

# RIGHT TO VOTE AND TO BE ELECTED IN AUTONOMOUS LOCAL GOVERNMENT AUTHORITIES FROM ROMANIA

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## Abstract

*„Everyone has the right to take part in the government of his country, directly or through freely chosen representatives, according to the art. 21 from Universal Declaration of Human Rights”*

*Laws which governing organization, deployment, financing of local elections are: Law no. 115/2015 for the election of local authorities, respectively, Law no. 334/2006 on the financing of political parties and electoral campaigns.*

*The sphere of electoral rights, conditions for exercising these rights and guarantees which accompany these rights, the obligations of the state bodies regarding elections, the rules of organization and conduct of autonomous local authorities elections are established by norms with constitutional status, rules with the rank of organic law, and also, enforcement rules adopted by the Government in local elections.*

*Regarding the need to develop a compendium of laws containing electoral laws, written in a distinctive form, for each type of election presidential, parliamentary, local, inclusive regional – named Electoral Code, according to Law no. 24/2000, we support totally the point of view expressed by Professor Ioan Vida in the article “Romanian electoral adventure and a return to traditional electoral systems” from Electoral Expert Journal.*

Key Words: *election, laws, vote, citizens, public administration*

JEL Classification: [K10]

## 1. Introduction. Short electoral history

Evolution of election life signals the presence of structures with legislative advisory role on the Romanian territory, both locally and at the central (or regional), is attested since establishment of the unified state even before the reign of Burebista<sup>1</sup>.

These were continued by the specific structures of Roman Dacia and then, before the foundation of Romanian medieval states by "elders advice" for the communities, the royal council<sup>2</sup> after the formation of the Romanian Country and

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<sup>1</sup> Burebista's role was extremely important, he acted for socio-economic needs of the moment and has decreed the first state by uniting all the tribes Geto-Dacian. See Negoită F., *Istoria administrației publice*, Universul Juridic, Bucharest, 2011, p. 21.

<sup>2</sup>This advice had, throughout time, different names such as: singled, advice congregation, synod or praetorium. The main role of the royal council was to support the sovereign in carrying out its responsibilities. See Buzdugan C., *Elemente de istoria statului și dreptului românesc*, Argonaut, Cluj-Napoca, 2006, p. 68.

Moldova, respectively Transylvanian Diet<sup>3</sup>. In exercising its powers established by custom<sup>4</sup>, mister consult the boyars of the country, which constituted the royal advice. Congregations of states<sup>5</sup> brought together, at the beginning, all socio-professional categories, but after was appanage of the nobility and the orthodox clergy in the Romanian Country and Moldova, respectively Hungarian nobility and the Catholic Clergy in Transylvania.

Elections history from Romanian territory after 1931 elections shows first elections for county councils and local elections including in rural areas<sup>6</sup>. The first elections in 1866 (censitar vote) and the following: 1869, 1870, 1871, 1874, 1876, 1879, 1883 and so on.

Organic Regulations enter into force on July 1 in Romanian Country (1831) and on January 1 in Moldova (1833). In this first Constitution is referred to the advice of municipal councils, the first local councils in Danubian Principalities.

The Status of Cuza included the communal law published on April 1, 1864 and law establishing the county council published April 2, 1864<sup>7</sup>, both adopted by French and Belgian models of time, were declaring county and village administrative territorial districts, having legal personality and invested with patrimonial attributions and public power.

Cuza's administrative legislation from 1864, withal subsequent amendments, It was a big step forward, through principles of organization of local government, having also the merit, to be formed the legal basis, "the frame", on which will be formed the whole organization of the local government of the Romanian State<sup>8</sup>.

Then the legislative framework was adopted by the Constitutions and special laws for which, in present, art. 120-123 from Romanian Constitution and Regulation of organization and functioning constitute basic legislative acts necessary in the work of the local persons elected.

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<sup>3</sup>Interestingly, is the fact that the term is of Latin origin, namely *diet* <*dies*, meaning day, day of gathering. She was convened by the prince, in big cities of Transylvania, in the day of celebration. See Herlea A., *Studii de istorie a dreptului*, Cluj-Napoca, 1983, p. 46-59.

