

# ATYPICAL CANDIDATURES AT LOCAL ELECTIONS FROM ROMANIA

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## **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 chosen topic is a problem of novelty in the Romanian legislation and, as a consequence, it has been treated especially in specialized literature. This brings to public debate the particularities of special categories of candidates who, by the nature of the profession, are prohibited from carrying out political activities during the work schedule. In order to produce the most adequate legal reasoning, we combined several research methods: quantitative, qualitative and respectively analytical.*

**Key Words:** *prohibition, candidature, civil service, lists of candidates, incompatibility, mandate*

**JEL Classification:** [K16]

## **1. Introduction**

The right to be elected provided by art. 37 of the Romanian Constitution presupposes the ability to candidate for public function (Valea, 2014; 78).

The civil servant may candidate for an eligible position or may be appointed to a public dignity function.

The citizens of the European Union can candidate in the administrative-territorial unit where they have their domicile. The proposals are submitted under the same conditions as for the Romanian citizens.

## **2. Under what conditions can prefects and sub-prefects to candidate for local elections?**

The provisions of art. 119 of Law no. 115/2015 (for the election of the authorities of the local public administration<sup>1</sup>, for the modification of the Law of the local public administration no. 215/2001, as well as for the modification and completion of Law no. 393/2004 regarding the Statute of local elected officials elected) establishes a prohibition for all prefects and sub-prefects to candidate in the local elections and to participate in the actions of the electoral

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campaign: "The prefects and the sub-prefects cannot apply and cannot participate in the actions of the election campaign, under the sanction of dismissal, unless they resign at least 50 days before the election date".

This prohibition is based on the fact that prefects and sub-prefects, as representatives of the Government in the administrative-territorial units in the county and in the municipality of Bucharest are public persons who, in the exercise of their duties, have already accumulated a "capital" of public image that could also be used as an electoral capital that could place them in a more favorable position compared to the other candidates.

Therefore, they cannot candidate for the position of local or county councilor or for the position of mayor.

Moreover, prefects and sub-prefects are also prohibited from participating in the actions of the electoral campaign, in order to eliminate the presumption that by this participation they would agree and support certain candidates and, respectively, political parties, political alliances or electoral alliances, especially when they are in government (Preda, 2008; 264-265).

The sanction of non-observance of this prohibition is the dismissal from function by GO.

However, the law provides for the possibility of prefects and sub-prefects to candidate and participate in actions in the election campaign, but only on condition that they resign from office at least 50 days before the election date.

The prefect and the sub-prefect being civil servants who according to the law (Art. 98 para. (3) of Law no. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and sanctioning of corruption)<sup>2</sup> belong to the category of high civil servants and cannot be members of a political party, under the sanction of dismissal from the public function.

### **3. The candidacy and belonging of civil servants to political groups**

According to art. 97 of Law no. 161/2003 the civil servant may candidate for an eligible position or may be appointed to a public dignity function.

The civil servant's service report is suspended:

- during the election campaign, until the day after the elections, if is not elected;
- until the termination of the eligible function or the public dignity function, if the civil servant has been elected or appointed.

Senior civil servants and management civil servants may be appointed to public dignity positions only after the termination, under the law, of the

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service relations and can candidate for public dignity functions only after the termination, under the conditions of the law, of the service relations (Art. 34 of Law no. 161/2003).

Civil servants may be members of the legally constituted political parties, in compliance with the prohibitions and limitations provided in art. 242 para. (4) and art. 420 of the Administrative Code.

Civil servants have the obligation, in the exercise of their duties, to abstain from expressing or public manifesting their political beliefs and preferences, not to favor any political party or any organization to which is applicable the same legal regime as to political parties.

