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# IMPLICATIONS OF THE ELECTORAL LAW IN STRENGTHENING THE ROMANIAN DEMOCRACY

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## **Abstract**

*Together with the other structural components of democracy: respect for fundamental rights and freedoms, separation of powers within the state, rule of majority and protection of minorities etc, the electoral law represents the source and the guarantee of a relevant component for democracy – free association – political pluralism – free, periodic and correct elections.*

*During more than 150 years, the electoral legislation has experienced a real dynamic on the one hand determined by the national and international political context, the form of government and, on the other hand, by the political regime.*

*This paper aims at analyzing the evolution of the main electoral regulations, regulations that have marked the evolution and involution of the Romanian democratization process, focusing on the latest regulation, law no 208/2015 with subsequent amendments which provides a new electoral option – the postal voting.*

**Keywords:** *electoral law, democracy, vote, postal voting*

## **Introduction**

The first legislation regarding electoral matters was the Law of 2<sup>nd</sup> May 1864<sup>1</sup> bringing a new vision of voting and electoral organization increasing the possibility of participation of a relatively larger number of voters as both the bourgeoisie and the peasantry were allowed to do that. Thus, the electorate was divided into primary vote, illiterate voters who voted indirectly and direct, literate voters –50 primary voters elected a direct voter who had to prove that he had an income of at least 100 gold coins<sup>2</sup>. The presence of the wealth census in the current regulation along with the citizenship / naturalization and age made eligibility possible. The justification of the wealth census excluded those who exercised high positions in government service and retired senior officers of the army. Article 4 had restrictive specifications about the categories of citizens who could have been neither direct nor indirect voters. Thus, ‘Persons subject to any foreign protection, servants receiving wages, bans, those who are not rehabilitated, those who were condemned to afflictions and infamous punishment, or merely infamous’<sup>3</sup>.

These regulations aimed at the designation of the Elective Assembly members, the geometry of the Body Weights or Senate from the point of view of the legislator was different, its composition being determined by the meeting of 64 members: by law and members appointed by the ruler. Although the idea of the establishment of the two chambers was welcomed, the Senate imagined by Cuza sparked controversy due to the interference of the executive into the parliamentary work and therefore due to the balance of forces between them. In support of this idea, Stanomir Ioan, in his work entitled *The birth of the Constitution – language and law in the Principalities until 1866*, considers that ‘strengthening the executive and the prerogative given to it to intervene in recruiting the members of The High Room are imagined tools to streamline the parliamentary labor’<sup>4</sup>.

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<sup>1</sup> Published in M.O. nr. 146 / 3 July 1864

<sup>2</sup> [http://enciclopediaromaniei.ro/wiki/Legea\\_electorală\\_din\\_1864](http://enciclopediaromaniei.ro/wiki/Legea_electorală_din_1864)

<sup>3</sup> <http://legislatie.just.ro/Public/DetaliiDocument/19649>

<sup>4</sup> Stanomir I., *Nașterea Constituției - limbaj și drept în Principate până la 1866 (Birth of the Constitution – language and law in Principalities until 1866)*, București, Nemira Publishing House, 2004, p. 388.

As regards the vote, Article 15 states on the one hand the secret character of the election of the deputies and on the other hand the public character for the election of the direct voters.

Even if the access to voting remained quite limited, the population, in its majority, consisted of peasants, mostly untrained, so with all its imperfections the electoral law represented a breakthrough ensuring fair participation of the social classes in the leadership of the state.

### **The electoral legislation in the interwar period**

The basic legal act adopted in 1866 brought not only the change of the form of government, meaning that Romania became a hereditary monarchy, but also important changes regarding the election and composition of the Senate and the Chamber of Deputies. Both the Constitution and the electoral law introduced a number of regulations regarding: the electoral colleges, the eligibility criteria, and the electoral capacity. Hence, 'the way of composing the electoral body was based on a vote based on qualification and empowerment, the electorate being divided into four colleges in relation to income, profession and dignities held'<sup>5</sup>.

The appointment of the members of the Chamber of Deputies was carried out in four electoral colleges for each county, according to the established wealth census. Pensioners, teachers, reserve officers and all the liberal professions were exempted from census.

Regarding the designation of the Senate members, this was done in two colleges having the established census as a criterion. It should be noted that Article 8 of the electoral law governs the waiver census for certain categories, e.g. *presidents or vice-presidents of the Legislative Assemblies, members of the Romanian Academy, those who hold a PhD or are licensed in a profession practiced for six years*<sup>6</sup>, etc. Elected professors from the Universities of Iasi and Bucharest as well as the heir to the throne and clerics of the highest level are ex officio members of the Senate.

The quality of the voter was recognized once the criteria were covered exhaustively by the provision of Article 16: Romanian citizen or citizen who acquired Romanian citizenship, age of 21 years. The eligibility criteria were regulated differently. The categories that 'were unable to be voters'<sup>7</sup> were limitedly listed as well, *'beggars, those placed under judicial interdiction, those declared bankrupt that could not be rehabilitated, servants with wages.* Article 19 regulates in detail the category of *the unworthy, persons to whom the law forbids the voting rights.*

Relevant changes in the electoral architecture of the fundamental legal Act of 1866 were made in 1884 and 1917, the former revision reducing the number of colleges for the Chamber of Deputies, the latter covering for the first time the character of the universal suffrage for all men over 21 years; women were still excluded from the exercise of the voting rights.

