constitutionality of laws, resolving conflicts between central and regional state authorities, and protecting individuals' constitutional rights.

As noted by Cristian Preda in his work on the relationship between voting and power, and on the institutionalization of the concepts of citizenship and political representation, constitutionalism, the separation of powers, and the legal structuring and practical organization of voting have been distinguishing elements in the construction of the Romanian nation since the modern era, though this phenomenon has mostly been studied in Romania through historiographical tools (Preda, 2011, p. 18). The author credits the National Salvation Front Council with reinventing political pluralism through Decree No. 8 of December 31, 1989, which introduced minimal conditions for recognizing a political party (Decret-lege nr. 8 /1989 [Decree-law no.8/1989]). This was the legal provision that allowed the registration and legal recognition of the first 30 political parties that were also invited to join the Provisional Council of National Unity (CPUN). CPUN would go on to propose the first legislative framework for organizing parliamentary elections using a proportional representation system. The May 1990 elections established a Constituent Assembly tasked with drafting the first post-revolutionary constitutional text, through a debate held between July 11, 1990, and November 21, 1991 (Preda, 2011, p. 295).

It is worth remembering that the last Constitution to affirm the freedoms of association and assembly before the communist regime was the 1938 Constitution, issued by King Carol II, which, however, inaugurated an authoritarian monarchy. After a hiatus of over 50 years, during which the Constitutions of 1948, 1952, and 1965 not only failed to recognize pluralism but explicitly stated that „In the Socialist Republic of Romania, the political leading force of the entire society is the Romanian Communist Party" (Sbârnă, 2012), the 1991 Constitution, adopted by the Romanian Parliament, became the first constitutional act to state that the form of government was a republic and that „Romania is a democratic and social state governed by the rule of law, in which human dignity, human rights and freedoms, the free development of human personality, justice, and political pluralism are supreme values and are guaranteed" (Constitution of Romania, 1991/2002) – under Art. 1(3).

Constitutionalism and the rule of law are essential elements of democratic order, in which the government and state apparatus are accountable to citizens, establishing the procedures by which public offices are filled. Constitutionalism requires broad consensus on the fundamental text and a clear hierarchy of laws, enforced by an independent judiciary. In fact, it manifests as the synergy between „a vibrant and independent civil society; a sufficiently autonomous political society; and a functional consensus on governance procedures and constitutionalism based on the rule of law" (Linz & Stepan, 1996, p. 55). In early 1990, „The Constituent

Assembly drew from various sources of inspiration and fused them into a blend of parliamentary and semi-presidential regimes" (Preda, 2011), where parliamentary logic—through the procedures for cabinet investiture and oversight by the two chambers—coexists with presidential logic—through the direct election of the head of state, though without the powers enjoyed in the French semi-presidential model, such as the power to dissolve Parliament.

Amendments adopted in the Constitutional revision of 2002 served only to reinforce the already established principles, emphasizing that these were „(...) in the spirit of the democratic traditions of the Romanian people and the ideals of the December 1989 Revolution." The 1991 Constitution provided a practical expression of political pluralism in Article 8, which stated that „(1) Pluralism in Romanian society is a condition and a guarantee of constitutional democracy" and „(2) Political parties shall be formed and shall operate under the conditions provided by law. They contribute to the definition and expression of the political will of citizens, while respecting national sovereignty, territorial integrity, the rule of law, and the principles of democracy." (Constitution of Romania, 1991/2002, p. Art. 8.2). This was the first clear constitutional recognition of political pluralism and of the role that political parties play in a democratic regime in defining and expressing political will. The importance of political party legislation is indirectly confirmed by the role of Parliament within the regime. The Constitution defines it as „the supreme representative body of the Romanian people and the sole legislative authority of the country" (Constitution of Romania, 1991/2002, p. Art. 61(1)).

2. The official opening of the political space through the creation of a legal framework for the establishment of political parties

This was the context that led to the adoption of Decree-Law No. 8/31 of December 1989 on the registration and functioning of political parties and public organizations in Romania (Decret-lege nr. 8 /1989 [Decree-Law No. 8 /1989]), just a few days after the removal from power of President Nicolae Ceaușescu. The decree established minimal conditions for founding political parties, while Decree-Law No. 92/1992 (Decree-Law No. 92 for the organization and functioning of political parties) introduced public funding from the state budget for political parties participating in electoral campaigns. The only explicit prohibition concerned the establishment of organizations that claimed fascism as a doctrinal foundation. Notably, the threshold for founding members was very low—only 251.

