

CITIZENS' CANDIDATURES AT THE ELECTION OF LOCAL PUBLIC AUTHORITIES

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Abstract

Art. 7 of the Law no. 115/2015 paragraph (1) for the election of the local public administration authorities provides: "The candidatures for local councils and county councils, as well as for mayors are proposed by political parties or political alliances, constituted according to the Law of political parties no. 14/2003, republished¹".

The candidatures can also be submitted by electoral alliances constituted under the law, by the organizations of citizens belonging to national minorities, as well as by independent candidates².

Candidates' lists for the election of local councils and county councils must be drawn up in such a way as to ensure the representation of both sexes, except for those with only one candidate.

Key Words: *local council, election procedure, lists of candidates, proposals, citizens, law.*

JEL Classification: [K10]

1. Introduction

A person can apply only for one local council and only one county council and just for only one function of mayor.

A person may candidate, in the same time, for local councilor, county councilor and mayor.

The candidatures submitted on multiple lists of candidates, or on both, list and as independent candidates are null.

Some observations on how Law no. 115/2015 for the election of the local public administration authorities is written are necessary.

First, the provisions should have drafted in a facultative, not imperative formulation, because those in question have no obligation to propose candidatures, they only do so if they consider it opportune and necessary.

Secondly, the text of the law expressly refers also to the submission of candidatures by the organizations of citizens belonging to national minorities, making at the same time reference to the rule of art. 8 of the abovementioned law, which specifies under what conditions these organizations, may submit candidatures.

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¹ *Legea partidelor politice nr. 14/2003*, modificată și completată prin Legea nr. 114/2015 published in the Official Gazette of Romania no. 346/20.05.2015.

² In the sense of the Law no. 115/2015, a national minority means that ethnicity that is represented in the Council of National Minorities.

It should be added that the last sentence of art. 7 paragraph. (1) of the abovementioned law, establishes the obligation for those who draw up the lists of candidates to ensure the representation of both sexes in conjunction with Law no. 334/2006³ which stimulates the political parties that promote women on the electoral lists, on eligible places, the amount allocated from state budget, as a grant, being increased in proportion to the number of mandates obtained in the elections by women candidates.

This is, of course, a requirement of the democratic principle of non-discrimination on this criterion, but it would have had greater finality if the norm had provided a certain percentage of the representation of the two sexes⁴.

2. The number of councilors for local councils and county councils

The number of councilors for local councils and county councils is the one established by order of the prefect, according to the provisions of Law no. 215/2001, republished, amended and supplemented, in conjunction with art. 137 point 2 of the Law no. 115/2015.

The number of members of each local council is determined by order of the prefect, according to the number of inhabitants of the commune, city or municipality, according to the population by residence reported by the National Institute of Statistics on 1 January of the current year, as follows:

Table no.1 - The number of members of each local council

Number of inhabitants of the commune or of the city	Number of councilors
up to 1.500	9
between 1.501 and 3.000	11
between 3.001 and 5.000	13
between 5.001 and 10.000	15
between 10.001 and 20.000	17
between 20.001 and 50.000	19
between 50.001 and 100.000	21
between 100.001 and 200.000	23
between 200.001 and 400.000	27
over 400.000	31

The number of the members of each county council is established by order of the prefect according to the number of inhabitants of the county depending on

³ *Legea nr.334 din 17 iulie 2006 privind finanțarea activității partidelor politice și a campaniilor electorale*, republished in the Official Gazette of Romania no. 446/23.06.2015.

⁴ See Preda Mircea, *Legea alegerilor locale – Comentarii pe articole*, Universul Juridic Publishing House, Bucharest, 2008, pp. 35-36.

the population by residence reported by the National Institute of Statistics on 1 January of the current year⁵, as follows:

Table no.2 - The number of the members of each county council

Number of inhabitants of the county	Number of councilors
up to 350.000	31
between 350.001 and 500.000	33
between 500.001 and 650.000	35
over 650.00	37

3. Proposals for candidates

Proposals for candidates for local councilors, county councilors and mayors are made on electoral constituencies and submitted to district electoral bureaus no later than 40 days before the date of the elections.

The term of 40 days before the date of the election is a decay term, over this period the district electoral bureaus do not have the right to receive and register no any candidacy.

Proposals of candidates shall be made in writing in two original copies and two copies by political parties, political alliances, electoral alliances or citizens' organizations belonging to national minorities participating in the elections, under signature of the leadership of their county organizations and on the basis of the list of sustainers, and in the case of independent candidates, based on the list of sustainers.

The 5 paragraphs of Art. 47 of Law no. 115/2015 contain proper technical rules for the submission of candidatures.

First of all, it is stipulated in paragraph (1) that candidates' proposals are made in writing in two original copies and two copies. Written form is a requirement not only for "probation" but also for "validity", the electoral bureau being entitled to refuse to register the candidacy that is not made in writing.