<sup>4</sup>Custom (legal habit) - first was the only source of law and for a long time was the main source of law. Currently, the custom is one of the main sources of law only in constitutional systems based on customary Constitution or which are part of the anglo-saxon law system. In our country, the old Constitutions of Romania have given to the custom the role of source of law, in general. (The constitutions from 1866, 1923, 1938). See Valea D., *Drept constituțional și instituții publice*, Universul Juridic, Bucharest, 2014, p. 11.

<sup>5</sup>Assemblies of states appear in Romanian documents (related to us) under different names: the great gathering of the country, gathering all over the country, synod, great synod (last, in Slavonian documents ) advice, counsel throughout the country, congregations, diaeta (documents in Latin). See Buzdugan C., *op.cit.*, p. 68.

<sup>6</sup>Iațu C. (coordinator), *Atlas electoral al României 1990-2009*, Publishing House Universității Alexandru Ioan Cuza, Iași, 2013, p. 9 and next.

<sup>7</sup>The Official Gazette – Official Journal of Romanian United Principates no. 76/1864.

<sup>8</sup>Manda C., Manda C. C., *Administrația publică locală din România*, Lumina Lex, Bucharest, 1999, p. 58-59.

## 2. Character of right to vote

Law no. 115/2015 for the election of local public authorities<sup>9</sup> for amendment of Law no. 215/2015 of public local administration, and also for amendment, modification and completion of Law no. 393/2004 regarding local elected status, govern the regime of elections for local government authorities – local councils, county councils, mayors and presidents of county councils.

Local councils and county councils, mayors are elected by universal, equal, direct and secret suffrage.

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<sup>10</sup>.

The right to vote, as it is regulated by the Constitution<sup>11</sup> and the provisions of art. 1 al.(2) from Law for the election of local administration authorities, has the following characteristics:

a) The universality of vote – the rule is that all citizens have the right to vote, if they have the legal age and full mental capabilities. The law does not impose other restrictions like those related to richness (censitar vote<sup>12</sup>), sex (in Romania women have gained the right to vote after 1923), religion<sup>13</sup>, professional interdiction<sup>14</sup>, capacitation vote (according to him the voter can participate in the elections only if he proves a degree for education)<sup>15</sup>.

b) The equality of vote – presupposes that every citizen is entitled to only one vote for selecting the same state body, each one of vote being of the same value, on the one hand, and the electoral cutouts (the constituencies, etc.) for selecting the same state body, to be equal in terms of population and not in terms of the number of voters<sup>16</sup>.

This feature of vote (equality) derives from the principle of equality of citizens<sup>17</sup>, provided in art. 16 of the Constitution, according to which citizens are equal before the law, without discrimination and without privileges<sup>18</sup>.

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<sup>9</sup>Published in Official Gazette no. 349/20.05.2015.

<sup>10</sup>See Preda M., *Legea alegerilor locale-Comentarii pe articole*, Universul Juridic, Bucharest, 2008, p. 19.

<sup>11</sup>See art. 16 alin (4) and art. 36 from Romanian Constitution.

<sup>12</sup>Comes from the Latin *census*, the condition of fortune imposed citizens in order to vote.

<sup>13</sup>See Voican M., *Principiile cadru ale administrației publice locale*, Universul Juridic, Bucharest, 2008, p. 134.

<sup>14</sup>In Brazil and Turkey military don t have the right to vote. See Iancu G., *Drept electoral*, C.H. Beck, Bucharest, 2012, p. 14.

<sup>15</sup>Such legislation has existed in Romania by elaborating Electoral Law of 9 May 1939, adopted according to the Constitution of 1938 do not recognize the right to vote only „those who have studies”, see art. 5, point b).

<sup>16</sup>See Iancu G., *op.cit.*, C.H. Beck, Bucharest, 2012, p. 14.

<sup>17</sup>See Preda M., *op.cit.* p. 19.

<sup>18</sup>See art. 2 (1) Law no. 115/2015 for the election of local public authorities for amendment of Law no. 215/2015 of public local administration, and also for amendment, modification and completion

c) The secret character of the vote – citizens have the right to freely express their will, without the option to be known by others thus being safe from any pressure or influence. After application of the stamp, he folded the voter ballot, and personal, inserts into the ballot box<sup>19</sup>.

d) The direct character of the vote. This constitutional feature of vote implies that voter may express personal political choice and not through intermediaries or representatives<sup>20</sup>.