Amendments to the legal framework regulating political party life adopted over the years focused less on intra-party democracy and more on the number of founding members, which increased progressively from 251 in 1989, to 10,000 members from at least 15 counties (with a minimum of 300 members per county) in 1996, and later to 25,000 members, as of 2003. Law No. 27/1996 on political parties (1996) had specifically intended to limit non-functional parties by raising the

founding threshold, to standardize formal founding requirements, and introduce basic principles of internal democracy and transparency. It remained in force until 2003, when it was repealed and replaced by Law No. 14/2003, which retained many of its principles but significantly increased the founding requirements to 25,000 members from 18 counties, with at least 700 members in each county.

Law No. 14/2003 on political parties -updated- (2003) was the first legal act to thoroughly regulate the founding conditions, the registration process with the Bucharest Tribunal, obligations regarding party statutes and political programs, rules of internal democratic functioning, as well as suspension and dissolution. Electoral participation is governed by a separate legal framework, including Law No. 115/2015 on local elections (2015), Law No. 208/2015 on parliamentary elections (2015), Law No. 33/2007 on European Parliament elections (2007), and Law No. 370/2004 on the election of the President of Romania (2004). Additionally, the increasing financial benefits from public subsidies for parties obtaining parliamentary seats or notable electoral results drew attention to Law No. 334/2006 on the financing of political parties and electoral campaigns (2015).

The removal of the numerical threshold, marking a return to a more liberal and pluralist vision (only partially achieved in 1996), was the consequence of a ruling by the Romanian Constitutional Court (2015). The amendments to Law No. 14/2003, instituted by Law No. 114/2015, credited as a „flexibilization" of the criteria regarding the number of founding members (Pârvu, 2023), further deregulated the relationship between central and territorial branches, under the argument that these would enjoy more autonomy. Although the law appeared to allow parties to organize at the national or local level, it maintained a significant safeguard to prevent excessive political fragmentation: a rule stating that a political party would be dissolved if it did not nominate candidates in two consecutive elections, except for the presidential election, in at least 75 local electoral districts or at least one parliamentary district.

The dominant electoral framework has been proportional representation, except for the 2008 and 2012 parliamentary elections, which used a mixed-member (uninominal) system. From the second post-communist election onward, all electoral laws introduced a threshold: 3% for parties and 8% for alliances in 1992 and 1996, later stabilizing at 5% for parties, plus 3–5% for alliances depending on the number of partners, after 2000. These thresholds played a moderating role in electoral competition. In 1990, 27 political entities were represented in the Chamber of Deputies (16 parties and 11 minority organizations); after 2000, this number ranged between 5 and 7 parties, and 17–19 minority organizations. Between 1990 and 2008, exactly 200 parties submitted candidacies, of which 60% did so only once, indicating high volatility of the political party system. Only 13 parties participated in all six elections during that period—11 of them representing national minorities. The only two parties present in every election from 1990 to 2008 were the PER and PNL (Preda, 2011, p. 312).

2.1. Internal structures

The Romanian legal framework requires that all political parties present a written political program, endorsed by the governing bodies according to provisions laid out in the statute. This requirement aims to ensure that the program is subject to an internal debate process, thereby emphasizing the importance that the legislators placed on consultative bodies tasked with the formation of political will.

However, it is worth noting that the law only covers a standardized democratic nomination process for electoral candidates and makes no mention of the other dimensions of power exercised through politically appointed political party officials. The fact that the law included provisions regarding European Parliament candidates only starting with 2015 speaks to the importance the parliamentary parties attributed to this electoral competition, as well as to the importance of the formal rules in the internal candidate selection process.

2.2. Selection of leaders and candidates

The mechanism for selecting executive positions within a party is left to the discretion of each party, provided it is clearly defined in its statute. The law requires that all territorial structures consist of a general assembly of members and at least one executive body, with the option to establish additional consultative bodies, whose responsibilities must also be set out in the statute. The only binding rules regarding leadership elections are that the vote must be secret and that the length of terms must be clearly defined.

As for candidates nominated for public elections, the statute must designate which body is empowered to validate candidacies for local, parliamentary, and presidential elections. However, the law does not institutionalize a single nomination procedure (e.g., list voting, uninominal voting, or team selection) but only requires that the vote be secret and that decisions be made by a majority of the votes cast.

2.3. Formulating programs and policies

By law, all political parties must present a written political program, officially adopted by the party's governing bodies, as specified in the statute. This requirement is meant to ensure that the program undergoes an internal debate process, emphasizing the legislator's intent to strengthen the role of consultative bodies in forming political will.

