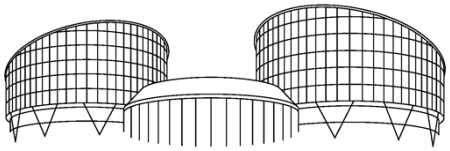

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CERNEA v. ROMANIA

(Application no. 43609/10)

JUDGMENT

STRASBOURG

27 February 2018

FINAL

27/05/2018

This judgment has become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cernea v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Antoanella Motoc,
Georges Ravarani,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 27 February 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 43609/10) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Remus Florinel Cernea ("the applicant"), on 13 July 2010.

2. The Romanian Government ("the Government") were represented by their Agent, Mrs C. Brumar, of the Ministry of Foreign Affairs. The applicant was given leave, by decision of the Section President, to present his own case to the Court (Rule 36 § 2 of the Rules of Court).

3. The applicant alleged, in particular, a violation of his right to stand, without discrimination, in the by-elections held on 17 January 2010.

4. On 17 April 2014 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Bucharest.

A. Background to the case

1. At the material time the applicant was the Executive Chair of the *Partidul Verde* ecological party, a political movement affiliated with the European Green Party.

2. *Partidul Verde* had put up candidates for the 2008 general elections but failed to win any seats. In 2009 the applicant was the party's candidate in the presidential elections. He won about 60,000 votes, or some 0.6 % of the total validly cast votes.

3. The 2008 general elections had been governed by Law no. 35/2008 on elections to the Chamber of Deputies and the Senate, amending Law no. 67/2004 on local authority elections, Law no. 215/2001 on local public authorities and Law no. 393/2004 on the status of local elected representatives ("Law no. 35/2008"; see paragraph 17 below). In 2009 Parliament amended Law no. 35/2008 under Law no. 323/2009 approving Emergency Order no. 97/2008 ("Law no. 323/2009"; see paragraph 18 below). That amendment made it impossible for parties not represented in Parliament, as well as independent candidates, to put up candidates for or stand in parliamentary by-elections.

B. Parliamentary by-elections of 17 January 2010

4. Parliamentary by-elections were scheduled for 17 January 2010 in order to fill a vacant seat in a Bucharest constituency. According to information available to the Court, that seat had fallen vacant in October 2009.

5. *Partidul Verde* submitted the applicant's candidacy to the Electoral Board on the party's behalf.

6. On 29 December 2009 the Electoral Board rejected the candidacy on the grounds that *Partidul Verde* was not represented in Parliament.

7. *Partidul Verde*, represented by the applicant, challenged that rejection before Bucharest County Court ("the County Court") and requested the acceptance of the applicant's candidacy. It entered an objection of unconstitutionality under section 48 (17) of Law no. 35/2008 (see paragraph 18 below). It alleged in particular that the ban on candidates from parties not represented in Parliament and independent candidates infringed the right to free elections and amounted to unjustified discrimination as compared with parties represented in Parliament. The party added that, contrary to the recommendations of the European Commission for Democracy through Law ("the Venice Commission"; see paragraphs 20 and 21 below), Law no. 35/2008 had been amended less than one year before the by-elections.

8. By interlocutory decision of 30 December 2009 the County Court deferred its ruling so that the Constitutional Court could consider the objection of unconstitutionality.

9. By Decision no. 61/2010 of 14 January 2010, the Constitutional Court dismissed the objection of unconstitutionality. Having reiterated that Parliament's political structure was defined by general elections, the Constitutional Court rejected *Partidul Verde's* arguments as follows:

> "The [Constitutional] Court observes that the reason for the holding of the parliamentary by-elections was the fact that a parliamentary seat had fallen vacant. Such by-elections are held in order to assign seats in Parliament while simultaneously respecting the structure of Parliament as it emerged from the latest general elections. In order to respect the sovereignty and the will of the electorate as expressed in the framework of general elections, it is necessary that the by-election stage, which is subsidiary and complementary to the general elections, should observe the electoral threshold criterion which allows political parties to be represented in Parliament. To allow candidates to stand in by-elections for political parties which are not represented in Parliament would alter the latter's political structure, [which is] incompatible with the votes cast by the electorate during the general elections which led to the constitution of the Romanian people's supreme representative body, with a specific political make-up, which can only be modified in the cases and conditions determined by law.
>
> ...
>
> Moreover, allowing a person who does not belong to a party represented in Parliament to obtain a parliamentary mandate further to by-elections would be tantamount to allowing something which had not been obtained in the framework of general elections to be obtained by the 'devious means' of a by-election."

