

IMPORTANCE OF DEVELOPING AND IMPLEMENTING THE ELECTORAL CODE

Author
Alexandra IANCU*

ABSTRACT: *Coding steps aimed at ensuring greater legal certainty and a better accessibility of law, in accordance with constitutional requirements related to ensuring voting rights. The "code" is a coherent body of texts encompassing, according to a systematic plan, all rules relating to a subject. Coherence law requires that an industry as a whole is governed by a single law. Clarity legislation is another essential aspect of a modern administration can be achieved only through quality editorial normative acts, but also involves the availability of these acts, despite the changes that are made. On the other hand, the principle of legality - a true constitutional postulate - turn rule requires systematic, clear and coherent governing the work of public authorities, so that normative system to be understood by all and, therefore, easily controllable. Recipients law must be able to ascertain unequivocally what their rights and obligations conferred or imposed by law, and the law must be predictable.*

It cannot be denied legal difficulty of this approach, due to its overwhelming scale. In this context, the practical limits of the process of encoding data that can be encoded and every legal or regulatory provisions in a particular field. Exception is justified by the fact that no specific rules based their coding solution. However, codification is an indispensable aspect of improving direct knowledge of materials and administrative texts and is therefore a "technical necessity" for users of administrative law.

Have shown that adopting an electoral code will facilitate the use of uniform terminology for the same legal realities, institutions, principles and legal concepts, thereby reducing the risk of interpreting them differently.

Adoption of the electoral code stable over time, would increase confidence in the continuity and sustainability of electoral regulations.

KEY WORDS: *election code, election law, elections, voter, candidate, campaign, election disputes, electoral competition, political parties, electoral list, observer, international observers.*

JEL CODE: *K 4*

* Assistant Ph.d (c), Faculty of Public Administration National University of Political Studies and Public Administration, Parliamentary counselor Permanent Electoral Authority, ROMANIA.

INTRODUCTION

Currently there are a number of laws governing the organization and conduct of elections and referendums. These are:

a) Law no. 35/2008 for the Chamber of Deputies and the Senate on amending and supplementing Law no. 67/2004 for the election of local authorities, the Local Public Administration Law no. 15/2001 and Law no. 393/2004 on the Statute of local elected officials, as amended and supplemented;

b) Law no. 370/2004 for the election of the President of Romania, as amended and supplemented;

c) Law no. 33/2007 on the organization and development European Parliament elections, as amended and supplemented;

d) Law no. 67/2004 on the election of local authorities, republished, with subsequent amendments;

e) Law no. 3/2000 on the organization and conduct of the referendum.

Central and local public authorities with responsibilities in organizing and conducting election polls should work with five different laws governing the same electoral operations (organizing polling stations, preparing voter lists, applications, electoral campaign, election processes, organization and duties each polling place). Differences between the laws relating to the powers of each authority, but also in terms of how to organize election ballots and therefore must be imposed now adopt an electoral code to unify the organization and conduct of the election polls.

All elections which took place from 2004 in present were based on that legislation and Permanent Electoral Authority, which was established in 2004, has developed and submitted to Parliament after each election as a book report about election. The report indicated a number of issues raised in practice (such as lack of legislative coherence area because each choice is governed by a specific law, lack of clarity of the legal acts in the field and uniform terminology, lack systematic rules governing election administration activities so that normative system to be understood by everyone, no corroboration rules) but also made a number of proposals such as expansion projects for certain categories of users and target audience: young people going to vote for the first time, people with disabilities, election officials, people with responsibilities at all levels of the electoral operation etc. It also requires the development of new programs advanced in this direction, aiming to attract external financial resources for their realization; procedures regarding the preparation and updating of voter lists, logistics electoral bodies established electoral campaign, the voting process.

To verify the copies of the permanent electoral lists and tables used in the polling stations was necessary to establish a national database by entering the computerized voter identification data (personal identification number) and the data sections stations. Achieving this centralized database is a complex activity that requires a great deal of work, adequate computers, high-capacity storage and processing, given the total number of polling stations.