The right to vote, so controversial at the time was to find its regulation in the following content, *'The Assembly of Deputies is composed of members of other grown-ups Romanian citizens by universal, equal, direct, secret and compulsory vote on minority representation'*. Therefore, the regulation eliminates the censitary electoral system and inaugurates the universal suffrage. Regarding the composition of the Senate, article 67 states, *'The Senate is composed of elected senators and ex officio senators.'*

The adoption of the Constitution of 1923 brought a new electoral law in early 1926, the newly adopted legislation being determined by the need to unify the legislation from the election matters point of view and in order to standardize national laws of the new state.

Thus, Article 1 of the Electoral Law of March 27, 1926 states, *the Assembly of Deputies is composed of members elected by grown-up Romanian citizens, by universal,*

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<sup>5</sup> Banciu A., *Istoria vieții constituționale în România (1866-1991)* ( *The history of constitutional life in Romania (1866-1991)*), București, Casa de Presă Șansa Publishing House, 1996, p. 35.

<sup>6</sup> [http://fp.kross.ro/pdf/le\\_1866.pdf](http://fp.kross.ro/pdf/le_1866.pdf)

<sup>7</sup> Art.18

*direct, secret and compulsory vote on minority representation, by ballot list, by constituencies.* ‘As for the Senate, the vote majority for the election both directly and indirectly of its members was still practiced, ex officio mandates being preserved’<sup>8</sup>. Maintaining the old legal regulations and developing new ones regarding the composition and the choice of the electoral body, the new regulations maintained, according to art. 26-28, the election ban on women and the military, and a series of indignities and incompatibilities.

The 1937 elections that preceded the adoption of the fundamental legal Act of 1938 were considered the last elections with a profound democratic character held in the interwar period; the decline of democracy and the regression of the democratization process will be landmarks for more than half a century.

The architecture of the fundamental Settlement of 1938 was conceived on other constitutional and democratic values and paradigms so, Article 61 indicates: *the Assembly of Deputies is composed of members elected by the Romanian citizens who are 30 years old and practice effectively an occupation entering into any of the following categories: agriculture and manual labour, trade and industry, intellectual occupations*’.

The candidatures were no longer free and as an additional guarantee, under article 26, the lower chamber candidacy was conditioned by the initiative of the National Renaissance Front, a political organization created by the state, having a profound mass character, in order to promote a unitary political ideology, aiming to disintegrate the old political parties by attracting certain cadres in leadership positions.

### **The electoral system under communism**

September 6, 1940 is the day that the political regime in Romania entered a new stage of its development, a new dictatorship that annihilated from the beginning the most important values of democracy: the basic law and the legislative bodies.

*‘The transition from a bicameral Parliament, existing in Romania during 1864-1940, to a unicameral once was possible beginning with 1946, by decree nr. 2218 regarding the exercise of the legislative power which stated that the National Representation is organized into a single body: the Assembly of Deputies*’<sup>9</sup>.

Thus, on 13 April 1948, the Grand National Assembly adopted the first popular constitution and after that the electoral law which regulated the seizure of power in its entirety by the new regime. Regarding the amendments, the legislature reduced the age limit of voters from 21 to 20 and of those elected from 25 to 23, which resulted in a substantial increase of voters. The provisions on incompatibilities of the military and the magistrates were repealed so they could have the right to be eligible. But the discriminatory provisions in the law were expanded to the unworthy and other categories of citizens, for example, those guilty of anti-democratic attitude or collaborationist activities (art. 7).

The analysis of the communist constitutions and the electoral legislation between 1948 and 1989 reflects the fact that the political regime in Romania was an oppressive totalitarian regime. It was born through the abolition of all the traditional parties and the forced merger of the workers' parties into a single Party which imposed its own ideology on the whole society as the only true and binding one. Thus, the ideological pluralism was liquidated, and therefore any possibility of political or civic opposition was annihilated, in other words democracy was abolished.

### **Post-December electoral system**

Decree-Law no 8 of January 1990 represented a genuine electoral law, the first law that aimed stability, establishing clear rules on central and local authorities<sup>10</sup>.

Political pluralism stated in Decree-Law no. 2 materialized in Decree-Law no. 8 of 31 December 1989<sup>11</sup> thus reiterating a Romanian tradition dating back more than a century. Hence, the historic political

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<sup>8</sup> Radu A, Reforma sistemului electoral din România – O istorie analitică (Electoral reform in Romania - An Analytical History), in *Sfera Politicii (The Political Sphere)*, [http://www.sferapoliticii.ro/sfera/167/art01-RaduA.php#\\_ftn6](http://www.sferapoliticii.ro/sfera/167/art01-RaduA.php#_ftn6)

<sup>9</sup> Damean S., Dănișor C. and others, *Evoluția instituțiilor politice ale statului (The evolution of the political institutions of the state)*, Târgoviste, Cetatea de Scaun Publishing House, 2014, p.168.

