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Towards Regulating Lobbying in Romania: A Multi-faceted Coin

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ABSTRACT *This paper focuses on the functional representation in post-Communist Romania, addressing the question of interest groups regulation. Taking into account the novelty of this matter in the Romanian political system, the aim of this paper is to describe and understand why the question of regulating lobbying has entered the Romanian political agenda 10 years after the collapse of the Communism. In other words, this contribution tries to illustrate the reasons for, and the public reaction to, a legislative proposal introduced in 2001 by a social-democrat Member of the Parliament. By focusing on the point of view expressed by the main political and social actors involved in the subsequent political and public debate, the paper maintains that regulating lobbying has been put on the political agenda of this country in the hope of solving some dysfunctional aspects observed in the domestic process of decision making. It argues that, in the Romanian political landscape, regulating lobbying became a multi-faceted coin.*

KEY WORDS: Lobby, interest groups regulation, Romania, civil society, participation, decision-making

Introduction

Research in the field of (functional) interest representation in Central and Eastern Europe has evolved significantly over the last few years (Fink-Hafner, 1998; Pederson *et al*., 1995; Pérez-Solorzano Borragan, 2001, 2002a, 2003). However, it still occupies a minor place when compared with the literature relating to political parties or party systems in this region. Shyly started in the first part of the decade, research on interest groups has been developed progressively. Scholars paid particular attention to the countries known for the dynamism of their civil societies under the Communist regimes (Poland, Hungary) or for their democratic tradition before the establishment of Communism in the region (Czech Republic).

Accordingly, if in the first part of the decade researchers showed particular interest in the emergence of new political actors or in the introduction of a democratic legal framework, attention has gradually turned from the institutional or constitutional aspects of the triple transition(s) to two new topics. The first one is the question of accession to the European Union (EU) and its impact on the domestic politics,

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policies and polity (Goetz, 2001; Grabbe, 2001; Lippert *et al*., 2001; Papadimitriou, 2002), and the second one is the relationship between state and society in the new Member States of the EU and candidate countries (Cox & Vass, 2000, p. 1095). One the one hand, the interest in the process of *Europeanisation* may be explained by the radical transformations undergone in order to accommodate European integration (Pridham, 2002, p. 2) and by the explanatory power of this concept in understanding the domestic political continuity or change in the applicant countries (Hix & Goetz, 2000, p. 1). One the other hand, the interest in the state/civil society relationships emerged for two main reasons. Indeed, by paying attention to this research topic, some authors aimed at invalidating (Fink-Hafner, 1998; Terry & Vass, 2000) a widespread view in the literature regarding the weakness of post-Communist civil societies (Kopecky & Mudde, 2003, p. 1), while others intended to analyse the impact of European Union integration on interest politics in Central and Eastern Europe (Forest, 2004; Pérez-Solorzano Borragan, 2002b). Therefore, some of them offered a 'path dependent' analysis of the emergence of interest groups in the region, trying to explain, through case studies, 'the communist legacies susceptible to affect the development of these new actors' (Forest, 2004, p. 1), while others paid particular attention to the hypothetical effects of the socialisation and learning processes resulting from the affiliation of national interest groups to European federations of interest representation.

However, if in this emergent literature there are a relative variety of aspects submitted to analysis, there still exists an imbalance as far as geographical criterion is concerned. Some countries are less scrutinised than others, Romania being, for various reasons, one of them. Within the existing literature on the transformations of post-Communist democracies, Romania has been seen as an 'exception' (Tismaneanu, 2005, p. 26), not only when analysing the nature of the Communist regime, but also when studying the process of transition and accession to the EU. The apathy of its civil society during the Communist regime, as well as its lack of symbolic dimension (de Bellet, 2001; for more details, see Pirotte, 2002) and dynamism in the first years of the transition to democracy, are the main explanations for scarce research into this matter. Nevertheless, 15 years after the collapse of Communism scholars attempt to re-examine the evidence for such conclusions and to expand the research agenda in the field of functional representation in this country (Carstocea, 2005; Coman & Pilat, 2005; Dobre, 2005; Otoiu, 2004).