Support for the adoption of the Electoral Code came from the team of Experts Election OSCE / ODIHR come to evaluate several aspects of the electoral process in the parliamentary elections of 9 December 2012 that the Final Report on 9 December 2012 parliamentary elections noted " despite previous OSCE/ODIHR recommendations and

election stakeholder efforts, a consolidated election code that would regulate all types of elections has not been adopted. OSCE/ODIHR EET interlocutors noted that such a code would eliminate inconsistencies and gaps generated by the existence of several pieces of legislation, eliminate the need for passing Government Emergency Ordinances (GEOs) in election periods, and ease the administration of elections. Furthermore, the election law does not sufficiently govern the complaints and appeals process, the conduct of the campaign or its coverage in the media. "

Other recommendations of the Experts Election OSCE / ODIHR were:

Electoral system and legal framework

1. Efforts should be made to distribute mandates representing voters abroad based on the number of citizens with a view to ensuring the equality of the vote and right to equal representation.

2. The Election Law should be amended to include the actual procedures implemented in the elections; all amendments should be enacted well ahead of an election through a public procedure in accordance with good practice and OSCE commitments.

Election administration

3. Consideration should be given to further elaborating the jurisdiction and sanctioning authority of the BECs in the Election Law in relation to campaign violations.

4. Consideration could be given to establishing a pool of trained election staff to draw from for each election.

5. In addition to the extraordinary funds allocated for every electoral process, the parliament could ensure that regular and sufficient budgetary funds are allocated to the PEA so that it could both fulfill its current mandate and take on the additional responsibilities foreseen in the Election Law.

Voter registration

6. Local authorities and election bureaus could be encouraged to undertake public outreach campaigns to review the voter lists, especially for those voting for the first time and those who have changed domicile or residence between the elections.

7. Consideration should be given to implementing some form of active registration for voters abroad; alternatively, additional safeguards should be introduced to eliminate the possibility of voters residing abroad casting multiple ballots.

Candidate registration

8. The legal framework should be amended to allow voters to sign in support of more than one prospective electoral contestant to further promote pluralism.

9. In order to promote greater participation in the political process by independent candidates, consideration should be given to requiring either a small registration deposit or the collection of a minimal number of supporting signatures, but not both.

10. With a view to better provide voters with the opportunity to make an informed choice, legislation could be amended to include a provision for notifying voters of candidates' withdrawals prior to election day.

Election campaign

11. The Government Emergency Ordinance definitions of vote-buying and bribery should be codified in the electoral legislation and proactively enforced.

Political finance

12. To further enhance the transparency of political finance during an election campaign, consideration could be given to requiring the timely disclosure of all

contributions received, their sources, amounts and types (cash or in-kind) and to make preliminary financial reports available to the public before election day, in accordance with good practice.

13. Effectiveness of oversight over campaign finance could be strengthened by means of, for example, granting additional audit authority to the PEA, ensuring sufficient human and financial resources to perform this task, and encouraging its greater co-ordination with the Court of Accounts, National Anticorruption Directorate and the National Integrity Agency.

Media

14. Regulation of coverage of electoral contestants by private broadcasters could be reviewed to better protect editorial freedom and the general public's interest in receiving a wide spectrum of information.

15. Consideration could be given to repealing the provision of Art. 38(2) of the Election Law so that all registered contestants are covered by the public broadcaster.

16. The Election Law could be amended to provide for precise and generally applicable guidelines for election coverage in the media. Such provisions could be based on existing legal requirements of equity, balance, and impartiality, while, at the same time, respecting editorial freedoms to control schedules, and determine the structure and format.

17. Authorities could consider enhancing the CNA's media monitoring methodology to increase its capacity to identify various forms of unbalanced coverage during the campaign, and providing the CNA with additional resources for this purpose.

18. The Broadcasting Law could be amended to regulate the role and powers of the CNA during election campaign period in more detail. Timeframes for the decision-making process could be made shorter so that sanctions could be issued and implemented in an expeditious manner ahead of election day.

