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Brief considerations regarding the presidential elections in Romania

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Summary. Explaining the institution of the head of state, from a philosophical, polyetiological perspective, but also constitutional, refers to the correct understanding of the relation between the people and the state organization of the power. Thus, the people hold the national sovereignty, which is entrusted to representative organs, among which is the head of state. The people shall appoint its representatives, among which is the head of state, by universal, equal, direct, secret and freely expressed vote. In Romania, the head of state is represented by the president.

Krótkie rozważania dotyczące wyborów prezydenckich w Rumunii

Słowa kluczowe: prawo wyborcze, wybory prezydenckie, głowa państwa

Streszczenie. Wyjaśnienie instytucji głowy państwa z perspektywy filozoficznej, polietyologicznej, ale także konstytucyjnej, odnosi się do prawidłowego rozumienia relacji między narodem a państwową organizacją władzy. W ten sposób lud posiada suwerenność narodową, która jest powierzona jego organom przedstawicielskim, wśród których jest głowa państwa. Naród wybiera swoich przedstawicieli, wśród których jest głowa państwa, w głosowaniu powszechnym, równym, bezpośrednim, tajnym i swobodnie wyrażonym. W Rumunii głową państwa jest prezydent.

The regulation of the institution of the head of state

The institution of the head of state was regulated in all constitutional provisions of our state under different names. The Statute expanding the Paris Convention states that the public powers are entrusted to the ruler, to a derivative assembly and to an elective assembly. The same term of “ruler” is used by the 1866 Constitution, when it is specified the fact that the legislative power is exercised collectively by the ruler and the National Representative. In 1923, the fundamental law speaks about the king, who exercises the legislative power together with the National Representative. The name as king is also maintained by the 1938 Constitution.

Law No 363/1947 entrusts the specific attributions of the head of state to the Presidium of the Republic, which thus becomes a collegial head of state. In 1948, the Constitution entrusts these attributions to the Presidium of the Great National Assembly, while in 1952 the institution is replaced by the State Council¹.

The Revolution in 1989 generated legislative and institutional modifications. The Decree Law No 2/27 December 1989 regarding the establishment, organization and functioning of the Council of the National Salvation Front creates the position as President of the Council. The Decree Law 92/1990 regarding the election of the Romanian Parliament and President, this position is entrusted to the Romanian President by universal, equal, secret and free vote. The Constituent Assembly expressed two opinions: the first aimed the election of the Romanian President by the Parliament and the second aimed his election by universal suffrage, directly by the electoral body.

The 1991 Constitution settles the issue, establishing a semi-presidential regime characterized by the direct election by the electorate of the head of state. Subsequently, the Electoral Law No 69/1992 on the election of the President of Romania completed the legislative framework in this area. Reasoned by the objective of integrating Romania in the European Union, the Romanian state revises the Constitution through Law No 429/2003, approved by the national referendum in held in October 2003. These constitutional changes have implicitly led to changes in electoral legislation. In this meaning, was adopted Law No 370/2004 on the election of the President of Romania, republished in the Official Gazette No 650/12 September 2011. In principle, several electoral operations on presidential elections are similar to those aimed at electing the Chamber of Deputies and the Senate. Therefore, if the framework law does not regulate special rules of the electoral process, the provisions of Law No 208/2015 on the election of the Senate and the Chamber of Deputies, as well as for the organization and functioning of the Permanent Electoral Authority shall be applied. It must be stated that the extension of the Romanian President's mandate, through the revised Constitution makes the parliamentary elections to be held separately from the presidential ones.

The President of Romania is a body of the state administration and exercises the executive power at the central level together with the Government. Along with the Prime Minister, the President exercises the leadership of the executive².

¹ A. Puran, A. Drăghici, *Drept electoral*, University of Pitești Press, Pitești 2016, p. 62.

² M. Andreescu, A. Puran, *Drept constituțional. Teoriagenerală a statului. Jurisprudență constituțională*, 3rd Edition, Bucharest 2018, p. 200.