Consequently, within this new frame, the paper focuses on a particular issue related to interest representation in post-Communist Romania. It tries to understand why the question of regulating lobbying has entered the Romanian political agenda 10 years after the collapse of Communism. What reasons have moved the Romanian political and social actors to debate it over the last five years? The interest in this research topic is threefold. From an empirical point of view, one should note its political recentness. From a theoretical perspective, this kind of analysis could offer additional insights with regard to the process of decision making and interest representation in general and, with regard to the nature of interest groups, their behaviour and relations with State institutions in particular. At the same time, the study of regulating lobbying in a post-Communist country reveals the normative vision of both State and non-State actors on how decisions should be taken in a new democratic frame.

Regulating lobbying has been put on the Romanian political agenda in the hope of solving some dysfunctional aspects observed in the domestic process of decision making. For instance, when supporting this idea, the rationale of the Romanian Government was to reduce corruption. The main explanatory statement of the Social-Democrat member of parliament (MP) was to change the modus operandi/behaviour of interest groups and to legitimate a new profession; while the reason expressed by some of social actors involved in the public debate was the establishment of a new legal framework allowing the participation of non-State actors in the policy-making process. This paper illustrates that, in a post-Communist country undergoing simultaneous transformations, regulating lobbying becomes a multi-faceted coin.

The paper is divided into two main parts. The first part deals with the clarification of the main terms of this research topic. A general theoretical overview will be drawn with regard to the issue of regulating lobbying in the existing literature. It aims at displaying the main questions that have structured similar studies in Western democracies and at integrating the Romanian case within the existing theoretical and empirical frame. This approach is important as it avoids, from my point of view, perpetuating a general practice observed in the literature on interest groups, which consists in the multiplication of case studies, without the possibility of comparing or to generalising the conclusions (Jordan *et al*., 2004).

The second part introduces some empirical data with regard to the Romanian case. I will present the arguments and reasons of both State institutions and civil society organisations that initiated and/or took part to the public debate on regulating lobbying. This part of the paper reveals, at the same time, the political and theoretical questions provoked by the attempt to regulate the activities of interest groups in Romania. Because of the novelty of this issue in the Romanian society, domestic actors have used the existing external models as reference points. The discussion has vacillated between the normative aspects of the functional representation in Romania and the technical and theoretical difficulties of lobbying regulation, in other words, between the role of interest groups in the Romanian political system and the definition/understanding of the main terms around which the legislative proposal has been articulated. There is no regulation in Romania. However, the paper concludes with some preliminary answers concerning the impetus and rationale of both State institutions and civil society organisations behind the attempt to regulate lobbying.

Framework of Analysis: Regulating Lobbying

Outside the political system of the United States, regulating lobbying is a relatively recent issue (Yishai, 1998, p. 154). While interest group regulation was put on the American political agenda at the beginning of the 20th century (Courty, 2004), in Western Europe this question has arisen within the past decades, as a consequence of the transformations undergone since the end of the 1970s. Indeed, the changing nature of governance, the fragmentation and sectoral character of the decision-making process, as well as the growing number of public and private organised actors in the political and social life (le Galès & Thatcher, 1995) produced a series of issues in the process of decision making that have been generally interpreted as

'problems' (Greenwood & Thomas, 1998, p. 487). Interest organisations become both a cause and a consequence of the increasing complexity of the democratic life (p. 487). They become progressively providers of information for the domestic/European institutions and sources of legitimacy (Magnette, 2003) for the politics of the EU in general (Smismans, 2003) and its policies in particular. But, the ways in which public affairs come to be influenced and the inequalities of access to public affairs between profit and non-profit interests (Saurugger, 2002) have become 'problems' and regulatory solutions have been proposed across Europe in order to solve them.

Therefore, one the one hand, regulatory solutions concern the actors involved in this process of functional representation and their activities. Regulating lobbying refers to the state constrains on private activity in order to promote the public interest (Yishai, 1998). In fact, this expression is used to designate all legal provisions concerning interest group activity (Thomas, 1998, p. 500), more precisely those legal provisions that specify what 'a group and its lobbyists can or cannot do in their attempt to influence public policy'. Regulating lobbying involves the introduction of some procedures/measures in order to 'domesticate' and balance private influence in the process of passing legislation (Liebert, 1995, p. 408).