However, this legal provision is tailored specifically to standardizing the democratic nomination process, making no mention of how power is exercised through politically appointed officials. It is also notable that rules concerning the nomination of candidates for European Parliament elections were also only introduced starting in 2015.

Law No. 27 of April 26 (1996), was the first post-communist legal act in Romania to thoroughly regulate the organization, registration, and functioning of political parties. It replaced the provisional regulations of the 1990s and remained in force until Law No. 14/2003 was adopted, which remains the main legal framework today. Although it was widely criticized for the large number of founding members it introduced, the official aim was not to reduce pluralism, but extreme party fragmentation and political volatility, which had made it difficult to form governing coalitions. This revised legal framework significantly intensified the administrative burden imposed on political parties, establishing stringent conditions to avoid legal dissolution. Under this threat, parties were required to convene a general assembly at least once every five years, to nominate candidates in a minimum of 18 counties, and to secure no fewer than 50,000 votes in two successive electoral cycles, whether local or general. These measures aimed to ensure a higher degree of institutional coherence and electoral legitimacy, yet they also introduced considerable operational constraints, particularly for smaller or emerging political formations. Following pressure from NGOs, which urged President Ion Iliescu to return the draft law to Parliament, the originally proposed 50,000-member threshold was reduced to 25,000, spread across 18 counties and Bucharest, with no fewer than 700 in each administrative unit.

The main criticism these laws received was that they were only successful in „simplifying the political landscape", as „organizations adapt both programmatically and structurally to the inputs they receive from the institutional, economic, social, and cultural environment in which they operate" (Preda & Soare, 2008, p. 233).

However, this updated version of the party law also brought clarifications regarding social categories which were restricted from political association (e.g., military and national security personnel, magistrates, and publicly funded journalists) and introduces elements of internal democracy and accountability for the first time: party statutes must explicitly define member rights and responsibilities, as well as the disciplinary sanctions and the mechanisms for applying them.

While the law imposes a high degree of uniformity, the tension between raising the founding members' threshold, thus imposing a high level of popularity as establishing criterion, and maintaining internal control and centralization of power determined parties to adopt diverse organizational strategies. The 2015 reform that allowed parties to be registered by only three founding members (Legea nr. 114 privind modificarea şi completarea Legii partidelor politice nr. 14/2003, 2015, p. Art. 19(3) [Law No. 114 amending and supplementing Law No. 14/2003 on political parties, 2015, p. Art. 19(3)]) significantly reduced the need for thorough internal organizing before formal registration but introduced the new challenge of negotiating the already adopted statute and political program to the expectations of a growing organisation, considering that a large body of members is critical to register candidates in electoral competitions and running for office is mandatory to avoid being erased from the registry of political parties.

3. The role of the Venice Commission in defining the regime and political pluralism

The European Commission for Democracy through Law, commonly referred to as the Venice Commission, functions as an independent consultative body engaged in cooperation with member states of the Council of Europe, as well as with non-member states and other international organizations interested in democratic governance. Its primary objectives include fostering mutual understanding among different legal systems, particularly with a view to their harmonization, advancing the rule of law and the principles of democracy, examining challenges encountered by democratic institutions; and contributing to the development and strengthening of such institutions (Venice Commission, 2002). The Statute of the Venice Commission outlines its structure, objectives, and functions, and reinforces its commitment to democracy, human rights, and the rule of law. These values also underpin principles vital to political party functionality and democratic safeguards, including pluralism, non-discrimination, and transparency.

The Commission functions as the Council of Europe's main institution dedicated to the rule of law. Its work focuses on several core areas: the reinforcement of democratic institutions through constitutional, legislative, and administrative expertise, the protection and promotion of public rights and freedoms, with particular emphasis on those facilitating active citizen participation, and the enhancement of local and regional self-governance, understood as a vital component of democratic advancement.

Formally established in May 1990 through a Partial Agreement of the Council of Europe, the Commission's founding was preceded by a conference in Venice on January 19–20, 1990. This event was attended by Council of Europe member states, with Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, Yugoslavia, and the USSR participating as observers. From the outset, the Commission sought to assist „sister nations" which had formerly been under Soviet influence, recently freed from dictatorial regimes, in building the political and legal infrastructure necessary to realize pluralist democracy, human rights, and the rule of law (Venice Commission, 1991). A second core institutional aim, energized by the fall of the Iron Curtain, was to support the harmonization of legal and political relationships typical of liberal democracies —referred to as „geopolitical transformations" that reshaped global configurations through international agreements.