Indirect voting should not be confused with vote by correspondence which boasted that it would be more "enlightened", that through it would make a better choice and would be more conservative. Vote by correspondence is not an indirect expression of right to vote, is an direct one, but through the correspondence<sup>21</sup>.

e) The character of the free expressed vote – the voter has the opportunity to express freely or not, option for a certain list or for a certain candidate, when the vote is a right and not an obligation<sup>22</sup>.

In another acceptance<sup>23</sup> citizen option may be to not present to the voting.

Nowadays, obligatory voting is regulated in Cyprus, Italy, Turkey, Luxembourg, Argentina, Brazil, Costa Rica and Ecuador<sup>24</sup>.

In Romania, obligatory voting was regulated and functioned under the 1923 Constitution regime, he forcing citizens to present at the polls in order to vote<sup>25</sup>.

### 3. Right to elect

Has the right to choose the Romanian citizens who have reached the age of 18, including those who make 18 years on election day<sup>26</sup>.

Therefore, local government authorities are obliged early to take care to enroll in the electoral lists this group of people, even if these lists are drafted and displayed with 10 days before election day, so before that these people to have 18 years.

Besides, also The Romanian Constitution – the basic law –<sup>27</sup> stipulates that: „citizens have the right to vote at 18 years, accomplished up to election day<sup>28</sup>.

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of Law no. 393/2004 regarding local elected status, published in Official Gazette of Romania, no. 349/20.05.2015.

<sup>19</sup>See Voican M., *op.cit.*, p. 134.

<sup>20</sup>Just Vice Mayors, presidents and vice presidents of county councils are elected indirectly by the Local council and respectively by the County Council. See art. 1(5) Law no. 115/2015 for the election of local public authorities, published in Official Gazette of Romania no. 349/20.05.2015.

<sup>21</sup>For details, see Iancu G., *op.cit.*, p. 18.

<sup>22</sup>*Ibidem*, p. 18.

<sup>23</sup>Voican M., *op.cit.*, p. 134.

<sup>24</sup>See Iancu G., *op.cit.*, p. 20.

<sup>25</sup>Art. 108, thesis III - members of county councils and municipal councils are elected by the Romanian citizens by universal, equal, direct, secret, obligatory.

<sup>26</sup>See art. 3 (1) from Law no. 115/2015 for the election of local public authorities.

<sup>27</sup>Constitution is the fundamental legal rule governing the organization of state power, fundamental rights and freedoms and public order from a state. See, Criste M., *Constituția, Legea fundamentală a statului*, Publishing House Worldteach, Timișoara, 2005, p.5.

The Constitution of Romania through the provisions of art. 36 para. (2) in conjunction with art. 6 para. (1) from Law no. 115/2015<sup>29</sup> specify the circumstances when a person, although it has Romanian citizenship and age of 18 years until election day, no has the right to exercise one of the constitutive elements of "electoral rights" namely the right to vote, the right to participate in the election of councillors and mayors.

These people can not exercise their right to vote because they are prohibited by final judgment of the court, prohibition determined by objective causes (alienation or mental debility) when people do not actually understand, the role and significance of this right, being deprived of discernment, either as sanction of suspension (for a specified period) of exercising his right, as a result of committing certain criminal acts, for which, alongside the main penalty, the court pronounced the additional punishment, interdiction of this right.

The current Criminal Code<sup>30</sup> dissociate this two rights: the right to choose and the right to be elected. Exercise of the second right does not exclude the application of the first, the new regulation being more rational than the existing Criminal Code from 1968, offering to the court additionally individualisation options<sup>31</sup>.

The regulation is in line with ECHR practice which provides that automatic ban of the right to participate in elections, applicable to all prisoners sentenced to execution of a custodial sentence, which leaves no discretion for the national court, is a violation of Article 3 of Protocol No. 1 the Convention<sup>32</sup>.

This practice has been taken up also by Romanian courts<sup>33</sup>.

To highlight that, in conjunction with the Romanian Constitution<sup>34</sup>, the prohibition of the exercise of these rights does not affect their existence, but only their no exercising for a specified period, either to termination of the cause of debility or mental alienation (established by court, based on medical conclusions), either by the deadline for which was given complimentary punishment<sup>35</sup>.