Nonetheless, both 'interest groups' and 'lobbying' depict a complex reality from an empirical point of view, and an ambiguous one, from a theoretical perspective. The concrete significance of these two terms is vital when legislators have to identify why and who to regulate (Rechtman, 1998, p. 583). Concerning the first question (why?), one should note that lobbying encompasses every effort to influence somebody (van Schendelen, 1993, p. 1). This 'effort' may include 'a broad range of activities' (Greenwood & Thomas, 1998, p. 490) of interest groups involved in 'an . . . exchange of information with public authorities' (van Schendelen, 1993, p. 3), a great range of activities as basic as the simple expression of an idea, writing a letter, leaflet or pamphlet, organising a petition' (Greenwood & Thomas, 1998, p. 489). With regard to the second question (who to regulate?), the term interest group is generally used to define any active organisation in the policy process having for function the influence of policy outcomes (Jordan *et al.*, 2004). It includes not only professional associations, employers' associations, trade unions, business groups, but also commercial companies, law firms, consultancy firms and even parts of the institutional state system, qualified as 'institutional interest groups' (Mény, 1993, p. 113). The broadness of this second definition has repercussions in politics, too. Therefore, the conceptual clarification of these two terms becomes a 'regulatory problem of who or what is encompassed by legislation' (Greenwood & Thomas, p. 490).

The place of lobbying in the political process varies across Western democracies (Ronit & Schneider, 1998, p. 559) and consequently there is an important variety in terms of lobby regimes (Liebert, 1995). In some countries, regulatory solutions concern only the actors involved in the process of functional representations and their activities. In others, these measures are focused on politicians and public administration (Rechtman, 1998, p. 581). This distinction corresponds to what Thomas Clive calls 'regulating' and 'monitoring' lobbying. Regulation emphasises the activities of lobbyists, while the term 'monitor' refers 'to the provisions that enable the public and those being lobbied in legislative and executive branches of

government to keep track of the public policy activities of groups and their representatives' (Thomas, 1998, p. 501). The first term seems to be uni-directional, while the second one has a broad character, including both interest groups and decision makers involved in a process of 'exchange of information' (van Schendelen, 1993, p. 3).

Thus, a comparative analysis of the schemes of regulation adopted in Western democracies reveals that there are, on the one hand, patterns based on the role of interest groups within the governmental structures and, on the other hand, patterns that aim at governing the relationship between legislators and outside interests (Greenwood & Thomas, 1998, p. 488). In the second case, the system of interest representation is governed by various provisions, generally called lobby laws (Thomas, 1998, p. 501), including both the regulation and monitoring of interest groups (p. 502). There are laws that provide for the registration of lobbyists and the reporting of expenditures. There are also conflict of interest and personal financial disclosure provisions. These laws, in an attempt to reduce corruption, prohibit civil servants from being employed by an interest group while they are involved in governmental decisions that directly affect that interest (p. 501). And, thirdly, there are campaign financing regulations.

All in all, the interest of scholars and politicians in regulating lobbying was of a particular interest at the beginning of the 1990s, when this issue was put on the European Union's political agenda. The scholarly community paid particular attention to this topic, aiming at describing and comparing the existing schemes across the world (Greenwood & Thomas, 1998, p. 489), in both liberal and non-liberal democracies (Yishai, 1998, p. 153). Five research questions have been formulated, which concern *the origin*, *the form*, *the extent* and *the degree of success* of lobby regulations.[1]

In parallel, this issue entered progressively the political agenda of some of the post-Communist democracies (Hungary, Poland, Slovakia, Czech Republic and Romania). The pre-occupation of both political and social actors for this matter could appear as surprising, given that in these countries functional representation is a new phenomenon. In the post-Communist democracies, regulating lobbying did not go beyond the phase of public debate. However, it would be interesting to analyse the rationale of both State and non-State actors behind the regulatory solutions proposed. The interest here is less to study the schemes of regulating lobbying advanced and more to understand the Romanian tendencies in that direction. It is, from my point of view, another way to comprehend the phenomenon of functional representation in this country.

The Romanian Case: Contextualisation

Case studies have to have a minimal point of reference in order to be able to compare and to weave them together into a coherent picture (Jordan *et al.*, 2004, p. 196). For doing so, I use in this paper the frame proposed by Greenwood and Thomas in the special issue of *Parliamentary Affairs* (1998), addressing the question of the origins of regulating lobbying in the Romanian case.