19. The appointment of CNA members should be free from any political or economic interference to enhance its independence and credibility. The Broadcasting Law could minimize the number of political nominations and, instead, provide for more diverse membership, including independent experts and civil society representatives.

20. In line with good practice, the Law on the Public Radio and Television could provide for public participation in the selection of candidates to manage the public broadcaster, which could be achieved through public hearings and public consultations on candidates.

Complaints and appeals

21. To ensure that voters and electoral contestants have a true opportunity for legal remedy during elections, the law could clearly specify the time permitted for review of complaints and appeals.

22. Consideration should be given to amending the legislation to provide for clear jurisdiction over non-criminal campaign violations and elaborate possible sanctions.

Of national minorities

23. Legislation should be amended to ensure fair competition without unduly favoring the organizations represented on the Council of National Minorities or in the parliament.

24. A large-scale civic education programme targeting selected minority communities and aimed at increasing the understanding of electoral processes could be developed and

conducted in close co-operation with relevant civil society organizations, including those representing Roma.

Citizen and international observers

25. In line with previous OSCE/ODIHR recommendation and with a view to further increase transparency, the Election Law should be amended to allow for observation by representatives of political parties and independent candidates.

Election day

26. To ensure a clear division of roles and prevent the presence of unauthorized persons, BESV members could be clearly identified with badges and only BESV members, accredited observers, candidates, and the media be allowed to remain in the polling station.

27. Further voter education campaigns could be organized to inform visually and physically impaired voters of the rights to be assisted.

28. Legislation should explicitly provide for observer access to the tabulation at all levels.

29. To ease the accessibility of the complaints process the election administration could consider the adoption of a standard complaint form that voters and observers could use to file a complaint with bureaus at all levels.

30. While de jure falling under the jurisdiction of the Court of Appeals, procedures for appealing CEB decisions regarding election results could be elaborated in the Election Law.

The Permanent Electoral Authority issued in early 2011 a draft electoral code was public debated and submitted to Parliament for review and appropriation by Parliament.

This project was revived public debate last year to qualify for the favorable moment created parliamentary elections on 9 December, and outlined the political will to support the idea of reforming the electoral law.

The Project Law on the Election Code drafted by the Permanent Electoral Authority aims to:

- Standardization of disparate legal solutions in the current legislation and regulation for the first time legal situations reported by electoral practice,
- Bridging rules, concepts and legal institutions specific to different types of elections;
- Simplify administration action (coherence and predictability of procedures);
- Ensure the indirect election procedures and election administration predictability act;
- Implement procedures to prevent electoral fraud.

Simplification and systematization of electoral legislation should lead to regulation consistent, clear to be understood by all citizens.

The adoption of an Electoral Code will facilitate the use of uniform terminology for the same legal realities, institutions, principles and legal concepts thus reducing the risk of interpreting them differently. Also, a Code set will enhance public confidence in the continuity and sustainability of electoral regulations.

The Project of Electoral Code drafted by the Permanent Electoral Authority comprises 14 chapters and 56 appendices which are:

Chapter I - General Provisions which are defined in specific terms the principles underlying legislative proposal (principles: universality, freedom, equality, fairness, regularity, pluralism and stability of electoral law).

Chapter II - Voter registration establishes the components of the electoral register, access the register, registration and deregistration including voters in the electoral register of voters, responsibilities of public authorities in updating the electoral register and the procedure for drawing up lists.

It also proposes giving special lists and additional ones that were registered voters on election day were in another place than the home or were abroad.

Chapter III - Administrative division regulating electoral constituencies electoral, college districts, polling places and register.

Chapter IV - Election administration comprising the Permanent Electoral Authority (organization, purpose, functions and duties) and a section on electoral.

This chapter contains regulations for the electoral body to which I refer in the following pages. Establishment of electoral body meets the need to ensure stability in the functions of presidents electoral precinct and their deputies, and the need to define the target group of the training organized by the Permanent Electoral Authority and professional assessment made by it.