10. As regards the plea based on the recommendations of the Venice Commission, the Constitutional Court assessed it "with reservations". It noted that the said recommendations advised against amending the electoral law less than one year before any elections, but that they also comprised the hypothesis that such amendments "should be adopted at the level of the Constitution or at a level higher than that of ordinary law" (see paragraph 20 below). In the present case the Constitutional Court ruled that the recommendation had been complied with because the amendment to Law no. 35/2008 had been effected under an organic law, which met the criterion of a "level higher than that of ordinary law" (see paragraph 16 below).

11. By judgment of 30 March 2010 the County Court dismissed the party's challenge, referring to the reasoning of the Constitutional Court in its aforementioned decision of 14 January 2010, to the effect that since *Partidul* Verde had failed to pass the electoral threshold in the general elections it could not put up candidates for the by-elections. The County Court further noted that the elections had already been held and that the challenge had therefore become devoid of purpose.

C. Subsequent developments

12. Fresh parliamentary by-elections were scheduled for 25 April 2010 in Bucharest to fill another vacant seat.

13. The applicant stood as an independent candidate. His candidacy was rejected by the Electoral Board pursuant to section 48 (17) of Law no. 35/2008. The applicant appealed to the County Court against the rejection of his candidacy, and lodged a fresh objection of unconstitutionality.

14. By Decision no. 503/2010 of 20 April 2010, the Constitutional Court allowed the objection of unconstitutionality lodged by the applicant and declared the part of the impugned section prohibiting independent candidacies unconstitutional on the grounds that it infringed the right to stand for election. The relevant parts of that decision read as follows:

> "Although, as regards political parties which are not represented in Parliament, the Constitutional Court's Decision no. 61 of 14 January 2010 set out the reasons justifying, in the light of constitutional standards, the elimination of such parties from by-elections, as regards independent candidates no reason was given for subjecting them to the same legal treatment. Thus the electoral threshold means that political parties must be representative, to some extent, of the electorate, as required by the sovereignty principle. in the case of independent candidates, however, such a criterion would be absurd; ... they are asked to submit support lists comprising the signatures of a minimum 4% of all the voters registered in the permanent electoral lists of the boards to which they submit their candidacies, [and the total number should not be lower that] 2,000 electors in the case of the Chamber of Deputies and 4,000 electors in the case of the Senate. Consequently, for general elections, the legislature had laid down this precondition, which is necessary in order to stand as an independent candidate, and simultaneously in order to exercise the right to be elected. Nevertheless, in relation to by-elections, the legislature failed to lay down the requisite conditions for this category of persons standing for election, providing that the category of candidates for by-elections comprised only political parties and organisations of citizens belonging to national minorities having passed the legal electoral threshold at the general elections, whether individually or in the framework of a political or electoral alliance. That being the case, it is a case not of setting limits on or circumscribing the manner of exercising the right to be elected, but of annulling that right by failing to recognise it, [by an] unlawful absence of regulation.
>
> ...
>
> In conclusion, the Electoral Law may specify the conditions in which an individual may stand for election as an independent (financial deposit, a specific number of supporters, etc.), but it can in no way exclude from the electoral process, in the case of by-elections, the candidacy of a person [standing as an] independent candidate without thereby infringing the fundamental right enshrined in Article 37 of the Constitution – the right to be elected."

15. The applicant stood in the 2012 general elections and obtained a seat in the Chamber of Deputies for a four-year mandate.

II. RELEVANT DOMESTIC LAW

16. Under Article 73 of the Romanian Constitution, Parliament enacts constitutional laws, organic laws and ordinary laws. In particular, organic laws are used in very specific fields, exhaustively listed in Article 73 § 3 of the Constitution. These fields include the electoral system and the organisation and functioning of the permanent electoral authority. Pursuant to Article 76 § 1 of the Constitution, organic laws are enacted on a majority of the members of each Chamber of Parliament, unlike ordinary laws, which, under Article 76 § 2, are enacted on a majority of members present.