The existing case studies on interest groups regulation reveal that regulatory solutions have been proposed or adopted across Western democracies as responses

to a series of problems that include overcrowded lobby and democratic overload (Greenwood & Thomas, 1998, p. 488). However, taking into account the first empirical conclusions in the academic literature with regard to the state of the Romanian civil society after the collapse of the Communism, my first reaction is to reject this idea according to which the increasing number of interest organisations explains the tendencies towards regulating lobbying in this country. Some authors, particularly interested in the evolution of the Romanian civil society, have pointed out the quantitative development of the associational sector since the mid-1990s (de Bellet, 2001, p. 104). Thus, between 1996 and 2000, the number of non-governmental organisations (NGOs) had increased from 12,000 to 27,000 by the end of the decade. But, at the same time, these authors draw attention to the fact that only 10–15% of them are active in the political life. In addition, only a limited number of these new social actors are visible in the political process; see, for instance, the case of trade unions and employers' associations or business groups and of some Bucharest-based NGOs, which act individually or through ad hoc coalitions established on specific issues. Certainly, it could be exactly the invisible character of these actors that arises problems in Romanian politics.

Another important element to be taken into account is that, in Romania, like in France, Germany or Denmark, 'lobby' is a foreign word, used without translation, with connotations of secretive policy process, where a range of competing actors are seeking to influence the decision makers (Ronit & Schneider, 1998, p. 559). In Romania, the term 'interest group' itself seems to have a relatively negative significance (Interview with Traian Basescu, 2005). For this reason, interest groups in this country prefer to be qualified as 'non-governmental organisations', as actors created outside the State realm.

Therefore, if there is no 'over-crowded lobbying', why does regulating lobbying matter in Romanian politics? The explanatory statements of the main actors involved in the political and public debate will offer a comprehensive picture with regard to the rationales behind regulating lobbying. It is difficult to identify the precise aspect/problem that has provoked the public debate on this matter, therefore I will analyse the arguments of the State and non-State actors form a chronological perspective. Regulating lobbying is first an issue discussed within the Romanian Parliament. In 2000 two Social-Democrat MPs introduced a legislative proposal on the interest group regulation, which divided the members of the Assembly. In the same period, the Romanian Government expressed its interest in this issue, too. While regulating lobbying is discussed within these institutions, three NGOs (Pro Democracy Association, the Centre for Legal Resources and Transparency International Romania) initiated a public debate on how to regulate the activities of interest groups in Romania.

The Arguments of the Romanian Social-Democrat MP and the Attitudes within the Assembly

The issue of interest groups regulation arrived on the Romanian political agenda in June 2000, in the shape of a legislative proposal introduced by two Social-Democrat MPs, Petre Naidin and Stefan Valeca. Being introduced at the end of the legislature, the proposal was renewed in March 2001 by Naidin. Three years later, his proposal

was discussed in the plenary session of the Chamber of Deputies and rejected a few days after. As the interest in this paper is less to study the regulatory schemes and more to understand the reasons behind these attempts at regulating lobbying, I will first pay attention to the explanatory statement and legislative proposal of Petre Naidin.

Naidin, as he declared in the plenary session of the parliamentary Assembly, found in the American model of interest representation and regulatory schemes a source of inspiration. In his explanatory statement, a particular accent was put on the idea of participation and consultation of social actors in the decision-making process, especially of those concerned by the measures to be taken. The term 'interest group' designates a group of individuals with common interests, whose aim is to represent and pursue them by influencing the process of decision making, while 'lobby' 'means an exchange of information' (Naidin, 2001, 2004), through consultation (hearings) and participation. In fact, his legislative proposal is entirely articulated around *lobby* (what?), *lobbies' activities* (how?) and *lobbyists* (who?).

Thus, Article 1 defines 'lobby' as a communication by a lobbyist directed towards public authorities and institutions. The 'activity of lobby' (Article 1.2) focuses on the information of clients about steps to be accomplished in order to achieve a goal, on the analysis of legislative proposals and participation in public debates, as well as on the establishment of direct contacts with MPs and senators, members of Government and other public institutions. By 'lobbyist' one should understand 'anybody who acts on the instructions of a third party and sets out to defend the interest of that third party to representatives of institutions or public authorities' (Article 1). The legislative proposal includes the obligation of registration (Article 8) and penalties for failure to comply with obligations set out by the proposal (Article 9).