The requirement to submit the application in 4 copies takes into account that, according to the law, two copies are kept at the district electoral bureau (one of which will be posted at its headquarters within 24 hours) and two copies, certified by the constituency electoral bureau shall be returned to the depositor (one of which shall be registered at the court or tribunal in whose territorial jurisdiction the respective constituency is located)⁶.

In the case of electoral alliances between political parties, lists of candidates must also be signed by the county leadership of each political party in the alliance. If the electoral alliances are established at communal, town, municipal or Bucharest level, the lists shall be signed by alliance leadership and is countersigned by the leadership of each local coalition organization.

⁵ See Art. 137 point 6 of the *Legea 115/2015 pentru alegerea autoritatilor administratiei publice locale*, published in the Official Gazette of Romania no. 349/20.05.2015.

⁶ See Preda Mircea, *op.cit.*, p. 137.

Proposals must include the name, surname, place and date of birth, domicile in conformity with identity card, name, series and ID number, occupation, profession and political affiliation of candidates and in the case of alliances, and the political or electoral alliance that proposed it.

4. Documents required submitting candidatures

Proposals for candidates must be accompanied by declarations of acceptance of candidature, statements of assets⁷, declarations of interest⁸ and declarations on their own responsibility as on the status of a Security worker or his collaborator, signed and dated by candidates (holograph), as well as copies of the identity documents of the candidates. It should be stressed that the Local Council and the County Council are elected by vote based on the “list scrutiny” and mayors are elected by uninominal voting system.

In the last sentence of paragraph 1 of art. 47 of Law no. 115/2015, it is stipulated that for independent candidates, the proposals are based on the “list of sustainers”.

5. List of sustainers

For each candidate for mayor function and for each list of candidates for the local council and for the county council, political parties, political alliances, electoral alliances and citizens' organizations belonging to national minorities must present a list of sustainers.

The list must contain at least 1% of the total number of voters registered in the Electoral Register and Complementary Electoral Lists from the constituency for which he is applying, but not less than 100 in the case of the communes, of 500 in the case of the urban settlements with II and III rank and 1 000 in the case of the counties, Bucharest Municipality, the sectors of Bucharest and the urban localities with rank I.

According to art. 50 paragraph (1) of the Law no. 115/2015 independent candidates for the position of counselor must be sustained by at least 1% of the total number of voters registered in the electoral register and in the complementary electoral lists in the constituency for which they are applying, but not less than 100 in the case of communes, 500 in the case of the urban settlements with II and III rank and 1 000 in the case of the counties, the Bucharest municipality, the Bucharest municipal sectors and the urban localities with rank I.

For the mayor function, independent candidates must submit a list of supporters, which must contain at least 1% of the total number of voters registered in the Electoral Register and in the complementary electoral lists in the constituency for which they are candidates, but not less than 100 in the case

⁷ See the website of the National Integrity Authority.

⁸ Ibidem

Communes, 500 in in the case of the towns and 1.000 in the case of the municipalities, the sectors of Bucharest, as well as in the case of Bucharest.

For the position of counselor are not admitted lists of independent candidates⁹.

The text of this last paragraph was necessary to make it clear that lists of candidates can only be submitted by political parties, political alliances and electoral alliances, candidates on lists having the political support of those who proposed them. The other candidates who are not on the list and are not politically engaged and, implicitly, not politically supported, can only candidate as individual persons. They cannot associate between them in order to constitute a “list of independent candidates” on which all the rules concerning the lists of political parties, political alliances and electoral alliances to be applied. The district electoral bureau could not receive and record such a list¹⁰.

The list of sustainers must include the date of the elections, the candidate's name and surname, the function for which is applying, the name and surname of the sustainer, the citizenship, the date of birth, the address, the name, the series and number of the identity card, his signature, as well as the name of person who drafted the list. In the case of the citizens of the European Union, at the rubric “Name, series and number of the Identity card “, is write the name, series and document number issued by the General Inspectorate for Immigration. The person who drafted the list is required, together with it, to submit a declaration on own responsibility stating the veracity of the sustainers' signature.

The list of sustainers is a public act, with all the consequences stipulated by the law.

Sustainers may only be Romanian citizens or citizens of the European Union with voting rights who have their domicile or residence in the electoral constituency in question. A sustainer can support several candidates for the position of local councilor, county councilor and mayor.

The adhesions of sustainers are given on their own responsibility.

The list of sustainers shall be submitted in an original copy and a copy to the election office of the electoral district where the candidates' proposals are submitted.

The district electoral bureau examines the compliance of the legal conditions necessary for a person to candidate, compliance of the form and fund conditions of the lists of candidates, as well as of the list of sustainers.

The candidatures which respect the legal requirements are registered. Candidatures that do not respect legal requirements (form and fund) are rejected by the district electoral bureau.

