



NDI

National Democratic

Institute for

International

Affairs

**OBSERVATIONS ON
PROPOSED AND POTENTIAL
CHANGES IN THE RULES OF
PROCEDURE OF THE ROMANIAN
PARLIAMENT**

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National Democratic Institute For International Affairs



conducting nonpartisan international programs to help promote, maintain and strengthen democratic institutions

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NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

The National Democratic Institute for International Affairs (NDI) was established in 1983. By working with political parties and other institutions, NDI seeks to promote, maintain and strengthen democratic institutions in new and emerging democracies. The Institute is headquartered in Washington, D.C. and has a staff of 120 with field offices in Africa, Asia, Eastern Europe, Latin America and the former Soviet Union.

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OBSERVATIONS
ON PROPOSED AND POTENTIAL CHANGES IN
THE RULES OF PROCEDURE
OF THE ROMANIAN PARLIAMENT

Prepared by
The National Democratic Institute
for International Affairs

November 23, 1994

On September 26-29, the National Democratic Institute for International Affairs (NDI) conducted a series of informal consultations with members and officials of the Chamber of Deputies and the Senate of Romania regarding proposed changes in parliamentary rules of procedure. For these meetings, NDI brought to Bucharest two experts in rules of procedure:

- Mr. Charles Flanagan, a member of the Irish Dail (parliament) and a member of the parliamentary Committee on Rules and Privileges.
- Mr. Stanley Bach, a senior specialist at the U.S. Congressional Research Service and an expert on legislative procedures and operations.

NDI Field Representative John Swanson, who is currently resident in Bucharest, accompanied Mr. Flanagan and Mr. Bach.

The consultations were originally intended to focus on rulings made by the Romanian Constitutional Court in the Spring of 1994 that invalidated various provisions in the standing rules of both chambers of the parliament. In addition to these constitutional issues, however, the meetings examined a wide range of topics relating to the operations and activities of the parliament, including its efficiency and transparency.

NDI's expert team attended three days of intensive meetings with key Romanian MPs and their parliamentary staff officials. In addition to many smaller meetings, the program agenda featured large meetings with the juridical committee of each chamber of the parliament. In preparation for these meetings, Mr. Flanagan and Mr. Bach studied English translations of the existing rules of procedure, the Constitutional Court rulings on these rules, proposed amendments to the rules, and the Constitution of Romania.

The following comments are based in large part on the delegation's study of these documents and their program of meetings and consultations in Bucharest. It must be emphasized that this memorandum in no way reflects the opinions of the Irish Dail or the

U.S. Congress or the Congressional Research Service.

Furthermore, the National Democratic Institute does not wish these comments to be considered as prescriptions. In no way do we wish to intrude upon the prerogatives of the Romanian Parliament. Rather, these observations should be considered as suggesting policy options that were developed and now are being offered in response to requests from the Romanian parliament for information from an international perspective. We hope that our observations will be useful to members of the Chamber of Deputies and the Senate as they make their own decisions about the future of their institutions.

I. ENHANCING THE LEGISLATIVE PROCESS

During our meetings, members of the parliament expressed regret about what they characterized as a lack of effectiveness and efficiency in the legislative process. They observed that legislative business often consumed days or even weeks in plenary sessions—in their opinion, an inordinate and unjustified amount of time. We believe that these concerns point to several respects in which the conduct of legislative business might be improved.

One clear option for reducing the demands on plenary sessions would be to emphasize the role of specialized standing committees. The U.S. Congress conducts much of its legislative business in committees, and the Irish Dail has recently placed a greater emphasis on committee deliberations. If committees are to become more valuable to parliamentary deliberations in Romania, however, they will benefit from increased professionalism and from a more pivotal role for committees in the legislative debates that take place in plenary sessions.