The Commission affirms pluralist parliamentary democracy as a fundamental and distinctive feature of Europe and North America—part of a shared democratic heritage, yet one that is not static. It is a cultural product in constant evolution and inherently imperfect (Venice Commission, 1991, p. 1). The Venice Commission therefore answers requests from the Parliamentary Assembly, the Committee of Ministers, or member states, to pronounce itself, though other actors may also require

its assistance, provided they comply with procedural requirements. In response, the Commission conducts legal analysis of the issue and acts as a forum for expert legal debate, primarily through examining legal guarantees and evaluating rules that govern political life in a democracy (Venice Commission, 1991, p. 2).

4. Opinions and recommendations of the Venice Commission

Research on party functions often follows three theoretical models. The first concerns internal party structure and the relationships between leaders and members, where one model sees parties as elite-driven teams, with decisions flowing top-down, making internal democracy irrelevant (Schattschneider, 1977), while the other expects parties to act as democratic associations of citizens, with bottom-up decision-making and leadership accountability. The second theoretical approach addresses the relationship between parties and the state: a liberal view, which treats parties as private associations with internal autonomy, it is an institutional view, which sees parties as semi-public entities, subject to state oversight due to their public role and access to public resources. And a third view, which concerns the state's role in inter-party competition, consisting of a libertarian model -calling for minimal state intervention- and an egalitarian model – that requires the state to ensure a level playing field.

The Venice Commission views political parties as vital to democracy, fulfilling three key functions: facilitating the exercise of citizens' rights (association and expression), promoting cooperation among governing bodies, as well as connecting citizens to representatives via political programs, elections, and collective governance. It supports party autonomy, warning against universal restrictions and its principles aim to protect association rights and party operations, particularly against oppressive state overreach.

Regarding specifically the organization and functioning rules of political parties, the views on political pluralism of the Venice Commission, as well as of the Organization for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights (OSCE/ODIHR) are most clearly illustrated by the „Guidelines on Political Party Regulation – Second Edition" (Venice Commission & OSCE/ODIHR, 2020).

Based on eleven principles — including freedom of association, presumption of legality, duty to respect, freedom of expression, political pluralism, legality and proportionality of restrictions, effective remedies, equality of treatment (both among and within parties), internal democracy, good governance, and accountability — this framework, which addresses legislators, civic actors, and state institutions interested in enhancing democratic governance, offers detailed recommendations on the legal and constitutional framework applicable to political parties in democracies.

Other Commission documents also reinforce these views. For instance, the 1991 OSCE Expert Seminar Report on Democratic Institutions identified electoral

fairness and pluralism as core pillars of democracy. Orgun Özbudun's report, „Organizing Elections" (European Commission for Democracy Through Law [Venice Commission], 1991, pp. 11-13) stressed safeguards such as equal voting rights, protection from intimidation or fraud, and the need for independent judicial resolution of electoral disputes and Francisco Laporta's report, „Organizing Political Parties" emphasized that parties are „the point of intersection between real politics and social processes" (European Commission for Democracy Through Law [Venice Commission], 1991, pp. 13-14), calling them constitutional mechanisms for shaping political will. Laporta further warned that while parties enjoy freedom upon registration, they are later constrained—especially when in power—to adhere to democratic values and to prove institutional loyalty to the state by not engaging in any political activity that could jeopardize the very political freedoms that they enjoyed upon registration- specifically freedom of association and freedom of speech. He advocated for judicial remedies when party leadership violates internal rules, careful balance between legal regulation and political autonomy and recognizing parties as mediators between state and society.

The Commission has also issued other key documents, such as „Guidelines on Prohibition and Dissolution of Political Parties" (European Commission for Democracy Through Law [Venice Commission], 2000), „Guidelines on the Financing of Political Parties" (European Commission for Democracy Through Law [Venice Commission], 2000), „Recommendations on Party Law: Specific Issues" (European Commission for Democracy Through Law [Venice Commission], 2004).

The Venice Commission has consistently emphasized that regulations concerning political parties must be designed to uphold democratic freedoms without imposing unnecessary constraints. Specifically, the registration of political parties should not involve excessive bureaucratic burdens, such as stringent requirements for territorial representation or minimum membership thresholds. Public authorities are urged to exercise restraint in regulating internal party operations, including matters such as the frequency of congresses or the establishment of regional branches. Moreover, where applicable, the right to political participation of foreign citizens or stateless individuals should be recognized and safeguarded. The autonomy political parties, as well as internal judicial remedies that enable members to challenge decisions perceived as unjust are essential features of their democratic functioning, thus they must be preserved and safeguarded. State interference in party affairs should therefore be minimal and permissible only in exceptional cases involving incitement to violence or attempts to undermine constitutional order.

