

GENERAL AND ELIGIBILITY CONDITIONS FOR CHOOSING AUTONOMOUS LOCAL PUBLIC AUTHORITIES IN ROMANIA

*Nicolae ROȘ**

Abstract

The electoral campaign is a confrontation between the electoral competitors, in order to convince the voters to grant their vote, by presenting and supporting the candidacies and their own political programs. The electoral campaign must be carried out, irrespective of the type of elections, respecting the principle of equal opportunities between candidates. Considering the necessity to improve the legislation in this field, it was elaborated and adopted a package of laws regarding electoral laws, on the one hand, and also the Law of political parties and the Law on the financing of political parties and electoral campaigns, on the other hand. These legislative proposals were elaborated inside of a common commission and is the result of a wide debate in which participated all the political forums as well as representatives of the nongovernmental organizations.

Key Words: *normative acts, electoral rights, eligibility conditions, mayor, local councilor, county councilor.*

JEL Classification: [K10]

1. Introduction

The election campaign represents that stage of the electoral period in which is being prepared the effective exercise of the right to choose and the right to be elected. The legal regulations must also, by virtue of the same principle of equal opportunities, ensure in a convergent manner the satisfaction of the need to ensure the impartiality of public power especially towards the candidates, so that the candidates of the political parties in power have an equal start with the other candidates (NICA, 2010;147).

2. The laws that regulate the process of organizing, conducting, financing local elections

The laws that regulate the process of organizing, conducting, financing local elections are Law no. 115/2015¹ for the election of the local public administration authorities respectively Law no. 334/2006² regarding the financing of the activity of political parties and electoral campaigns.

* Assistant Professor, PhD, “Dimitrie Cantemir” Christian University Bucharest, Faculty of Law Cluj-Napoca, Romania.

¹ Published in the Official Gazette no. 349/20.05.2015.

² Republished in the Official Gazette no. 446/23.06.2015.

The normative acts mentioned above contain provisions regarding the election of local authorities from the summer of 2016 but also the mechanism for financing parties and electoral campaigns.

The sphere of electoral rights, the conditions of exercise and the guarantees that accompany these rights, the obligations of the state regarding the elections³, the rules for organizing and conducting the elections of the autonomous local public administration authorities are established by norms with constitutional rank, norms with rank of organic law such as and rules for the execution and application of the law adopted by the Government on the occasion of local elections (VIDA, 1994; 14).

Thus, in order to understand the administration term it is necessary to resort to its original meaning. In the old Roman law, administer, a term from which derives the administration from today, had the meaning to accomplish a commissioned mission (VIDA, 2012; 5).

As part of the documentation activity that was the basis for the elaboration of this article, were used the legal instruments in the field, such as: the jurisprudence in electoral matter of the Constitutional Court and of the courts; the jurisprudence of the European Court of Human Rights; Decisions of the Central Electoral Bureau adopted in the interpretation of the law and the specialized literature in the field.

At the same time, for the elaboration of this work was taken into account the practice of the Permanent Electoral Authority acquired as a result of the elections.

At the preparation and organization of the elections has contributed the electoral statistics and the proposals for systematization and simplification of electoral legislation materialized in the draft of Electoral Code, proposals which, for the most part, we accept, supporting this approach⁴.

Regarding the necessity to elaborate a collection of normative acts that will include electoral laws drafted in a distinct form for each type of presidential, parliamentary, local, including regional elections - which will be called Electoral Code (see Law no. 24/2008⁵), we fully support this point of view expressed by Professor Vida Ioan in the article "Romanian electoral adventure and the return to the classical electoral systems" in the Electoral Expert Magazine.

Considering the necessity to improve the legislation in this field, it was elaborated and adopted a package of laws regarding electoral laws, on the one hand, and also the Law of political parties and the Law on the financing of political parties and electoral campaigns, on the other hand.

Thus, Law no. 115/2015⁶ is structured on three titles, respectively the election of the authorities of the local public administration, the modification of the Law of

³ The organization represents the second phase of the leading, being preceded by the predictive side of the management, namely prevision.

⁴ See the explanatory memorandum of the Electoral Code elaborated by the Permanent Electoral Authority www.roaep.ro.