17. Law no. 35/2008, which was enacted by Parliament on 13 March 2008 according to the set procedure for organic laws, governs parliamentary elections to the Chamber of Deputies and the Senate. It provides for forty-three constituencies nationwide, each made up of several wards. The Law defines a single-member ward (*colegiu uninominal*) as a unit of an electoral constituency in which one mandate only is assigned. Section 29 (1) of the Law provides that each entity participating in the election (a political party, a political or electoral alliance or an organisation of citizens belonging to a national minority) can put up one candidate only in an electoral ward. In particular, section 30 of the Law lays down that an independent candidate must prove that he or she is supported by at least 4% des electors registered on the electoral rolls in the ward in which he or she is proposing to stand, provided that this proportion amounts to at least 2,000 voters in the case of the Chamber of Deputies and 4,000 in the case of the Senate. The Law also provides that by-elections should be held where elections are cancelled in a given constituency or where a deputy's or senator's seat has fallen vacant.

Moreover, section 47 (2) of the Law concerns the electoral threshold to be attained by "candidates for political parties, political alliances, electoral alliances or organisations of citizens belonging to national minorities". The threshold is set, as a general rule, at 5% of votes validly cast at the national level, and there is also a requirement on obtaining at least six single-member wards for the Chamber of Deputies and three single-member wards for the Senate. The threshold is slightly higher for political and electoral alliances, and a special threshold is set for organisations of citizens belonging to national minorities. Section 48 of the Law provides that votes should be distributed in two stages. The first distribution of votes takes place at constituency level, according to the individual constituency's electoral quotient; section 48 (3) provides that that quotient should be calculated on the basis of the number of votes validly cast for political formations which have passed the electoral threshold and the number of Deputies and Senators to be elected in the constituency. Section 48 (4) governs the assignment of seats to independent candidates. The latter are assigned a seat if they have obtained a majority of the votes validly cast in the ward in which they were standing. Under section 48 (5), unused votes

and votes falling below the electoral quotient for a given constituency are redistributed at national level during the second stage.

18. The Government amended Law no. 35/2008 under an Emergency Order of 27 August 2008. In the framework of its review of that Order, Parliament enacted Law no. 323/2009 of October 2009 ("Law no. 323/2009") under the procedure laid down for organic laws. Pursuant to the latter law a new requirement was introduced into Law no. 35/2008 concerning by-elections. That amendment related to section 48 (17), which now provides:

> "By-elections are open only to political parties and organisations of national minorities which passed the threshold [for access to Parliament] at the general elections ..."

19. Law no. 35/2008 was in force until 26 July 2015, when it was replaced by a new Electoral Law.

III. RELEVANT INTERNATIONAL LAW

20. At its 52nd session the Venice Commission adopted a Code of Good Conduct in Electoral Matters (CDL-AD (2002) 23 rev.), which comprises guidelines and an explanatory report expanding on the principles set out in the latter. The relevant provisions of the guidelines read as follows:

> **II. Conditions for implementing these principles**
>
> ...
>
> **2. Regulatory levels and stability of electoral law**
>
> "a. Apart from rules on technical matters and detail – which may be included in regulations of the executive – rules of electoral law must have at least the rank of a statute.
>
> b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law."

21. The provisions of the explanatory report are described in the case of *Tănase v. Moldova* ([GC], no. 7/08, § 86, ECHR 2010). In particular, the explanatory report recommends avoiding "changing them frequently or just before (within one year of) elections" (see paragraph 65 of the explanatory report).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

22. The applicant complained of a violation of his right to stand in the by-elections of 17 January 2010 without discrimination. He relied in particular on Article 14 of the Convention read in conjunction with Article 3 of Protocol No. 1 to the Convention.