A. Increasing the Contributions of Committees

Clearly, one important obstacle to greater committee effectiveness is the limited time that presently is made available for standing committees to meet. As we understand the current schedule in both chambers, one day each week is reserved for committee sessions. So long as they are constrained by such a schedule, standing committees simply do not have the opportunity to examine legislation in an intensive manner and develop the kind of detailed policy expertise on which other Deputies and Senators can rely with confidence.

There are many options that the Chamber and the Senate can consider if they decide that their committees should be able to meet more frequently. For example, perhaps committees could be allowed to meet during the mornings while plenary sessions convene in the afternoons. Another, more radical option for increasing time for committee sessions would be to allow certain committees to meet during the plenary sessions. Such simultaneous meetings could occur when the plenary is engaged in routine business that does not require the presence of all members. This option will become more feasible to the extent that committee meeting rooms are located near the plenary session halls.

Another opportunity for enhancing the value of committee work lies in increasing the number of professional staff who can provide detailed policy and legal advice on legislative issues. In addition to legal experts, legislative committees require policy analysts who understand the implications of new legislation, whether proposed by government ministries, members of parliament, or interested citizens' groups, and who can assist committees and individual MPs to develop and evaluate alternative approaches to addressing the many and serious issues confronting the parliament, especially in this uniquely important period of transition.

B. Improving the Conduct of Plenary Sessions

We also believe that the Chamber of Deputies and the Senate might enhance the value and effectiveness of their plenary sessions if they developed procedures that would permit committees to play an expanded and more central part in organizing and leading the debates on the draft legislation they have studied. One presumed virtue of a system of permanent legislative committees is that they develop specialized policy expertise on the matters within their jurisdictions. This expertise should be available to all deputies, especially during the course of debate in plenary sessions.

During the debate on each article and amendments to it, for example, priority might be given to members of the committee who want to speak for or against the article and each amendment. One approach would be to amend the rules of procedure to provide for the committee to designate two rapporteurs on each bill—one favoring it and one opposing it. When the bill then is debated in plenary session, the rapporteurs would be responsible for responding to amendments and otherwise speaking for like-minded committee colleagues as the Chamber or the Senate debates each article and each amendment. Some practice like this might encourage the development of committee expertise and allow the chamber to take maximum advantage of it. It also might have the added benefit of promoting more interactive debate instead of a sequential series of speeches.

Another possible change would be to encourage or even require MPs to submit their proposed amendments to a bill to the committee that is studying it. This would encourage Deputies and Senators to work with the committees and to defend their amendments during a careful and deliberate process of committee review. To maintain flexibility, the rules of procedure might preserve the option for an MP to submit an amendment for the first time during plenary debate on a bill; but to discourage this practice, the rules also could require that amendments not previously evaluated by the committee must be supported by a certain number of other MPs. Such a requirement also could keep amendments with minimal support from consuming the limited time available during plenary sessions.

As noted earlier, MPs and parliamentary staff informed our delegation in several meetings that debates in plenary session often were long and repetitive. A proposed rule in the Chamber would attempt to address this problem by forbidding MPs from repeating arguments previously made in debate. If an MP's speech was considered to be repetitive, the presiding officer of the Chamber would be permitted to terminate the speaker's

statement. While we understand the motivation for this proposal, we believe that such a rule could be subject to variations in interpretation and possibly seen as presenting an opportunity for arbitrary rulings.

An alternative approach would emphasize rules that set reasonable time limits on debate, both on individual speeches and on the total length of a debate. Such constraints would encourage MPs to use their limited time efficiently and could be enforced in a predictable and impartial manner. This approach also would provide an opportunity for the rules of procedure to include more explicit assurances that the opposition would have an opportunity to be heard and to present its amendments or alternatives to whatever proposal the Chamber or Senate is debating. To permit flexibility, a standing committee or possibly the Permanent Bureau could be authorized to propose a balanced schedule for debating each bill that takes into account its complexity and significance.

