

# CRIMES AND ELECTORAL OFFENSES COMMITTED DURING ELECTIONS OF THE LOCAL PUBLIC ADMINISTRATION AUTHORITIES

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## **Abstract**

*Law no. 115/2015 refers to the elections for local government authorities - local councils, county councils, mayors and presidents of county councils.*

*Local councils, county councils and mayors are elected by universal, equal, direct, secret and freely expressed vote.*

*The right to vote means the possibility recognized and guaranteed by the state to a person under the law, to participate in the appointment of the representative authorities of the State or territorial administrative units.*

*The right to vote, as governed by Constitution has the following characteristics: universality, equality, direct and secret and is freely expressed.*

*In Romania, compulsory vote was regulated and functioned under the Constitution from 1923, the citizens being forced to go to vote.*

**Key Words:** *Vote / electoral / elections / offenses / freely expressed*

JEL Classification: *[K10]*

## **Introduction**

Political discussions from 2016 led to a series of significant changes in the electoral legislation but, in most cases, the changes only partially responded to the need to improve them.

We are witnessing a regrouping of electoral offenses in one enactment in the New Criminal Code<sup>1</sup> (Law no. 286/2009) entered into force on 01/02/2014, Title IX (Art. 385-393) from special part it is dedicated to electoral offenses.

These offenses refers to all types of elections (euro-parliamentary, presidential, local referendum) so there is not a specific category of offense related to local elections.

## **Chapter 1. Electoral infractions**

Electoral infractions are provided in Title IX art. 385-393 of the New Code Penal (Law no. 187/2012<sup>2</sup> namely:

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<sup>1</sup> See *Noul Cod Penal – Legea nr. 286/2009*.

<sup>2</sup> Published in Official Gazette no. 757/12.11.2012.

**• Art. 385 Preventing the exercise of electoral rights**

(1) Preventing, by any means, the free exercise of the right to elect or be elected is punished with imprisonment no less than 6 months and no more than 3 years of imprisonment.

(2) An attack, by any means, on the polling station shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights.

**• Art. 386 Corruption of voters**

(1) The act of offering or giving money or other benefits in order to determine a voter to vote or not to vote for a certain list of candidates or for an independent candidate shall be punishable by no less than 6 months and no more than 3 years of imprisonment and a ban on the exercise of certain rights.

(2) The goods of symbolic value, bearing the insignia of a political party, are not included in the category of goods mentioned in par. (1).

**• Art. 387 Voting fraud**

1) The act committed by the individual who votes:

a) without having the right;

b) two or more times;

c) by introducing in the box more ballots than allowed;

shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine and a ban on the exercise of certain rights.

(2) The same penalty shall apply to the use of a voter card or identity document that are counterfeit, or to the use of counterfeit ballots.

**• Art. 388 Electronic vote fraud**

The act of printing and using false access data, fraudulent access to the electronic voting system or falsification, by any means, of electronic vote ballots is punished with imprisonment from one to five years.

**• Art. 389 Violation of voting secrecy**

(1) The violation, by any means, of the voting secrecy is punished with fine.

(2) If the act was committed by a member of the electoral bureau of the polling section, the punishment is imprisonment from 6 months to 3 years or fine and a ban on the exercise of certain rights.

**• Art. 390 Failure to observe the rules governing ballot boxes**

(1) The act of opening a ballot box before the time established for the closure of elections is punished with imprisonment from one to 3 years or a fine and deprivation of certain rights.

(2) Entrusting the special ballot box to individuals other than members of the electoral bureau of the polling station, or its transportation by other individuals or in conditions different from those provided by law is punished by imprisonment from 3 months to 2 years or by a fine and a ban on the exercise of certain rights.

**• Art. 391 Counterfeiting documents and voting records<sup>3</sup>**

(1) Falsification by any means of electoral documents from polling stations is punished by imprisonment from 1 year to 3 years and a ban on the exercise of certain rights.

(2) The same penalty shall apply to the enrolment on the copy of the permanent voting list or on the supplementary voting list of individuals who do not belong on such list.

**• Art. 392 Offenses committed in relation to a referendum**

The stipulations of Art. 385 - 391 it's applying accordingly in the case of offenses committed in relation to a referendum.

**Chapter 2. Electoral contraventions****• Art. 393 Punishing the attempt**

The attempt to commit the offenses set out in Art. 385 and Art. 387 - 391 is punished.

In the case of an election offense, notice may be addressed to police or prosecutor's office, respecting the general notification rules related to criminal offense committed<sup>4</sup> provided in the Code of criminal procedure<sup>5</sup>.

If a citizen assists to commission of an offense and, with that occasion, he makes photos<sup>6</sup>, recordings, it is useful to provide those photos or recordings to the criminal prosecution authorities (police, prosecutor) in order to open or continue prosecution.

Offences to specific local elections are set out in art. 108-111 of Law. 115/2015<sup>7</sup>.

To them are applicable provisions O.U.G. no. 2/2001<sup>8</sup> on the regime of contraventions, approved with amendments by Law no. 76/2012 amended and supplemented.

Goods intended or used to commit offenses referred to in Art. 108 lit. k), t) and w) of Law no. 115/2015 or results from this facts shall be confiscated.