The explanatory statement of the Social-Democrat MP focused on how decisions should be taken in a new democratic frame. His aim was to create a legal framework for the consultation of social actors in the process of decision making, to institutionalise the informal influencing of public authorities, but also to legitimate a new profession in Romanian politics, that of lobbyist. However, while the explanatory statement emphasises the idea of involvement and participation of interest organisations in politics, in the legislative proposal 'lobby' is defined narrowly, referring only to the behaviour of professional lobbyists.

Introduced in March 2001, the legislative proposal was discussed in the plenary of the Chamber of Deputies in February 2004. Regulating lobbying divided the MPs, who took the opportunity to evoke a range of problems provoked by this issue. For instance, the representative of the Committee on Legal Affairs drew attention to the fact that lobbying represents 'an absolutely new phenomenon in Romanian politics, which arouse a number of questions, both theoretical and practical, with political, ethical and judicial implications on different areas and sectors of activity'. At the same time, the Commission considered that regulation is relatively unnecessary, given that there are no similar provisions at the European level.

The legislative proposal provoked similar reactions within the plenary session of the Upper Chamber. The Committee on Legal Affairs of the Senate focused on the definitional problems as to what represent 'lobby' and 'lobbyist'. This is not

a peculiarity of the Romanian case. Actually, these definitional controversies characterised the debate on this issue in all Western democracies (Schaber, 1998, p. 208).

The Chamber of Deputies and the Senate were not the only Romanian institutions that took part to this political debate. In 2001, the Government, through the voice of Adrian Nastase, Prime Minister in office, had to express its point of view with regard to this legislative proposal (Romanian Government, 2001). It did not receive the Government's support either, for three main reasons: The first one related to the existence of a legal framework allowing civil society participation in the process of decision making; the second one referred to the exact meaning of the word 'lobbyist' and the legal provision governing the related activities; and the last one stressed the lack of particular provisions on this matter at European level. Therefore, he considered the legislative proposal superfluous. From his point of view, the Romanian legal framework contains a sufficient number of measures aimed at satisfying the claim of the Romanian interest groups and of the European Union with regard to their legal involvement in politics.

The Rationale of the Romanian Government

Nevertheless, the Romanian Government was interest in regulating lobbying. But its rationale was different from the arguments formulated by the Social-Democrat MP. In fact, the question of interest groups regulation has been placed within the framework of the fight against corruption, being part of the 'National Strategy for Fight against Corruption', adopted in 2001. Corruption is not a new phenomenon in the Romanian post-Communist society. During the last few years, surveys and assessments conducted by national and international organisations confirmed that corruption in 'Romania continues to be widespread and to affect all aspects of society' (European Commission, 2004, p. 14). Confronted with criticisms from international organisations, successive Romanian governments initiated and proposed measures in an attempt to reduce it and, consequently, to comply with the requirements of European integration. However, before 2000, no Government approached corruption holistically (Stan, 2004, p. 1). But, the National Plan and the Strategy adopted by the Government in 2001 proposed different measures in this respect related to different sectors of activity. In this context and to some extent indirectly, the question of lobbying regulation becomes one of the priorities of the executive. For the purpose of this paper, it will be useful to see what 'corruption' means for the Romanian authorities and how it was related to the issue of regulating lobbying.

Corruption has been defined as 'the abusive use of public power in view of getting illicit personal benefits: abuse of power in exercising the office duties, fraud, use of illicit funds to finance political parties and electoral campaigns, institution of an arbitrary mechanism of the distribution of power in the field of privatisation or public acquisitions, conflict of interest (by engaging into transactions or getting a position or a commercial interest incompatible with the official role and duties)' (National Program for Prevention of Corruption 2002–2004, 2002, p. 4). The Romanian executive identified four forms of corruption, in four different sectors of activity: the sphere of public administration, the economic sector, justice and

politics in general (Romanian Government, 2002, pp. 6–8). For these four sectors, the Government proposed general measures, such as: The adoption and implementation of international and European norms; improvement of good governance, of confidence of civil society in public administration and of transparency in doing business; strengthening the rule of law and the role of civil society. These general measures, formulated as general principles, were accompanied, for each sector of activity affected by corruption, by particular and specific legislative proposals.