Another related issue that emerged from our discussions was the practical difficulties posed by the constitutional requirement that a majority of Deputies or Senators must be present to pass a bill or agree to a resolution or motion. We have been able to suggest several ways in which the procedures in plenary sessions might be adjusted to make it easier for the Chamber or the Senate to comply with this requirement. One possibility, for example, would be for at least some of the debates and votes on amendments during plenary sessions to take place in a grand committee on which all members serve. There could be preliminary votes in this committee, to which the constitutional quorum requirement may not apply, that then could be ratified by the Chamber or Senate itself.

Another possibility would be to provide for votes in plenary sessions only on amendments and not on the clauses and articles of the bills themselves. This would reduce the number of votes and, therefore, the times when the presence of a quorum is required. Even if neither of these approaches, for which there is precedent in other parliaments and legislatures, is thought appropriate for the Chamber or the Senate, we are confident that consultations about the procedures and practices of other parliaments will reveal alternatives that also merit consideration.

C. Better coordination between the two chambers

On several occasions in our meetings, MPs expressed dissatisfaction with the level of coordination between the Senate and the Chamber of Deputies. Measures that promote greater cooperation between the two chambers will increase parliamentary efficiency and enhance the public image of the institution.

In particular, we were informed that an amendment had been proposed in the Senate that would put a limit on the time that may elapse between the passage of a bill by one chamber and the consideration of that bill by the other chamber. Although we are not familiar with the precise language of this amendment, and therefore would not endorse it per se, we do recognize the value of effective bicameral coordination. Coordination between the two houses of the U.S. Congress traditionally has depended on informal

consultations and agreements. The possibility exists, therefore, that even when one house has expended the substantial effort needed to debate and pass a bill, it may die for lack of action in the other house. On the other hand, precedent exists for a requirement such as the one that has been proposed in the Romanian Senate. In Ireland, for example, the other chamber must consider a bill within ninety days of its passage by the chamber where the legislation originated.

The feasibility and suitability of such a requirement will depend on a variety of factors, including the respective constitutional powers of the two houses and their relationships with the government. Nonetheless, we do concur that both houses could benefit from devoting more attention to the importance of coordinating the legislative activities of the Chamber and the Senate, especially so long as they continue to meet in separate locations.

There are various additional steps that might be considered in an effort to improve coordination between the two chambers. For example, a central office or joint leadership council could ensure the coordination of the legislative agendas and schedules in both chambers. In addition, the parliament might consider establishing joint committees as a more efficient and cost-effective way for members of both chambers to examine key legislation. Finally, the two chambers could share professional staff who have developed expertise on important issues of national and international policy. The U.S. Congress has demonstrated that it is both practical and economical for an expert and non-partisan staff to provide timely information as well as legal and policy analysis to the members and committees of both its houses, and to do so in a timely and confidential manner.

II. STRUCTURAL IMPROVEMENTS

In addition to these suggestions for possible improvements in the bicameral structure of the parliament, we also suggest that each chamber give serious thought to establishing a permanent committee to review and recommend necessary changes in its rules of procedure.

* Need for a permanent rules committee

During our meetings, MPs and parliamentary officials suggested that the parliament should establish permanent committees in each chamber to review the effectiveness of its organization and the operation of its procedures, and to develop necessary amendments to its standing rules. We think there is considerable merit in this proposal, especially because the committee on rules would likely become the focal point for institutional improvement over the long term.

The juridical committees of both chambers, which now have responsibility for parliamentary rules of procedure, are heavily burdened with other critically important legislative business. Under these circumstances, which are unlikely to change in the foreseeable future, the demands of their other responsibilities will make it extraordinarily

difficult for these committees to devote as much attention as they would like to monitoring and reviewing the procedures of either the Chamber or the Senate. The apparent urgency of other business will be a constant distraction, but the parliament cannot afford to ignore its own institutional health. The formal establishment of rules committees would create a forum for Deputies and Senators who are interested in creating a more effective parliament, and would publicly demonstrate that the improvement of parliamentary effectiveness is an essential goal that has the institutional support of both chambers and their leaders.