In the exercise of the civil service the civil servants cannot:

- a) participate in the collection of funds for the activity of political parties, of organizations to which it is applicable the same legal regime as for political parties, of foundations or associations that work alongside political parties, as well as for the activity of independent candidates;
- b) provide logistical support to candidates for public dignity functions;
- c) display, within the public authorities or public institutions, signs or objects inscribed with the logo and / or the name of the political parties, of organizations to which it is applicable the same legal regime as for political parties, of foundations or associations that work alongside political parties, as well as for the activity of independent candidates;
- d) use the acts that they are doing in the exercise of their service duties to express or manifest their political beliefs;
- e) participate in public meetings with political character during the working time.

We mention that the general secretary of the unit / administrative-territorial subdivision cannot be a member of a political party, under the sanction of dismissal from function.

The civil servants can be elected or appointed in a public dignity function, according to the conditions of the Administrative Code and the conditions provided by Book I, title IV of Law no. 161/2003, with subsequent modifications and completions.

#### **4. The candidatures of the citizens of the European Union**

The right to be elected is part of the category of fundamental rights of citizens characterized by the fact that it can be exercised by citizens of their choice, both in order to ensure their material or cultural development and in order to participate in state leadership (Drăganu, 2000;155).

The citizens of the European Union can candidate in the administrative-territorial unit where they have their domicile. The proposals are submitted under the same conditions as for the Romanian citizens (Roș, 2015; 26-28).

If the lists of candidates include citizens of the European Union, the following information are mentioned: name, surname, member state of origin, place and date of birth, the address where live in Romania, occupation, profession and political affiliation, and in the case of alliances, also the political or electoral alliance that proposed it.

In the case of the candidature of a citizen of the European Union, the declaration of acceptance of the candidacy includes name, surname, member state of origin, place and date of birth, the address where live in Romania, occupation, profession and political affiliation, his express consent to candidate for that function, and also the specification that it meets the conditions provided by law to candidate.

The declaration of acceptance of the candidacy is accompanied by a document attesting the address in Romania, according to art. 23 para. (3), or by a document issued by the General Inspectorate for Immigration.

Once the candidacy is submitted, in addition to the documents required for Romanian citizens, the citizens of the European Union present a document attesting their identity and a declaration on their own responsibility, which includes the following mentions:

- a) that they are not deprived of the right to apply in the home Member State, based on a final criminal or civil court decision;
- b) that they do not hold positions in another member state of the European Union, equivalent to functions incompatible in Romania with the local elected status.

In 24 hours after the candidature is submitted, the electoral district office rejects by decision all the proposals of candidatures that do not contain in the declaration on their own responsibility the mention provided by law.

### **Conclusions**

As a personal conclusion, the Romanian legislation which regulate the election of local authorities has more clearly defined the conditions under which these categories of candidates can participate in elections.

These categories of persons have the advantage of visibility, respectively notoriety and credibility conferred by the exercise of a public function.

At the same time, they have the disadvantage of banning their involvement in political activities during their exercise of function.

In contrast to the eligibility conditions, the incompatibility statuses intervene only after the validation of the local elected mandate (Vida I., Vida C., 2012; 364). Eligibility conditions are subject to censorship of the constituency electoral bureau.

For all the local elected officials, the incompatibility state intervenes only after the mandate is validated<sup>3</sup> (Art. 91 of Law no. 161/2003), and in the case of art. 88 para. (2) of Law no. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, preventing and sanctioning corruption it is stipulated that a person cannot exercise at the same time a mandate of local councilor and a mandate of county councilor. In the case provided for in art. 89 from the same mentioned normative act, the incompatibility with the quality of local elected person intervenes on the date when the local elected one, his spouse or his 1st degree relative becomes shareholders.

The elected local may resign from the position held before being appointed or elected to the position that attracts the incompatibility status within 15 days from the appointment or election to this position.

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<sup>3</sup> Published in the Official Gazette of Romania no. 279 / 21.04.2003, with the modifications and completions brought by Law no. 255/2013 published in the Official Gazette of Romania no. 515 / 14.08.2013.