Various international reports emphasised that corruption in Romania is directly or indirectly connected to the political class (Stan, 2004, p. 2). Recognising the existence of corruption at this level, the Government sought to increase the degree of transparency in policy making. 'Corruption', we can read in the National Program of Prevention of Corruption, 'has an accentuated political dimension determined by the possibility of including the state's high officials, political leaders and political parties into the phenomenon's manifestation area' (Romanian Government, 2002, p. 29). Indeed, almost daily since 1996, when the first newspaper revealed corruption affairs, the press reports cases of politicians engaging in 'nepotism, pull, cronyism, bribe taking and giving, misappropriation of public funds and embezzlement, journalists deploring the many terms that the Romanian language reserves for describing corruption' (Stan, 2004, p. 2). In order to reduce this phenomenon, the following legislative proposals have been suggested: 'a strict regulation of the parliamentary immunity regime', 'a regulation of the conflict of interests', 'lobbying regulation' and 'the regulation of the rules in reference to political parties and electoral campaign funding' (Romanian Government, 2002, p. 29).

The comparison between the legislative proposal of the Social-Democrat MP and that of the Strategy for Fight against Corruption allows me to argue that, in the first case, the regulatory solution concerns interest groups and their activities, most precisely the professional lobbyist, whereas in the second case the emphasis is less on the actors involved in functional representation and more on politicians and public administration. Therefore, according to the distinction established by Thomas, the aim of the Romanian MP is to 'regulate' lobbying, while the attempt of the executive is to create a legal framework to 'monitor' it. The documents drawn by the Romanian Government are less concerned with the importance of involvement and participation of civil society organisations in the decision-making process and more with some abuses observed in public administration and political institutions. The aim of the proposed measures is to control the lobbying behaviour of MPs rather than the behaviour of those who try to influence de public decisions.[2]

This preliminary conclusion shows that the problem to be solved, from the point of view of the Romanian executive, was less the 'over-crowded lobbying' and the lobbying abuses of interest groups, and more the porous boundaries between licit and illicit activities of civil servants and parliamentarians. Indeed, different international and national surveys and reports have emphasised that in the Romanian legislative hemi-cycle some legal provisions are adopted in order to satisfy particular interests of parliamentarians. The same claim has been expressed by the Romanian business community.

Therefore, both the explanatory statement of the Social-Democrat MP and that of the Romanian executive are concerned with the way in which public policies come to

be influenced in this country. The difference is that in the first case the emphasis is put on the behaviour of professional lobbyists and in the second one on the modus operandi of politicians, that is to say a different face of the same problem.

Attitudes Among the Romanian Social Actors

Within civil society, the discussion on regulating lobbying was more 'intense' than in the two Chambers of Parliament. In fact, three Bucharest-based NGOs, known for their active role in promoting democracy – the Centre for Legal Resources, Pro Democracy Association and Transparency International Romania – took the initiative, on the proposal of the Ministry of Justice, to organise a public debate on this issue. The aim was to facilitate the dialogue between the Government, the Parliament and the civil society organisations with regard to interest group regulation. Another objective was to offer 'a legal support and a reference framework for authorities responsible for drawing up the law regulating lobbying activities' (Centre for Legal Resources, 2002, p. 1). They argued that, in order to elaborate a law based on the actual realities, which responds to the needs of the Romanian society, the consultation of civil society is essential.

As the Social-Democrat MP in his explanatory statement, the NGOs involved in the organisation of the public debate emphasised the importance of consultation of interest groups in the decision-making process, in particular of those that might be affected by potential decisions. Another argument advanced in the support of a legal provision on regulating lobbying was that it 'will cover a deep gap in the democratic process in Romania', making reference to the threshold fixed by the Romanian Constitution with regard to the right of citizens to introduce a legislative proposal. The objective pursued by the NGOs was threefold: To create a legal framework for the participation of different interest groups (civil society organisations, professional associations, trade unions, politicians, mass-media representatives etc.) in policy making; to provide a mechanism to curb corruption; and to 'increase Government's capacity to inform, consult and engage civil-society in the policy-making process, including the opportunities to amend draft legislation and to improve the existing legislation by the representatives of civil society organisations' (Centre for Legal Resources, 2002, p. 2).