Permanent committees on rules eventually would provide an "institutional memory" and encourage the Chamber and the Senate to step back occasionally from the pressures of daily business to examine how the parliament is functioning and how it can be improved for the long-term benefit of a balanced and vibrant democratic system. In addition, these rules committees would develop expertise among their members and professional staff in international models of procedural rules and parliamentary practice as sources of ideas and examples that may be adaptable to the needs and conditions of the Romanian parliament.

In Ireland, for example, the Parliamentary Committee on Procedure and Privileges is responsible for matters of procedure generally, and makes recommendations from time to time on amendments to the standing orders that it deems necessary. This committee also may consider and report on questions concerning members' privileges and matters relating to the conditions of the premises in which members carry out their duties. The Irish committee has the power to engage the services of persons with specialist and/or technical knowledge to assist it in considering particular matters. The membership of the Committee, which consists of the Ceann Comhairle (Speaker) and 17 other members, is impartially representative of the Dail Eireann, the Irish parliament, as a whole.

In the United States House of Representatives, its Committee on Rules also has the responsibility for evaluating and reporting on proposals to amend the standing orders, especially those affecting the legislative process itself. In addition, this committee makes recommendations concerning the procedures by which the House of Representatives debates and acts on amendments to the most important bills it considers each year. Because of this dual responsibility, there is widespread agreement that the Committee on Rules is among the three or four most powerful and influential committees in the House of Representatives.

As time passes, both the Chamber of Deputies and the Senate undoubtedly will conclude that some of its rules of procedure have proven to be appropriate and useful, but that others will need to be adjusted. This is a continuing process because parliaments are not static institutions. They are constantly evolving and adapting to new circumstances. Furthermore, as Romanian political tradition continues to develop, procedural rules may need to change in ways that foster a more effective system of majority rule while preserving the rights of individual members and the opposition. We believe that permanent committees on rules will make it much more likely that this process will proceed systematically and thoughtfully.

III. PARLIAMENTARY RIGHTS AND RESPONSIBILITIES

Some of the most controversial aspects of the Constitutional Court's rulings on parliamentary rules of procedure were linked to fundamental questions about the rights of individual members and the opposition. It was apparent to us that Deputies and Senators alike were responding with great seriousness to the Court's decisions and the issues they raised. We are confident that this process will continue. We also believe that there are a number of related issues that also deserve attention in this context.

A. Party migration

We understand that the Constitutional Court ruled invalid the present limitations on the ability of Deputies and Senators to change parties during the course of their parliamentary service. We also were advised that the rules of both chambers will be amended in deference to these decisions of the Constitutional Court.

We were not surprised to discover that some members of both chambers disagreed with the Court's decisions and sought some way to prevent party migration, especially if it could have the result of bringing into the Chamber or the Senate one or more parties that had not achieved representation as a direct result of the parliamentary elections. By the same token, we would not have been surprised if the Court had deferred to the judgment of the two houses of parliament on this and some other matters on which it ruled. On the other hand, we respect the diligence that the Court demonstrated in reviewing the rules so carefully, and the willingness of members of both chambers to comply with the Court's rulings even when they disagree with its reasoning and conclusions.

In both the Irish Dail and the United States Congress, members are free to change parties if they choose to do so. Whatever the other differences between them, both national assemblies consider party affiliation to be a matter that is best left to the discretion of each member and the party with which he or she decides to associate. If a member switches parties, his or her constituents can decide whether or not to re-elect that member at the next election. These arrangements generally have proven satisfactory in Dublin and Washington.

We recognize that this issue may be of continuing interest to the Romanian parliament. Therefore, we now are attempting to gather information on the rules, practices, and experiences of other national parliaments in the region concerning this issue. If we are successful in obtaining the information we have requested, we shall prepare a report on the subject that we will provide to interested members of the Chamber of Deputies and the Senate as soon as it is available.