<sup>10</sup> Decree-law nr. 8 / 7 January 1990 regarding the organization and functioning of the local administration.

parties were re-established: the National Liberal Party, the National Peasant Party, the Social Democrat Party, and some new political parties appeared, so that on January 28, 1990 there were a total of 30 political parties, and at the elections held in May 1990 their number significantly increased to 80<sup>12</sup>.

The electoral system of proportional representation in Romania established in 1990 transformed the votes into mandates of deputies and senators differently, which represented a real reform from the viewpoint of the previous electoral system and practice. *The way the results and awarding mandates are determined*.<sup>13</sup>

The allocation of mandates is done in two stages. In the first stage, seats shall be allocated at each of the 42 constituencies, as follows: for each constituency the electoral quotient shall be established by dividing the number of valid votes cast in the constituency in the number of seats that are allocated to the constituencies; for each list of candidates, the number of votes cast is divided by the electoral quotient, the whole part of the quotient of this operation is a first number of mandates received by the list.

In the second stage, a second row of seats at national level is given using the d'Hondt method: for each party, the debris resulting from the operation of division in the first stage are aggregated nationally.

An evolution in the democratization process has been driven by the regulation of the threshold of 3% by the Law no. 68 / 1992.

The uninominal elections represented an important step in the democratization process of Romania as this type of voting has consequences not only in the constituencies but also in the relationships between the voters and the elected. The uninominal vote with all the controversy that it has generated is a mechanism of direct voting of individual candidates instead of a list drawn up on the basis of some random criteria by a political party. So the uninominal vote law<sup>14</sup>, in article 5, paragraph 1 states that *Deputies and senators are elected in uninominal constituencies by single vote, according to the principle of proportional representation*.

### **Postal voting**

One of the current problems that generated controversy among specialists in law, politics and media is the vote of the Romanian citizens living abroad, citizens who sometimes decisively influenced the electoral score. Sometimes considered a manoeuvring mass that can be neither manipulated nor numerically controlled, the Romanian citizens have according to the constitutional regulations identical rights to those living abroad. Moreover, the incidents which occurred in the Diaspora on the occasion of presidential elections reopened the sensible subject usually avoided by most of those in government. Hence, the law no 208 / 2015 was adopted<sup>15</sup>. According to Article 2 b of the above law, voting by mail, using postal services, is the equivalent alternative to voting by being present at a polling station.

The voter residing abroad, who wants to exercise their right to postal voting in the general elections for the Senate and the Chamber of Deputies, must register on the Electoral Roll with the option to vote by mail, based on a written, dated and signed requirement, delivered personally or sent by post to the diplomatic mission or consular post of the State of domicile or residence, enclosing a copy of the passport mentioning the state where they live, for Romanian citizens residing abroad or a copy of the ID and a copy of the document which proves the right to stay issued by foreign authorities, according to art. 83 para. (4) of Law no. 208/2015 regarding the election of the Senate and the Chamber of Deputies as well as for the

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<sup>11</sup> Decree-law nr. 8/31 December 1989 regarding the organization and functioning of the political parties and other state organizations from Romania published in M.O. nr. 9 / 31 December 1989.

<sup>12</sup> Voicu G., *Pluripartidismul. O teorie a democrației (Multi-party system. A theory of democracy)* București, All Publishing House, 1998, p. 213.

<sup>13</sup> [http://www.apd.ro/files/publicatii/25plus2\\_Model\\_electorale\\_I\\_Sisteme\\_electorale.pdf](http://www.apd.ro/files/publicatii/25plus2_Model_electorale_I_Sisteme_electorale.pdf).

<sup>14</sup> Published in M.O.Nr. 196 / 13 March 2008

<sup>15</sup> Published in M.O. nr. 843 / 12 November 2015

organization and functioning of the Permanent Electoral Authority, for the Romanian citizens residing abroad.

Although the law regulates in detail the organization and conduct of the electoral process in case of post voting, it has been the subject of unconstitutionality of the Constitutional Court who pronounced Decision nr. 799 of 18 November 2015. In support of the objection of unconstitutionality it was raised that *the Romanian citizens residing abroad who wish to vote by mail have other rights than the Romanian citizens residing in the country; thus, the latter may vote only in the event that on the day of the vote they are in the constituency of their domicile or residence, and if they cannot travel to the polling station, they should ask for a mobile ballot box only if they have a good reason, while the Romanian citizens residing abroad can send envelopes containing their votes wherever they are at the time of the elections without questioning the reason for not moving to a polling station.*

In support of its complaint it is said that *the law under review contains no leverage through which a state authority could eliminate the possibility of 'voting in the family' or, worse, the vote exercised in corporate employees under the guidance of their employer or boss, that their vote by correspondence does not respect the direct vote.*

For all the reasons given, the Constitutional Court rejects as unfounded the objection of unconstitutionality formulated and finds that the provisions of the Law on postal voting as well as the amendment of Law nr. 208/2015 concerning the election of the Senate and the Chamber of Deputies and for the organization and operation of the Permanent Electoral Authority are constitutional in relation to the criticisms brought.

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