In a related development, the Venice Commission's Opinion No. 845/2016 – "Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist" (European Commission for Democracy through Law [Venice Commission], 2019) introduced a detailed framework for evaluating the relationship between governing majorities and parliamentary opposition. This opinion reaffirmed the importance of maintaining internal party

discipline while respecting the principle of free mandates for elected representatives. It warned against the practice of revoking parliamentary mandates solely for voting against party lines, though it acknowledged that internal disciplinary measures—such as revoking leadership positions—may be appropriate. The Commission further endorsed the use of secret ballots as a means of protecting individual parliamentarians from coercion and preserving internal dissent.

The Code of Good Practice in Electoral Matters (Venice Commission, 2002), also a cornerstone document in understanding the positions of the Venice Commission, identifies key electoral principles, essential to democratic governance. These include the universality of suffrage, equality in the weight of each vote, the freedom and secrecy of voting, the periodicity of elections, transparency throughout the electoral process, the impartiality of electoral authorities, and access to effective legal remedies in the event of electoral disputes. Although the code does not explicitly regulate the internal functioning of political parties, it implicitly calls upon them to reflect these democratic principles within their own organizational structures and practices, thereby reinforcing public trust and contributing to the integrity of democratic institutions.

5. An assessment of Romania's alignment to recommendations issued by the Venice Commission

Although Romania has made significant strides in harmonizing its legislation on political parties with international standards, critical shortcomings persist in the institutionalization of internal party democracy. The national legal framework references the eleven foundational principles of the „Guidelines on Political Party Regulation" (Venice Commission & OSCE/ODIHR, 2020), but these are only partially upheld in practice.

One of the key deficiencies rests with the procedural barriers to party registration. Recurrent delays in the registration process at the Bucharest Tribunal have forced some political groups to resort to legal shortcuts merely to gain formal recognition and the right to participate in elections. Equally concerning is the reluctance of party leaderships to allow the establishment of internal thematic organizations—such as those representing youth or women—which have the effect of curbing internal deliberation and discouraging diverse political expression.

The application of disciplinary sanctions, particularly expulsion, often lacks proportionality and procedural fairness, thereby infringing on the fundamental right to freedom of association and expression. Moreover, the formulation of political programs frequently occurs without meaningful consultation with party members, undermining both the freedom of expression and the legitimacy of internal political processes. Internal dialogue is not structurally guaranteed, and political platforms can serve as mechanisms for consolidating elite control rather than channels for articulating collective preferences.

Furthermore, the existing legal and institutional arrangements do not provide effective mechanisms for member oversight of upper-level leadership, nor do they offer credible avenues for the revocation of mandates or ensuring leadership accountability. Although secret voting is legally required for leadership selection, this safeguard is compromised by the pre-selection of candidates by party elites, limiting open competition and reducing opportunities for broader participation.

The Venice Commission recommends that national regulations strike a balance between transparency, participation, and party autonomy. Party statutes should thus be genuinely democratic, adopted in general members' assemblies, publicly accessible, and explicitly outline internal decision-making procedures. In Romania, however, guarantees of access to internal judicial remedies for members whose rights have been infringed end where leaders' discretionary powers begin. Moreover, party structures rarely institutionalize pluralism, internal debate or openness in policy development, which limits their legitimacy as democratic intermediaries between citizens and the state, given that there is no space for the articulation of political views.

In summary, while partial alignment with the Venice Commission's standards has been achieved, Romania's party system continues to fall short in three essential domains: internal democracy, the protection of member rights, and the institutionalization of transparent, participatory policymaking.

Conclusions

The analysis of the legal framework governing the organization and functioning of political parties in Romania reveals both significant progress in aligning with the international standards articulated by the Venice Commission as well as persistent structural and conceptual deficiencies. Romania has benefited from the Venice Commission's expertise since the drafting of its 1991 Constitution, and subsequent guidance in the form of recommendations, handbooks, and opinions has shaped the development of its electoral legislation and party regulation.

The study highlights the ambivalent nature of Romania's legal-political Europeanization process. While Romanian legislation formally adheres to core democratic principles—particularly in areas such as political pluralism, freedom of association, and internal party democracy—implementation remains largely symbolic and superficial.