⁵ Republished in the Official Gazette no. 260/21.04.2010.

⁶ Published in the Official Gazette no. 349/20.05.2015.

the local public administration no. 215/2001 and the modification and completion of the Law no. 393/2004 regarding the status of local elected officials and aims, as mentioned in the explanatory memorandum, to establish a new normative framework in the matter and, consequently, upon the entry into force of this above-mentioned law, Law no. 67/2004 for the election of the local public administration authorities⁷ as well as other contrary provisions are repealed⁸.

The main regulated news items refer to:

- the election of the mayor in a single tour;
- the election of the president of the county council, indirectly ;
- parties and independent candidates will submit lists of supporters for each list of candidates for the local council and the county council;
- a person can sign for the support of several candidates for the position of local councilor, county councilor and mayor;
- introduction of the information system to monitor the presence of the vote and to prevent the illegal vote.

We mention that these legislative proposals, according to the point of view of the Government of Romania, were elaborated inside of a common commission and is the result of a wide debate in which participated all the political forums as well as representatives of the nongovernmental organizations.

In conclusion, this democratic system of adopting the laws only insofar as it represents the will of everyone and each person, the law will have the necessary authority to impose respect for the whole society, because only in this way will be accepted and applied willingly by the majority of citizens (DRAGANU, 1992, p. 20).

3. Eligibility conditions

For the election in the public functions of councilor, mayors or presidents of the county councils within the authorities of the local public administration, the law sets out⁹ the four essential conditions that must be met cumulatively. The lack of any of these determines either the rejection of the candidacy or the invalidity of the election, depending on the moment when it is found that one of the four conditions is not met¹⁰: to have the right to vote, to have 23 years old, not to be forbidden to associate in political parties, to have his domicile in the territorial administrative unit where it will be elected.

The first of these refers to the right to vote that the person concerned must have, not being conceivable to be elected to a public function, a person who does not have himself the right to vote, because he has not fulfilled the age of 18 or as a

⁷ Published in the Official Gazette no. 271/29.03.2004.

⁸ See art. 136 of Law no. 115/2015 for the election of local public administration authorities.

⁹ Art. 4 of Law no. 115/2015 for the election of the authorities of the local public administration, published in the Official Gazette of Romania no. 349 / 20.05.2015.

¹⁰ See art. 37 of the Constitution in conjunction with art. 4 and art. 60 paragraph (2) of Law no. 115/2015 for the election of local public administration authorities.

result of the loss of this right due to causes dependent or independent of his will (alienation or mental debility, or as a sanction disposed by a court decision).

The second condition concerns the age of the candidate for a public function of councilor or mayor and who cannot be less than 23 years old until the day of the election inclusive. It is observed that the minimum age limit at which a person can be elected in these public functions is higher than that of exercising the right to vote and it is natural to be so because the chosen one is empowered with the duties and responsibilities for whose fulfillment is needed of some experience on which to be based more profound the actions and inactions to which is obligated by the function that it occupies (PREDA:2007; 27).

The minimum age limit of 23 years for the election in these public functions of a person could not be neither be increased nor reduced by the legislator, not even by the organic one, because this is expressly provided by the constituent legislator, by the provisions of art. 37 paragraph (2) of the Constitution of Romania.

The third condition for a person to be elected in the position of counsellor or mayor provided by law, as well as by the constitutional provisions, is that this person should not be banned to associate in political parties "according to art. 40 paragraph (3) of the Constitution of Romania, republished"¹¹.

The fact that the provisions of art. 4 paragraph (1) of the law send, in this respect, to the provisions of art. 40 paragraph (3) of the Constitution, requires some clarifications. First, it is worth noting that these constitutional provisions state that: "the judges of the Constitutional Court, the people's lawyers, the magistrates, the active members of the army, the police and other categories of civil servants established by the organic law cannot be part of political parties."

From the constitutional text reproduced above, result that the constituent legislator has expressly decided, that certain categories of persons cannot belong to political parties, because the exercise of their public function presupposes, by its essence, a total neutrality policy.