Admissions or rejections of candidatures are made by decisions of district electoral bureaus.

Regarding the establishment of the minimum percentage of sustainers from the total number of voters registered in electoral lists, the Constitutional Court of

⁹ Preda Mircea, *op.cit.*, p. 143.

¹⁰ We agree with the point of view expressed in the doctrine by the prof. Mircea Preda in *op.cit.*, p. 143.

Romania pronounced¹¹ in the sense that it represents a guarantee of the exercise of the right to be elected by the discouragement of any abusive candidatures which are aimed to obstruct the good evolution and finalization of the electoral process.

The decisions of the Constitutional Court are published in the Official Gazette of Romania. From the date of publication, decisions are generally obligatory and have power only for the future¹².

The legal characterization of our constitutional instance is given by the Law of the Constitutional Court¹³, an organic law that has given expression to the fundamental Law, stating in its first article that this public authority is the only authority of constitutional jurisdiction in Romania.

In the literature¹⁴, the Law on the Organization and Functioning of the Constitutional Court of Romania was analyzed from the point of view of fulfilling the European standards comparing our court with that of Austria, where the Constitutional Court became a true guardian of the Constitution (Hunter der Verfassung).

Candidates may give up from the candidature until the date that these are declared final. For this purpose, they submit to the constituency electoral bureau a renunciation statement, signed (handwritten) and dated by the person concerned¹⁵.

Acceptance by the district electoral bureau of a candidacy may be disputed by citizens, political parties, political alliances and electoral alliances within 48 hours of the date of the candidature posting.

Rejection of a candidate by the district electoral bureau may be disputed by the candidate, political parties, political alliances or electoral alliances that have nominated that candidature within 48 hours from the date of the rejection of the candidature which was displayed.

The contestations must include the name and surname, address and quality of the claimant, the name and surname of the person whose application has been admitted or rejected, presentation of the motives for contestation, the date and signature of the objector and the indication of the person designated to represent it, if is appropriate.

¹¹ Decision of the Constitutional Court of Romania no. 522/08.05.2008, published in Official Journal of Romania no. 370/15.05.2008.

¹² See Art. 147 paragraph (4) of the Romanian Constitution.

¹³ *Legea nr. 47/1992 privind organizarea si functionarea Curtii Constitutionale*, published in the Official Gazette of Romania no. 101/22.05.1992.

¹⁴ See Vida Ioan, *Curtea Constituțională, Justiția politicului sau politica justiției?* Official Journal Publishing House, Bucharest, 2001, pp. 29-30.

¹⁵ We propose that the candidate's right to waive the candidacy can be made at any time, being unilateral will and without the need for motivation, and so would be in conformity also with the right of resignation of local councilors, county, mayor or president County council in function. See Ticlea Alexandru, *Demisia. Teorie si jurisprudenta*, Universul Juridic Publishing House, Bucharest, 2013, pp.115-117.

The contestation and, if applicable, the appeal, shall be recorded at the competent court to solving them, under the nullity sanction.

Appeals for the admission or rejection of applications shall be settled within 48 hours of registration by the court or tribunal in whose territorial jurisdiction the constituency is located. The decision is not communicated.

Against the judgment given in the contestation, can be made appeal within 24 hours of pronouncement, to the hierarchically superior court. The appeal is solved within 24 hours of registration.

The decision given in the appeal is final.

The courts with jurisdiction to solve appeals against contestations of admission or rejection of a candidacy by the district electoral bureau shall take measures to immediately notify the final decision after the expiry of the mandatory terms provided in paragraph (5) and (6) of art. 54 of Law no. 115/2015 for the election of the local public administration authorities, to the district electoral bureau which pronounced the contested decision, for the finalization of the candidatures.

After the expiry of the deadline for submission of applications, to which it is added, if applicable, the deadlines provided in art. 54 paragraphs (1), (2), (5) and (6) of the abovementioned law, the district electoral bureaus conclude a minutes in which notes that the candidatures have remained final. Final candidatures are displayed at the headquarters of the district electoral bureau, as well as at the headquarters of the polling stations, after the constitution of the electoral bureaus mentioning the name and surname of the candidate, the political, professional and occupational status of the candidate.

Final candidatures may also be made public by any means of mass media, the costs being borne by those concerned.

Conclusions

In conclusion, what is to be emphasized regarding the election procedure (no matter if we refer at exercise of the right to choose or the right to be elected), is the existence of a special procedure, characterized in particular by the short deadlines set for dealing with contestations and for introducing appeals.

The explanation for this lies in the need to resolve as quickly as possible any uncertainty and indistinctness that may have like result, if not as purpose, in the prolongation of the election procedure¹⁶.

¹⁶ Criste Mircea, (2012), *Institutii constitutionale contemporane*, West Publishing House, Timișoara, p. 271.

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