Conditions for eligibility

The conditions for eligibility are stated by the Romanian Constitution and the Law No 370/2004, republished in the Official Gazette No 650/12 September 2011. These can be separated into two large categories: substantive and formal conditions. The substantive ones aim and follow the capacity of exercise, age, domicile, right to associate in political parties etc. The formal conditions are stated by the electoral law and aim certain documents that the candidate must present together with his candidature.

1. Are substantive conditions:
2. The candidate must have the right to vote, namely, to fulfill all those conditions stated by the constitutional regulations.
3. The candidate shall have the Romanian citizenship, condition representing a constant of the regulations in this area.
4. The candidate must be domiciled in the country, which is necessary for the proper conduct and knowledge of public affairs involving the exercise of his / her position.
5. The candidate must have the age of 35 by election day. It is noted that, for the position of President of Romania, the law requires an older age than for the other public dignities. This is justified by the importance and central role that this institution has in all public authorities.
6. Candidates should not be prohibited from associating in political parties, i.e. not from the following categories: judges of the Constitutional Court, ombudsmen, magistrates, active members of the army, police and other categories of civil servants established by organic law.
7. Not to have already fulfilled the function of President of Romania twice, regardless of whether the two mandates were successive or not. This substantive condition was regulated from the date of entry into force of the 1991 Constitution. According to the revised Constitution, the term of office of the President is 5 years.

According to the electoral law, are considered as formal conditions³:

1. The candidates shall be nominated by political parties or political alliances, constituted according to the Law No 14/2003 on political parties, as well as independent candidates. Political parties and alliances may propose a single candidate. Parties that are members of a political alliance proposing a candidate may not nominate candidates separately.
2. The candidatures proposed by the political parties or alliances, as well as the independent candidatures may be submitted only if are supported by at least

³ G. Iancu, V. Alexandru Iancu, *Drept electoral*, Bucharest 2015, p. 215.

200.000 voters individualized by name, surname, date of birth, address, ID card series and number, as well as their signature.

3. The nomination proposal shall be accompanied by the declaration to accept the candidature, written, signed and dated by the candidate.
4. The nomination proposal shall also be accompanied by the following declarations: assets (and wealth) declaration, the authentic statement, on one's own responsibility regarding the affiliation or non-affiliation as an agent or collaborator of the security bodies, as political police.

Though these conditions are not practically formal conditions, nor are they provided for by constitutional regulations, due to the importance of the position for which they candidate, it is absolutely necessary to perform a thorough verification of their fulfillment. Also, the literature has expressed the importance of these formal conditions, thus “these conditions are necessary for the preservation of the real sense of the elections which is not a simple pretext for communicating the opinions, but a means of appointment to elective office. This is the only way to prevent numerous or fanciful candidacies, as well as the danger of distorting or devaluing the presidential campaign”⁴.

The organization and conduct of elections

The organization and conducting of presidential elections are stated by the Law No 370/2004, but Art 81 of the Romanian Constitution states the legal framework regarding the means of scrutiny. Thus, it is stated that: “The President of Romania shall be elected by universal, equal, direct, secret a free suffrage. The candidate who, in the first ballot, obtained a majority of votes of the electors entered on the electoral lists shall be declared elected. In case no candidate has obtained such a majority, a second ballot shall be held between the first two candidates highest in the order of the number of votes cast for them in the first ballot. The candidate having the greatest number of votes shall be declared elected”.

Therefore, the election of the President of Romania shall be made by majoritarian uninominal scrutiny, with two tours⁵. In the first tour shall be elected the candidate who has received the absolute majority, that is, at least half plus one of the votes of the voters registered on the electoral lists. If after the first tour neither of the candidates obtains the number of votes to be elected as president, there shall be a second tour, in which only the first two candidates participate in the order of the number of votes obtained in the first round. If during the first tour it is

⁴ M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, F. Vasilescu, I. Vida, *Constituția României*, “Monitorul Oficial” Press, Bucharest 1992, p. 118.