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 3 of Protocol No. 1 to the Convention provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

23. The Government raised objections as to the applicant's lack of victim status and non-exhaustion of domestic remedies. They submitted that all the requisite domestic action had been taken by *Partidul Verde* but not by the applicant. They considered that the latter had not put forward in his own name before the domestic courts the complaint raised before the Court. Under those circumstances the Government argued that *Partidul Verde* should have applied to the Court rather than the individual candidate.

24. The applicant had made no submissions on the admissibility of the application.

25. The Court observes that the two objections raised by the Government are closely interconnected inasmuch as they both concern the applicant's *locus standi* before the Court. It will therefore consider them together.

26. The Court notes that a successful appeal was lodged at the domestic level on behalf of *Partidul Verde*, of which the applicant was a member. It was specifically the applicant, in his capacity as a private individual, who represented the party and actively participated in the domestic proceedings (see paragraph 7 above). The Government, moreover, did not state that the applicant could have had recourse to a different domestic remedy to secure the examination of the legal issue which arises in the present case or to seek scrutiny of another legal issue or obtain a different outcome. The Court

accordingly takes the view that the applicant can claim to be the victim of a violation of his rights and that he exhausted the domestic remedies available to him.

27. Finally, the Court notes that the implementation of Law no. 323/2009 to the impugned by-elections had the effect of excluding candidates of parties which are not represented in Parliament and independent candidates from the election race (see paragraph 18 above). It observes, however, that the applicant intended to stand on behalf of *Partidul Verde* and not as an independent candidate. It will therefore not include the restriction on independent candidacies in the framework of by-elections in its assessment of the present case.

28. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. Having described the Romanian electoral system in detail, characterising it as "the most restrictive and least democratic [such system] in Europe", the applicant submitted that small political parties were discriminated against in parliamentary elections and found it difficult to pass the electoral threshold required by the Electoral Law. He considered that this state of affairs had played against his party during the 2008 general elections owing to the large sums of money required under the Electoral Law as a deposit for each candidate. He argued that the version of the Electoral Law as amended before the by-elections of 17 January 2010 had been discriminatory to the extent that it excluded candidacies not supported by a party represented in Parliament.

30. The applicant contested the Government's argument that the aim of by-elections was to respect the will of the people as expressed during general elections. In a democratic society, voters should be allowed to change their minds. He considered that the same rules and principles should be applied to general elections and by-elections, and that the importance of the right to stand for election took precedence over the need to preserve the political structure of Parliament. The applicant also rejected the argument that independent candidates could win parliamentary seats because in practice it was impossible to obtain half of all votes in any one constituency. He concluded that the alleged restriction on his right to stand for election was neither proportionate nor justified.

31. The Government stated that the applicant's party had put up candidates at the 2008 general elections but had won no seats. They

explained that the January 2010 by-elections had been exceptional because a parliamentary seat had fallen vacant. They discerned two different situations in the aforementioned elections, considering that general elections and by-elections pursued different aims. The Government took the view that the difference in the regulations governing by-elections was justified by the need to respect the will of the people as expressed during general elections.

32. The Government added that the measure criticised in the instant case was proportionate. The existence of specific conditions for general elections was not such as to infringe the essence of the right to stand for election. The Government submitted, moreover, that the Constitutional Court had found in the instant case that the ban on independent candidates standing had not been justified and that the Electoral Law had been amended accordingly (Decision no. 503/2010 of 20 April 2010; see paragraph 14 above). They added that the measure applied in the applicant's case had been temporary and that in any case he had been elected to Parliament in the 2012 general elections.

2. The Court's assessment

a) General principles

33. The Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. "No objective and reasonable justification" means that the distinction in issue does not pursue a "legitimate aim" or that there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, among many other authorities, *Sejdić and Finci v. Bosnia-Herzegovina* [GC], nos. 27996/06 and 34836/06, § 42, ECHR 2009). The scope of a Contracting Party's margin of appreciation in this sphere will vary according to the circumstances, the subject matter and the background (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 82, ECHR 2009).

34. The Court further reiterates that Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective political democracy and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113). as regards the method of appointing the "legislature", Article 3 provides only for "free" elections "at reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people". Subject to that reservation, it does not create any "obligation to introduce a specific system" such as proportional representation or majority voting with one or two ballots. Here too the Court recognises that the Contracting States have a wide margin of appreciation, given that their legislation on the matter varies from place to place and from time to time (ibid., § 54).