Three round tables were organised by Pro Democracy Association and the Centre for Legal Resources under the banner 'The regulation of lobby activity in Romania'. The first one, held in October 2002, aimed at consulting the business community in order to give the Romanian executive and legislative a general overview on how to manage regulating lobbying. For this occasion, the participants drew attention to a widespread practice of the Romanian Government consisting in the adoption of norms through emergency ordinances. Indeed, as the European Commission put it, 'the Executive's practice of legislating through emergency ordinances, and to a lesser extent ''ordinary'' ordinances, has reduced the transparency of the legislative process, has limited the opportunity for adequate consultation on draft laws, and has contributed to a situation of legislative instability... Ordinances are still used excessively by the Executive and often in cases where there are no obvious grounds for urgency' (European Commission, 2003, p. 16). The participants argued that this practice eliminates the phase of consultation, and consequently, the role of interest

groups in the first stages of the legislative process. Most of them supported the regulation of lobbying as a proxy to create a new frame for decision making in Romania. An additional element in this direction, presented by the representatives of employers' associations, was that a regulatory solution would establish a clear distinction between the licit and illicit representation of interests, between lobbying and 'traffic of influence'. This measure would increase transparency in the decision-making process.

While the first round table had been organised in order to give to Romanian economic actors the opportunity to express their point of view on lobbying regulation, the second round table, held in November 2002, was aimed at gathering the opinions of civil society organisations in general. The discussion focused on some definitional aspects, such as the distinction between lobby and 'traffic of influence' or the content of the expression 'lobbies' activities'. After the two round tables, the three NGOs involved in their organisation synthesised the conclusions and presented them to public opinion as general guidelines. These general principles (Pro Democracy Association, 2002) reveal how Romanian civil society organisations conceive lobbying regulation and, indirectly, why this issue has been put on the political agenda and discussed by these social actors. Interestingly, it is possible to observe that their definition of lobby is different of that proposed by the Social-Democrat MP. Naidin (2001, 2004) defined it narrowly, focusing on professional lobbyists, while for the social actors participating in the public debate 'lobbying' is an activity that cannot be restricted to commercial lobbyists. For this reason, a regulatory solution should refer to the 'activity' and not to the 'profession'. Lobbying should not be restricted to a specific category. Lobbying is 'a way to participate to the policy making', open to any citizen.

The third round table (held in February 2003) went further, as the participants were preoccupied with answering the question of what kind of pattern of regulation to adopt. As a matter of fact, the emphasis had been put on the idea of transparency in the elaboration of public decisions, on the necessity to consult civil society organisations and on their capacity to participate in the decision-making process. In order to understand these claims, it is important to note that at that time, social actors had only limited opportunities, from a legal point of view, to make a direct impact on the decision-making process. There were no 'imperative public participation provisions/procedures in the Statutes of the Parliamentary Chambers or in the law making-process' (Centre for Administrative Innovation in the Euro-Mediterranean Region, 2003, p. 8), nor precise requirements for notification. However, the third round table divided the participants, but not on the necessity of regulating lobbying. The bone of contention was the shape of the regulatory solution, some of the participants being against a written pattern. In fact, their main question was whether a regulatory solution limits the participation in policy making to professional lobbyists only, restricting therefore the participation of the others social actors. The political and public debate lost intensity because at that time new laws entered into force, allowing the participation of civil society organisations in the decision-making process (the Access to Public Information – L544/2000 and the Law on Transparency in the Policy-Making – L52/2003). However, in 2005 regulating lobbying re-entered the Romanian political agenda (Pro Democracy

Association, 2005). The statement of the Romanian President in office, Traian Basescu, with regard to the activities of interest groups, re-opened the debate both within the political class and civil society.

Conclusions, Or Creating an Agenda for Regulating Lobbying

The aim of this paper was to understand why the question of regulating lobbying has entered the Romanian political agenda 10 years after the collapse of the Communism. It argued that this issue has been addressed by the State institutions and discussed by the social actors in the hope to solve some dysfunctional aspects observed in the domestic process of decision making. The paper maintains that, in a post-Communist country that is undergoing simultaneous transformations, regulating lobbying is a multi-faceted coin. In fact, both the Romanian State and non-State actors aimed at improving the democratic character of the decision-making process, but each of them referred to a particular side of this issue.