B. District Offices for MPs

We are heartened by the decisions of the Senate and Chamber to open and maintain offices for members of parliament in their constituencies. The presence of such offices

will enhance the relationship between the members and the people they represent.

Although our meetings focused primarily on the internal operations and procedures of the parliament, we recognize that it is equally important to encourage a sense of accountability among both members and constituents, and particularly for citizens to look upon Deputies and Senators as their representatives in Bucharest, with whom they should communicate and whom they should hold responsible for their decisions. District offices will encourage communication between representatives and their electorate to the benefit of both.

C. Proxy voting

We strongly support measures that have been proposed to prevent the practice of proxy voting in plenary sessions of the Senate and the Chamber of Deputies. In the U.S. Congress, including the House of Representatives which uses an electronic voting system, it would be a gross violation of acceptable conduct for one member to cast a vote for another during a plenary session. Proxy voting sometimes has been possible during committee meetings, but only when the rules of the two houses have explicitly authorized committees to permit it.

In the Irish Dail's current voting system, proxy voting is not possible. It is likely that this system will be replaced with electronic voting in the future, in which case one member voting on behalf of another member would not only be outlawed, it would be punishable by severe penalties. When unauthorized proxy voting occurs, it can only undermine public confidence in the integrity of democratic institutions.

IV. TRANSPARENCY

By opening the activities of the Chamber of Deputies and the Senate to increased public observation and participation, we believe the parliament will be strengthened as the centerpiece of Romanian democracy. Greater transparency in the legislative process will increase the public's confidence that democratic institutions are being responsive to their concerns and addressing them conscientiously.

We offer several brief observations on transparency:

A. Recorded Voting

We understand that unrecorded voting in plenary sessions may permit individual MPs to exercise a degree of independence from their parties. We are concerned, however, that the disadvantages of unrecorded voting may be greater than any potential benefits it may have. In particular, the Romanian people cannot hold their representatives accountable if they are unable to learn what their representatives are doing in their name and, presumably, on their behalf. It may not be necessary or practical to record members' votes on every question, but we do encourage the parliament to consider rules that will

enable some reasonably small number of Deputies or Senators to require a recorded vote when they think it is appropriate. The use of electronic voting systems can minimize any delays and inconvenience that such votes otherwise might cause.

B. Access to committee meetings

We recognize that many parliamentary committees in Europe meet in closed session more often than is the practice in the U.S. Congress. Even in most European systems, however, committees may be able to exercise discretion in deciding whether to open committee sessions to the public. We understand that some committees have invited non-governmental organizations to testify before them. This is a positive development, but we would also hope that such organizations, as well as individual citizens, could attend committee meetings not only as witnesses, but also as observers--simply to listen and learn what their government is doing.

C. Access to documentation

We understand that no regular and convenient procedure now exists for making draft laws available to the public. In addition, we understand that there often have been considerable delays in publishing the transcripts of plenary session proceedings in Part II of the Monitorul Oficial al Romaniei. Again, we hope and recommend that the parliament will develop the facilities that will eliminate this problem. Access to the records of parliamentary debate will make it possible for interested citizens to enhance their knowledge of the activities of parliament and to better understand the information and reasoning on which Deputies and Senators have based their decisions.

CONCLUSION

We heartily congratulate the parliament of Romania for the leadership it has shown over the past five years in helping the nation recover from an oppressive dictatorship and move toward a flourishing representative democracy. On the whole, the parliamentary rules of procedure of both chambers are consistent with international parliamentary practices, and can only contribute to making the Romanian parliament an ever more effective and valuable national forum for democratic pluralism.

At the same time, the continued vitality of any institution depends on its willingness to look carefully and critically at itself. We hope that our comments will contribute to this process and will be received in the same spirit in which they are offered--as an indication of our confidence in the capacity of Romanian democracy to overcome the daunting obstacles it has been confronting.