Summarizing, have the right to choose persons who meet the following conditions:

- have the right to vote;
- are Romanian citizens;

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<sup>28</sup>See art. 36 para. (1).

<sup>29</sup>See art. 36 para. (2) from Constitution: "Do not have right to vote deficient or alienated mentally, placed under interdiction and neither those sentenced by final court decision ( loss of electoral rights)" and art. 6 from Local elections law reiterates these provisions with the remark that the prohibition is applied only for the duration set by court.

<sup>30</sup>Law no. 187/2012 for the implementation of the Law no. 286/2009 regarding Penal Code, published in Official Gazette of Romania no. 757/12.11.2012.

<sup>31</sup>See Pașca V., *Drept penal. Partea generală*, Ediția a III – a, actualizată cu modificările la zi ale Codului penal, Universul Juridic, Bucharest, 2014, p. 461.

<sup>32</sup>Cauza Sabou și Pircălab c. României, published in Official Gazette of Romania no. 484/08.06.2015.

<sup>33</sup>Î.C.C.J. , s. pen., dec. no. 74/2007; C.A. Timișoara , s. pen. dec. no. 346/2008.

<sup>34</sup>See art. 53(2).

<sup>35</sup>See Preda M., *Legea nr. 215/2001 a administratiei publice locale. Comentarii pe articole*, Wolters Kluwer, Bucharest, 2007, p. 32 and next.

- have 18 years old by election day;
- have permanent or temporary residence in administrative-territorial unit.

#### **4. European Union citizens right to vote and to be chosen under the same conditions as Romanian citizens**

EU citizens who having the residence in Romania have the right to vote and to be elected under the same conditions as Romanian citizens, fulfilling the law conditions<sup>36</sup>.

EU citizens have the right to be elected mayor, local councillor and county councillor<sup>37</sup>.

According to the the Law no. 115/2015 for the public local authorities election<sup>38</sup>, through EU citizens is understood citizens of the EU member states other than Romania.

This art. 5 from Law no. 115/2015 for the public local authorities election, was introduced initially as art. 4<sup>1</sup> from Law no. 67/2004, republished, with subsequent amendments and completions, as a result of Romania accession at European Union in 1 January 2007 .

In this respect, the provisions of art. 16 paragraph (4) of the Constitution stipulate: „through Romania's accession to the European Union, EU citizens who meet the requirements of the organic law have the right to elect and be elected to local government authorities”.

Therefore, citizens of any Member State of the European Union have acquired from 1 January 2007, when Romania joined the European Union the right to elect local government authorities, with the conditions to respect the requirements provided for Romanian citizens by Law no. 115/2015 for the public local authorities election<sup>39</sup>.

In connection with Article 5 of the local election law it are necessary the following clarifications<sup>40</sup>:

a) the right to elect or be elected to the European Union citizens belongs not only to those who are domiciled in Romania but also those who reside in Romania;

b) is specified what is meant by the phrase "European Union citizens", this being citizens of Member States of the European Union other than Romania.

The specification was necessary because for Romanian citizens it's applying also additional other provisions relating to the right to vote and to be elected to local government authorities.

<sup>36</sup>See art. 5 din Legea nr. 115/2015 pentru alegerea autoritatilor administratiei publice locale.

<sup>37</sup>Note that the text of the law makes no statement regarding the possibility of EU citizens to be elected as president of the county council.

<sup>38</sup>See art. 5 (3) din Legea nr. 115/2015 pentru alegerea autoritatilor administratiei publice locale.

<sup>39</sup>Published in Official Gazette of Romania no. 349/20.05.2015.

<sup>40</sup>See Preda M., *Legea nr. 215/2001 a administratiei publice locale-Comentarii pe articole, op.cit.*, pp. 30-31.

Regarding the right to vote, the law does not provide restrictions for EU citizens domiciled in Romania<sup>41</sup>. Instead they can candidate only for mayor, local councillors and county councillors. As such, it should be made clear that through revision of the 2003 Constitution stated under art. 16 para. (4) EU citizens who meet the requirements of the organic law have the right to vote and to be elected, but only<sup>42</sup> *within public local authorities*.

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<sup>41</sup>Vida I., Vida I.C., *Puterea executivă și administrația publică*, Cordial Lex, Cluj-Napoca, 2012, p. 359.

<sup>42</sup>DanaValea, *op.cit.*, p.55.