35. Electoral systems seek to fulfil objectives which are sometimes scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. In these circumstances the phrase "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" implies essentially – apart from freedom of expression (already protected under Article 10 of the Convention) – the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election. It does not follow, however, that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory. Thus no electoral system can eliminate "wasted votes". For the purposes of Article 3 of Protocol No. 1 to the Convention, any electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the "free expression of the opinion of the people in the choice of the legislature" (ibid., § 54).

36. The Court also reiterates that the words "free expression of the opinion of the people" mean that elections cannot be conducted under any form of pressure in the choice of one or more candidates, and that in this choice the elector must not be unduly induced to vote for one party or another (see *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 108, ECHR 2008). The word "choice" means that the different political parties must be ensured a reasonable opportunity to present their candidates at elections (see *Yumak and Sadak*, cited above, § 108).

37. That being said, the rights enshrined in Article 3 of Protocol No. 1 to the Convention are not absolute. There is room for implied limitations, and Contracting States must be given a margin of appreciation in this sphere (see, among other authorities, *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I, and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV). As regards the right to stand as a candidate for election, which is the so-called passive aspect of the rights guaranteed by Article 3 of Protocol No. 1 to the Convention, the Court has been even more cautious in its assessment of restrictions in that context than when it has been called upon to examine restrictions on the right to vote, the so-called active aspect of the rights set out in Article 3 of Protocol No. 1 (see, to the same effect, *Etxeberria and others v. Spain*, nos. 35579/03 and 3 others, § 50, 30 June 2009, and *Ždanoka v. Latvia* [GC], no. 58278/00, § 115, ECHR 2006-IV).

38. However, it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been fulfilled; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as

to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Mathieu-Mohin and Clerfayt*, cited above, § 52). In particular, any conditions thus imposed must not thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage (see *Ždanoka*, cited above, § 104).

b) Application of those principles to the present case

i. Existence of a difference of treatment provided for by law

39. The Court notes that the applicant complains that he was unable to stand for the by-elections of 17 January 2010 owing to the amendments to the Electoral Law. It observes that as the candidate of a party not represented in Parliament, the applicant had not been allowed to stand in the by-election, whereas he would have been permitted to do so if his party had already been represented in Parliament. There was therefore a difference of treatment in the present case as regards the applicant's ability to stand for election as a representative of a political party.

40. The Court further notes that the domestic authorities also replied to the applicant's plea based on the recommendations set out in the Venice Commission's Code of Good Practice in Electoral Matters. In this connection, the Constitutional Court referred to the provisions of the guidelines of that Code, which recommend either avoiding amending the electoral law less than a year before any elections or writing such amendments "in the constitution or at a level higher than ordinary law" (see paragraph 20 above). The Constitutional Court ruled that the Venice Commission's recommendation had been complied with because Law no. 35/2008 had been amended under an organic law, thus satisfying the criterion of a level higher than an ordinary law. The Court takes note of the Constitutional Court's conclusion inasmuch as, under the Romanian system covered by the Venice Commission's recommendations, organic laws require a broader consensus since they are enacted on a majority of the members of both chambers of Parliament, unlike ordinary laws, which are enacted on a majority of members present (see paragraph 16 above). The Court also has regard to the particular context of by-elections, noting that they are not designed to be held at regular, foreseeable intervals, are random in nature and depend on parliamentary seats falling vacant. Furthermore, the Court notes that the legislative procedure for amending the Electoral Law began in August 2008 and ended with the enactment of Law no. 323/2009 of 20 October 2009 (see paragraph 18 above), and that the by-elections in issue in the present case were held in January 2010.

ii. Legitimate aim of the difference in treatment

41. It is incumbent on the Court to ascertain, in the light of the above-mentioned principles, whether the system complained of pursued a legitimate aim and whether there was a reasonable relationship of proportionality between the means employed and the aim pursued. Applying these two criteria will enable it to establish whether the impugned measures amounted to discrimination in breach of Article 14 of the Convention and whether they impaired the very essence of the right to the free expression of the opinion of the people within the meaning of Article 3 of Protocol No. 1.