*The finding of contraventions and application of sanctions is made by:*

<sup>3</sup> See G. N. Labo, *Cercetarea criminalistică*, IVth edition revised and completed, Pro Universitaria Publishing House, Bucharest, 2014, p. 21.

<sup>4</sup> See S. Siserman, *Drept procesual penal: Parte specială*, Alabastră Publishing House, Cluj-Napoca, 2008, p. 41.

<sup>5</sup> Art. 288 din *Noul Cod de procedură penală*, Published in Official Gazette no. 757/12.11.2012

<sup>6</sup> G. N. Labo, *Elemente de tehnică criminalistică*, Argonaut Publishing House, Cluj-Napoca, 2012, p. 10.

<sup>7</sup> Legea nr. 115/2015 pentru alegerea autorităților administrației publice locale, Published in Official Gazette no. 349/20.05.2015.

<sup>8</sup> Published in Official Gazette no. 410/25.07.2001. For details see Podaru Ovidiu, Chiriță Radu, *Regimul juridic al contravențiilor*, O.G. nr. 2/2001 comentată, II edition, Hamangiu Publishing House, Bucharest, 2011, p. 7.

- Police officers and agents of the Romanian Police and officers and first sergeants of the Romanian Gendarmerie, for the facts referred to in Art. 108 lit. a), b), g), k), m) -q), t), w), x) and z);

- President of the electoral bureau constituency, for facts referred to in art. 108 lit. j), l), r) s) t) and z);

- Delegate of Permanent Electoral Authority for offense listed in art. 108 lit. a), b), c), d), e), f), y), z);

- Prefects and sub prefects, for the facts referred to in art. 108 lit. v) and z).

Permanent Electoral Authority complained<sup>9</sup> about the lack of appropriate security in election which led to the creation of a climate of doubt in the fairness of elections.

To this is added de facto impunity<sup>10</sup> enjoyed by voters who vote for several times in the same election or without this law because the difficulty of proving them.

At the elections to the European Parliament were reported 11440 possible cases of multiple voting or without the right, at national level.

Romanian police has registered 7377 criminal cases that concern crimes provided in the Criminal Code and Law no. 33/2007 on the organization and conduct of elections for the European Parliament, of which 6316 criminal cases were solved.

About how were resolved the researches into these folders:

- In 450 criminal cases relating to 476 accused persons, prosecution authorities have issued reports calling for termination of prosecution and asked to competent authorities sending them in court.

- In 5002 criminal cases were filed proposals for no starting the prosecution, from research resulting that are respected provisions of art. 10 of the Criminal Procedure Code and 861 criminal cases were solved with other solutions.

At the local elections held on June 10, 2012, were recorded a number of requests for annulment of the elections, some of them were rejected and others accepted<sup>11</sup>.

Applications accepted by the Central Electoral Bureau referring to the cancellation of elections are:

- Decision no. 129 of 13.06.2012 - admission of cancel request referring to election of the Moeciu Mayor, Brasov County, formulated by National Liberal Party. It decided revotes from June 24, 2012 because the results took place through fraud liable to change of mandates in the constituency;

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<sup>9</sup> See pp.3 from *Expunerea de motive a Codului Electoral*.

<sup>10</sup> See, L. Săuleanu, S. Rădulețu, *Dicționar de expresii juridice latine*, C. H. Beck Publishing House, Bucharest, 2007, p. 87.

<sup>11</sup> See *Anexa nr. 14 din Raportul asupra organizării și desfășurării alegerilor pentru autoritățile administrației publice locale din iunie 2012. Site-ul Autorității Electorale Permanente*.

- Decision no. 130 of 13.06.2012 on the admission application for annulment of the election of the mayor of Răsmirești, Teleorman, formulated by the Alliance for Teleorman. The reason for the appeal was that they were placed in urns more ballots for mayor than the number of voters.

- Decision no. 205 of 14.06.2012 on the admission application for annulment of the election of the mayor and local council of Curcani, Călărași County, formulated by the Popular-Christian Alliance. The reason for the appeal was that they were placed in urns more ballots for mayor than the number of voters. Reasons: handing over more ballot paper to voters, theft of ballots, mood created by these incidents, etc.

- Decision no. 214 of 15.06.2012 on the admission application for annulment of the election of the mayor and local council of Mangalia, Constanța County, formulated by the National Liberal Part, Radu Cristian and Social Democratic Party. It was ordered revote, based on the same electoral lists, lists of candidates and independent candidates.

Decision no. 221 of 15.06.2012 settled measures for the good organization of the local public administration authorities from the date of 24 June 2012.

The Central Electoral Bureau has admitted 16 complaints made by parties, non-governmental organizations and individuals.

## Conclusions

The electoral process is always liable for fraud, so it should be improved over time.

Confidence in the democratic process and in the elections is also evaluated in order to assess the degree of democracy in a particular country.

It is the job of experts to propose solutions for reliable electronic voting procedure<sup>12</sup>.

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<sup>12</sup> See, C. Pârvolescu și A. Todor, *Oportunități și amenințări în contextul schimbărilor legislației electorale din România*, Revista " Expert electoral". Ediție specială, Bucharest, 2016, p. 45-53, [www.roaep.ro](http://www.roaep.ro).

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