A general understanding could be observed amongst civil society organisations and decision makers with regard to the involvement of social actors in Romanian politics. All of them emphasised the idea of participation and transparency in policy making. However, when addressing the issue of regulating lobbying, they focused on different aspects. For instance, the Social-Democrat PM concentrated on the behaviour of interest groups. By adopting a narrow definition of lobby, he aimed at legitimating a new profession, that of lobbyists. In contrast, civil society organisations consulted on this matter were in favour of a broad definition of lobby, being afraid of eventual exclusion of other social actors representing particular interest. At the opposite side of the argument introduced by the MP, the Romanian Government focused on the behaviour of politicians (MPs) and civil servants working in public administration. Therefore, the Strategy for the fight against corruption has mostly been concerned with the question of how to correct the abuses of politicians and civil servants in office rather with the question of how to increase civil society participation in policy making or to correct the abuses of these actors.

Certainly, regulating lobbying has been put on the Romanian political agenda as a consequence of the way in which public policies come to be influenced. But the debate was less focused on the activities of interest groups and more on their access to the loci of power. The increasing number of interest groups did not appear as a problem and consequently as a reason for regulating lobbying. Meanwhile, the abuses observed in the behaviour of politicians in office, who act as representatives of particular interests within the Parliamentary Assembly, has been evoked many times and daily presented in newspaper articles over the last past years. Analysing the arguments of the actors involved, I would argue that, amongst civil society organisations, discussions revolved around the role of interest groups in the process of decision making as legitimate part of the political system.

All in all, Romania is not entirely a peculiar case when compared with similar attempts at regulating lobbying in Western democracies. Lobby regimes vary across Europe according to the place of the functional representation in each particular

context. In some countries, regulatory solutions concern the activities of interest groups, whereas in others, for instance the Scandinavian states, they had been focused on the behaviour of politicians and public administration. Although in some political systems regulating lobbying is a consequence of the increasing number of interest groups and of the activities conducted in order to influence policy outcomes, in the Romanian case regulating lobbying is an 'opportunity structure' for the social actors to increase their legal involvement in domestic politics. The issue here was the transparency and the open character of the decision-making process, in a context in which norms were adopted through emergency ordinances, often in cases were there were no grounds for urgency.

The case studies in the existing literature on regulating lobbying reveal 'a wide range of historical experiences with interest groups and lobby regulation, from the long history of initiatives in the USA to the most recent experiences of many European democracies' (Greenwood & Thomas, 1998, p. 497). Romania and the other post-Communist countries represent the third wave of analysis on this matter. It would be interesting to compare the debate on regulating lobbying in Central and Eastern Europe and to identify in each case the rationales behind the regulatory solutions proposed. Within the literature on functional representation, the analysis of lobbying regulation is an indirect way to apprehend the mode of interest representation (i.e. the relationship between State institutions and interest groups).

Some additional conclusions or new research perspectives result from this paper. The analysis of the Romanian civil society 15 years after the collapse of Communism may contradict the first empirical observations related to its apathy and slow crystallisation. The second indirect conclusion of this paper is that, under the pressure of civil society organisations, the Romanian process of decision making has undergone some changes. These changes are due not only to some of the requirements of the European Union in the accession process, but also to concrete demands formulated, in different ways and different contexts, by the Romanian interest representation organisations.

Even if, in the Romanian political system, the participation of interest groups in the policy-making process does not represent a tradition, there are signs that, within the context of accession to the European Union and upon the demands of Romanian social actors, the 'process of government' is changing: It is moving from a procedural version of democracy to a substantive participation in the political process. The complexity of the reforms required by the European Union generated demands, both from civil society in terms of participation, and from State, in terms of consultation.

Notes

[1] (a) What issues (of regulating lobby) were defined in the countries concerned, and why these were propelled to the policy agenda? (b) What the regulatory schemes are, and why they have taken the particular form they have? (c) How do they operate? (d) What problems arise in their interpretation and implementation? (e) What is the impact of regulation on interest groups and on the polity in general? For more details, see Greenwood and Thomas (1998, p. 498).

[2] This trend has been observed in different Western democracies too. See, for example, Rechtman (1998) and Warhurst (1998).

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