42. The Court notes that the parties disagree on whether the difference in treatment pursued a legitimate aim. The Government submitted that the restrictions on candidacies during the by-elections had been aimed at ensuring compliance with the will of the people as expressed in the general elections, which view was contested by the applicant on the grounds that the same rules and principles should apply to both general elections and by-elections (see paragraphs 30 and 31 above).

43. Unlike certain other provisions of the Convention, Article 3 of Protocol No. 1 does not specify or limit the aim which a measure must pursue. A wider range of purposes may therefore be compatible with this Article (see *Sukhovetskyy v. Ukraine*, no. 13716/02, § 62, ECHR 2006-VI). In the present case, the Court can agree with the Government that by requiring candidates for by-elections to come from political parties that were represented in Parliament and had therefore passed that electoral threshold at the general elections, the new Electoral Law was geared to reinforcing the expression of the people's will concerning the choice of legislature (see, *mutatis mutandis*, *Yumak and Sadak*, cited above, §§ 121-125, as regards electoral thresholds, and *Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, no. 7819/03, §§ 37-42, ECHR 2012, as regards the public financing of political parties depending on a representation threshold).

44. The Court notes that the applicant submitted to the domestic authorities the complaint now before it; he complained, in particular, of the alleged discriminatory nature of the ban on candidates from parties not represented in Parliament standing in by-elections and of the change to the Electoral Law less than a year before those by-elections, which he claimed had contravened the Venice Commission's recommendations (see paragraph 7 above). The domestic authorities examined all his pleas and dismissed his appeal by a reasoned decision. The Court observes in particular that in its decision of 14 January 2010 the Romanian Constitutional Court held that the restrictions imposed during the by-elections had been justified by the need to preserve the structure of Parliament as it had emerged from the general elections (see paragraph 9 above). Like the Romanian Constitutional Court, the Court does not challenge the aim of preserving the structure of Parliament and preventing the fragmentation of the political spectrum

emerging from the general elections, which aim could justify the restriction on candidates from parties unrepresented in Parliament wishing to stand in the by-elections.

iii. Proportionality of the difference in treatment

45. The Court reiterates that it has ruled that the setting of electoral thresholds was a discretionary matter for the national authorities since such thresholds were geared to promoting sufficiently representative political views and helped prevent the excessive fragmentation of Parliament (see *Yumak and Sadak*, cited above, §§ 113-115, and the references therein). In the instant case, in order to justify the limitation imposed during the by-elections, the Constitutional Court had taken into account the electoral threshold which political parties had to pass in order to enter Parliament. The Court notes that the applicant did not explicitly contest the setting of electoral thresholds in the Romanian electoral system: in fact he submitted that the same rules and principles should apply to all elections, covering both general elections and by-elections (see paragraph 30 above).

46. In that regard, the Court notes that the by-elections in question had had been organised in respect of one single parliamentary seat which had fallen vacant in a Bucharest constituency (see paragraph 4 above). That being the case, the limitation of Mr Cernea's right had to be kept in perspective, especially since he had stood in the 2008 general elections, when his party had failed to pass the electoral threshold to enter Parliament (see, *mutatis mutandis*, *Dupré v. France* (dec.), no. 77032/12, § 26, 3 May 2016). In that context, the Court takes note of the Constitutional Court's argument that the aim of by-elections was not to open a backdoor to a parliamentary seat for a party which had failed to obtain seats at the general elections (see paragraph 9 above). It therefore holds that the domestic authorities were objectively and reasonably justified in limiting the right in question and that that limitation was reasonable and proportionate.

iv. Conclusion

47. In conclusion, the Court considers that the amendment to the Electoral Law which led to the restriction of the applicant's right to stand in the by-elections of 17 January 2010 on the grounds that he was not standing for a political party represented in Parliament had had an objective and reasonable justification, that that amendment did not infringe the very essence of the right to the people's freedom of expression, and that, consequently, it was not disproportionate to the legitimate aim sought to be achieved.

48. There has accordingly been no violation of Article 14 of the Convention read in conjunction with Article 3 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 14 of the Convention read in conjunction with Article 3 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 27 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President