Chapter V contains provisions on *electoral logistics* electoral offices, polling station, the ballot boxes, voting booths, stamps, election ballots, voter information system, material flow and financing ballot election process. A new element is the permanent Understanding precincts and certified by the Permanent Electoral Authority and establishing the technical characteristics of the ballot boxes and voting booths. To finance the election process is general elections Fund available to the Government.

Chapter VI - Applications governing formal and substantive conditions to be met by the Romanian citizens and citizens of other European Union member states to submit its candidature for election.

Chapter VII - The electoral campaign and referendum campaign includes provisions for the campaign, Athens time distribution, audiovisual media campaign by referring to the types of programs containing polls electoral, electoral campaigning, campaign through print media .

Chapter VIII - Voting governing the preparation, conduct and suspension of voting, special voting procedures and voting closes. A new computer system is to implement monitoring turnout and prevent illegal voting.

Chapter IX - Observation of elections and referendum contains regulations on the procedure for accreditation of NGOs observers and media representatives.

Chapter X - Establishing outcome voting record contains provisions on the election results, vote tabulation, distribution and assignment of deputy and senator seats, allocation of office (President of Romania, MEP, local elected), validating the results of the referendum.

Chapter XI - Partial Elections

Chapter XII - Election Disputes shall detail the types of complaints and appeals that are within the competence of the precinct electoral, electoral village, town, city, district and the Central Electoral Commission.

Is regulated is canceled voting at a polling station, polling administrative jurisdiction of courts, courts of appeal, the High Court of the Cassation and Justice and Electoral Contentious Constitutional Court.

Chapter XIII - Offences and penalties established facts which are misdemeanors, penalties and people can find and punish offenses in electoral matters.

Chapter XIV contains final and transitional provisions.

Regulations for the electoral body are provided in Chapter IV entitled election administration. Establishment of electoral body meets the need to ensure stability in the functions of presidents electoral precinct and their deputies, and the need to define the target group of the training organized by the Permanent Electoral Authority and professional assessment made by it.

In the final report of the team of electoral experts OSCE / ODIHR recommended, among others, "*a network of trained election personnel from which to select personnel at each election.*" Even if completed trainings attended by representatives of AEP shortly before election day, the team OSCE / ODIHR met critical opinions about the poor quality of training and lack of practical exercises leading to errors during the voting and count.

According to art. 47 of the draft Electoral Code provided as follows:

The electoral body includes persons who may become presidents of the electoral precinct and their deputies. Enrollment in the electoral body is made based on written request by the Permanent Electoral Authority with the attached supporting documents relating to the conditions provided by law. The demand is determined by AEP.

The procedure for registration in the electoral body, their evaluation and exclusion criteria are established in a judgment by the Permanent Electoral Authority. At the request of EPA, public responsibilities in the electoral authorities are obliged to provide free space for training and evaluation of electoral officials. Withdrawal from the electoral body is made based on a written request no later than 5 days after the start of the campaign period. If an election official cannot act as a Deputy President or electoral office of a polling station during elections shall make a written request from the Permanent Electoral Authority suspended their body election officials during later than 5 days after the start of the election period. Evidence of election officials to make towns and cities and the common including villages.

Electoral district and electoral district and the PEA foreign communicate decisions ordering replacement Presidents electoral precinct and their deputies within 48 hours of approval.

In conclusion, the proposals are:

- Integration into a single election law;
- The financing of the electoral process;
- Delimiting electoral propaganda carried out before the final candidates and one after;
- Clear rules for election on public display;
- Information system monitoring turnout;
- Special voting procedures for the blind.

REFERENCES

Office for Democratic Institutions and Human Rights (OSCE/ODHIR) - Final Report about Parliamentary Elections 9 December 2012

Decision no. 2 of 19 March 2007 the approval of the organization and functioning of the Permanent Electoral Authority,

Project of Electoral Code elaborated by Permanent Electoral Authority