This symbolic compliance may be interpreted through the lens of the theory of „external conditionality," as outlined in the introductory section. According to this model, domestic actors adopt democratic norms primarily for strategic purposes, such as gaining legitimacy or securing external support, rather than out of genuine normative commitment. In line with the rationalist approach proposed by Schimmelfennig and Sedelmeier (2004), adherence to Venice Commission recommendations becomes a tool for maximizing external rewards—such as

improved international image—without internalizing the democratic values those norms promote.

The paper also draws attention to the limits of institutional resilience. The legacy of a centralized and authoritarian regime continues to undermine democratic functionality within political parties. From a historical institutionalist perspective, political institutions exhibit strong path dependency and resistance to change, even under external pressure. While the Venice Commission has established a valuable normative reference and exerted a form of moral pressure for reform, its influence is mediated by a domestic context characterized by democratic discontinuities, clientelist practices, and the absence of a deliberative political culture. Although the Commission's contributions have been instrumental in shaping the legal architecture of the party system, they have not ensured its functional democratization.

The Venice Commission consistently underscores the need to maintain a balance between party autonomy and democratic requirements, without resorting to excessive regulatory intervention by the state. Romania's experience illustrates oscillation between overly restrictive measures—such as high thresholds for founding membership—and sudden liberalization, as seen in the 2015 reform, without building a coherent framework conducive to internal democracy and political accountability.

The findings suggest that formal Europeanization alone is insufficient to consolidate democracy. Only through the genuine internalization of democratic principles and the creation of effective accountability mechanisms can Romania overcome the persistent gap between formal and practical law. Romanian law prescribes the existence of intra-party democratic mechanisms but fails to guarantee their meaningful implementation. Freedom of expression, the right to internal dissent, and effective participation in decision-making processes continue to be constrained by centralized leadership structures and a post-communist political culture.

At an organizational level, Romanian political parties formally subscribe to the principles of transparency and representativeness. In practice, however, their dominant practices reflect low levels of member participation and a stark imbalance between leadership elites and the party base. Leadership and candidate selection processes rarely follow competitive procedures, and debates around political platforms are typically absent or perfunctory. As a result, internal pluralism—an essential component of representative democracy—remains underdeveloped.

In essence, the current regulatory framework imposes limited horizontal accountability within political parties. The combination of institutionalized elections, political particularism as a dominant institutional logic, and the disjunction between formal rules and actual behaviour fosters a tendency toward delegative, rather than representative, models of authority. Once elected, party leaderships often behave in a plebiscitary and authoritarian manner, assuming they have a mandate to impose their will upon the organization.

To achieve full compliance with the standards of the Venice Commission and other relevant international bodies, Romania must take several critical steps. It should clarify and strengthen the rights of party members, including the establishment of internal appeals mechanisms and accountability over party leadership. It must improve transparency and public access to information on party activities, including financing and decision-making processes. Furthermore, it should promote meaningful member participation in shaping political will through regular consultations and direct voting on policy and candidate selection. The country must also redefine thresholds for registration and participation in a manner consistent with proportionality and non-discrimination and establish baseline standards for internal democracy—preferably through soft-law mechanisms adopted in party statutes, rather than rigid legal imposition.

In conclusion, while Romania has made notable strides in institutionalizing political pluralism and constructing a functioning representative democracy, political parties have yet to demonstrate a strong commitment to deepening internal democracy or implementing the more demanding aspects of Venice Commission recommendations, particularly those calling for greater transparency and members' accountability. This situation reflects the „formal structures as myth and ceremony" phenomenon described by Meyer and Rowan (1977) whereby legal frameworks are adopted primarily to signal conformity with the minimal standards of pluralist democracy, without seeking greater legitimacy or functional efficiency. Legitimacy is thus reduced to compliance with formal institutional norms, primarily to avoid deregistration, while any additional effort toward higher—albeit non-mandatory—standards appear unjustified in the absence of external pressures with tangible electoral consequences.

To this moment, the quality of internal party democracy remains a significant vulnerability that may hinder parties' ability to function as arenas of deliberation and as vital intermediaries between civil society and the state. Addressing this shortcoming will require both political will and a substantive commitment to fostering a culture grounded in democratic values. Compliance to democratic standards would be strengthened by the adoption of legal provisions making the public reporting on internal decision-making mandatory and introducing minimal statutory standards for debating the political programs as well as candidate and leadership selection.

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