The provisions of art. 4 paragraph (1) of the Law for the election of the authorities of the local public administration stipulate that the persons who belong to the categories specified by art. 40 paragraph (3) of the Constitution cannot even be elected to the positions of counselors, mayors or presidents of the county councils, because these functions are political functions, the candidates for these functions being proposed by the political forces (even if they have the right to candidate to a function people who are not members of any political party).

On the other hand, from the mentioned constitutional text result that, by the organic law can be established, also, "other categories of civil servants" which cannot belong to political parties and, therefore, may not be elected councilors or mayors. Their express determination did not make it the constituent legislature, but it left it to the organic one (in no case of the ordinary legislator)¹².

¹¹ Published in the Official Gazette no. 767/31.10.2003.

¹² In this respect, we can mention, for example, that by the Law of the local public administration no. 215/2001, republished, the organic law stipulates that "the secretary of the

The fourth condition is the domicile of the candidate.

Thus, if the right to vote (the right to choose) can be exercised also by the people with the right to vote who have established their residence in the locality where elections are organized, these people have no right to run for certain public functions.

The reason for such a provision is also related to the requirement that the candidate (which eventual could be chosen), to know the issues of the respective territorial administrative unit well and to be able to discern between the priorities and the solutions which are required, a requirement which, objectively, the one who does not have his domicile in the respective locality could not fulfill it (PREDA:2007; 29).

It is also the reason why art. 4 paragraph (2) of the Law stipulates that "only the persons who have their domicile in the territory of the territorial administrative unit in which they are to be elected" can candidate¹³.

It should be mentioned that "at the sectors of the municipality of Bucharest can apply to a public function the persons who have their domicile in the municipality of Bucharest, regardless of the sector¹⁴, even if the sectors of the municipality of Bucharest are" territorial administrative subdivisions of the Bucharest and not territorial administrative units, in the sense given to this notion by the provisions of art. 3 paragraph (3) of the Constitution.

Conclusions

The citizens of the European Union who have their domicile or residence in Romania have the right to choose and to be elected under the same conditions as the Romanian citizens, with the fulfillment of the provisions of the present law¹⁵.

The citizens of the European Union have the right to be elected as mayor, local councilor and county councilor.

We specify that by the entry into force of the Administrative Code on July 5, 2019 some provisions regulating the establishment, organization and functioning of the local public administration authorities in Romania have been repealed and other normative acts incident to the matter have been modified or supplemented, as the case¹⁶.

administrative-territorial unit cannot be a member of a political party under the sanction of dismissal from function, art. 116 paragraph (2)".

¹³ Law no. 115/2015 for the election of the authorities of the local public administration.

¹⁴ See art. 4 paragraph (3) of Law no. 115/2015 for the election of the authorities of the local public administration.

¹⁵ Citizens of the European Union are citizens of the Member States of the European Union, other than Romania.

¹⁶ See OUG no. 57 / 2019 regarding the Administrative Code published in the Official Gazette of Romania no. 555 of July 5, 2019.

Bibliography

1. Nica Elena Mădălina, Drept electoral, Editura Sitech, Craiova, 2010
2. Vida Ioan, Puterea executivă și administrația publică, Editura Regia Autonomă, Monitorul Oficial, București, 1994
3. Vida Ioan, Vida Ioana Cristina, Puterea executivă și administrația publică, Editura Cordial Lex, Cluj Napoca, 2012
4. Preda Mircea, Legea nr. 215/2001 a administrației publice locale-Comentarii pe articole, Editura Wolters Kluwer, București, 2007
5. Drăganu Tudor, Introducere în teoria și practica statului de drept, Editura Dacia, Cluj Napoca, 1992
6. Law no. 115/2015 for the election of the local public administration authorities, published in the Official Gazette no. 349/20.05.2015
7. Law no. 334/2006 regarding the financing of the activity of political parties and electoral campaigns, republished in the Official Gazette no. 446/23.06.2015.
8. Law no.24/2008, republished in the Official Gazette no. 260/21.04.2010
9. Law no. 67/2004 for the election of the local public administration authorities, published in the Official Gazette no. 271/29.03.2004
10. The Constitution of Romania.