⁵ See also E.M. Nica, *Drept electoral*, Bucharest 2016, p. 335.

required the absolute majority to be elected, during the second tour it is sufficient the relative majority.

The date of the elections shall be set and made public by the Government at least 75 days before the voting day. According to Art 5 of the Law No 370/2004, the day of elections shall be on a Sunday, in the month previous to the month in which is the deadline for the mandate of the current president. The decision regarding the establishment of the date of the elections shall be adopted at the proposal of the Ministry of Internal Affairs and the Permanent Electoral Authority.

The proposal for candidacy shall be submitted and registered at the Central Electoral Bureau in 4 copies, one original and 3 copies. The original plus one copy shall be preserved in the Central Electoral Bureau, another one shall be sent to the Constitutional Court, while the fourth, certified by the president of the Central Electoral Bureau shall be returned to the depositary.

The candidate proposals for the election of the President of Romania shall be submitted to the Central Electoral Bureau, with maximum 50 days before the date of the elections. The proposals shall be in written and shall be received only if:

- a) Are signed by the board of the party or political alliance who have proposed the candidate or, where appropriate, by the independent candidate;
- b) State the name and surname, place and date of birth, civil status, domicile, education, occupation and profession of the candidate, as well as the mention that he/she fulfils the conditions stated by the law in order to candidate;
- c) Are accompanied by the declaration of accepting the candidacy, in written, signed and dated by the candidate, by the assets (and wealth) declaration, the authentic statement, on one's own responsibility regarding the affiliation or non-affiliation as an agent or collaborator of the security bodies, as political police, as well as by the list or lists of supporters, whose number cannot be less than 200.000 voters.

The list of supporters is a public act. The list or lists of supporters have to state the date of the elections, the name and surname of the candidate, as well as the name and surname, date of birth, address, type, series and number of the ID card and the signature of the voters supporting the candidature. At the end of the list, the person who drew it up is obliged to make a statement on his own responsibility to certify the veracity of the signatures of the supporters.

The Central Electoral Bureau informs the public, through the press, and displays, at its headquarters, the proposals of candidates it has received, within 24 hours from the registration.

The registration of the candidates on the ballot paper is done in the order of submitting the candidacies.

The current president may participate in the presidential campaign of the political party or alliance which has proposed or supports his candidature.

The schedule for the electoral campaign and the distribution of airtime for equal and free access of candidates to public radio and television services are made, after the end of the application period, by the permanent reunited bureaus of the two Houses of Parliament, together with public service representatives, radio and television and with the participation of candidates.

The permanent electoral lists for the administrative-territorial subdivisions throughout the state shall be drafted, in maximum 15 days from the entrance into force of the Government's decision regarding the date of the elections, by the mayor of the commune, town or city or of the sectors of the Bucharest municipality based on the data and information comprised in the Electoral Registry and presented to the mayor by the territorial bureau of the Permanent Electoral Authority functioning at the level of the county on whose territory the locality is located. The permanent electoral lists comprising the Romanian citizens with domicile or residence abroad are drawn up by the Permanent Electoral Authority and will be the basis for the delimitation of the polling stations that will be organized abroad.

In the supplementary electoral list will be included, by the president of the electoral bureau of the polling station, the persons who present themselves to the vote and prove that they reside within the respective polling station but have been omitted from the list. These persons shall be able to vote based on their ID card and voter's card. Also, the voters using the special urn shall be included in the supplementary lists.

The electoral operations are carried out in polling stations organized on the territory of the country and, for the voters who are abroad at the time of the elections, one or more polling stations are organized next to the diplomatic missions and consular offices of Romania. With the agreement of the government of the respective country, polling stations may be organized in other localities than those where the diplomatic missions or consular offices are based.

The voters also have the possibility to vote by mail.

Regarding the vote by mail, it has been relatively recent stated, initially by Law No 288/2015 regarding the postal voting, as well as by the modification and amendment of the Law No 208/2015 on the election of the Senate and the Chamber of Deputies, as well as on the organization and functioning of the Permanent Electoral Authority and used for the first time during the parliamentary elections held in December 2016. Subsequently it has been stated also for the presidential elections, by Art 1 Para 6 of the Law No 370/2004, with subsequent modifications and amendments.

This method of voting can be used only by Romanian citizens with the right to vote, having their domicile or residence abroad, according to the law.

The voter domiciling or residing abroad, but who wishes to vote by mail, needs to register in the Electoral Registry, with the option to vote by mail based on a written request, dated and signed, submitted personally or sent by mail, including by electronic mail, to the diplomatic mission or consular office from the state of domicile or residence, to which he shall annex a copy of the passport mentioning the state of domicile, for Romanian citizens domiciling abroad, namely a copy of the ID card and of the document proving the right to reside, issued by the foreign authorities, for Romanian citizens residing abroad.

The voter who shall choose this option to vote shall be removed from the permanent lists for that scrutiny.

For the last presidential elections held in Romania, on the 28th of July was launched the portal www.votstrinatate.ro, in which the Romanians wanting to vote abroad could pre-register. Due to the small number of persons registered until the initial deadline on 11th September, the Government extended, by emergency ordinance, the term up to 15th September⁶. Nevertheless, only 41 003 Romanians living abroad (approximately 1% of the total number of voters) registered for postal voting⁷.

In order to organize and carry out the operations specific to the electoral period, the Central Electoral Bureau, the county electoral bureaus, the electoral bureaus of the sectors of the Bucharest municipality, the electoral bureau for the polling stations abroad and the electoral bureaus of the polling stations are established.

Each polling station shall have a sufficient number of ballot boxes, cabins, stamps with the word “VOTED”, proportional with the number of voters listed in the copies of the permanent electoral lists and with the estimated number of voters, as well as a special ballot box.

The Constitutional Court shall publish the result of the elections in the press and in the Official Gazette for each ballot and shall validate the result of the elections for the elected president.

The second ballot takes place under the conditions provided in Art 81 Para 3 of the Romanian Constitution, two weeks after the first ballot, in the same polling stations and constituencies, under the leadership of the electoral operations by the same electoral bureaus and on the basis of the same voter lists from the first round. The first 2 candidates who obtained the highest number of votes, validly expressed

⁶ I. Olteanu, *The Government has expanded, by emergency ordinance, the deadline for registration for postal voting*, www.ziare.com [access: 11.03.2021].

⁷ *Registrations for postal voting were closed on Sunday night. How many Romanians from abroad registered?*, www.hotnews.ro [access: 11.03.2021].

throughout the country in the first round, participate in the second ballot. The confirmation of this number is made by the Constitutional Court within 24 hours from the receipt of the minutes by informing the public of the name and surname of the two qualified candidates and of the voting day.

In the second ballot shall be declared as elected the candidate who has received the highest number of votes. The minute concluded by the Central Electoral Bureau for each ballot shall be submitted to the Constitutional Court, which shall public the results of the elections.

According to Art 146 Let f) of the Constitution, the Constitutional Court shall guard the observance of the procedure for the election of the President of Romania and confirm the ballot returns. According to the fundamental law, the mandate of the President of Romania is of 5 years and shall begin at the date of the oath.

The last presidential elections were organized in Romania in 2019, in two ballots, on the 10th and 24th November.

For these elections, 27 persons announced their candidatures. Only 17 of them submitted their documents at the Central Electoral Bureau, being accepted only 14 candidatures. Eligible for a second term, the incumbent president, the Liberal Klaus Iohann is came out on top in the first round, ahead of former Social Democrat Prime Minister Viorica Dăncilă. The election was marked by a low presence in the country. The second round was won by Klaus Iohannis. He won 66% of the vote, while the Social Democrat candidate won 34%.

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