

**CRIMINAL LIABILITY OF THE CHAIRMAN OF  
THE ELECTORAL OFFICE OF THE VOTE SECTION**

**Alexandra IANCU\***

**ABSTRACT:** *Unlike the previous legislation on electoral contraventions, legislation that was not consolidated in one piece of legislation, but was, on the contrary, spread in several special laws (Law No. 67/2004, Law No. 33/2007, Law no. 3/2000, Law 35/2008 and Law 370/2004) from February 1, 2014, the electoral offenses are included only in the New Penal Code (NCP), in Title IX, art. 385, art. 392. The regrouping of electoral offenses into a distinct title of the New Criminal Code is based on several reasons, namely:*

- *ensuring greater stability of these texts and eliminating existing regulatory parallelism in previous legislation;*
- *eliminating uncorrelations or differences in regulation from different special laws,*
- *a better systematization of criminalization in this matter, having regard to their legal object,*
- *a more correct legal personalization.*

*Therefore, according to the New Penal Code, the electoral contraventions are the following:*

- *preventing the exercise of electoral rights (Article 385);*
- *corruption of voters (article 386);*
- *voting fraud (Article 387);*
- *electronic voting fraud (Article 388);*
- *violation of voting confidentiality (article 389);*
- *non-observance of the ballot box regime (Article 390);*
- *forgery of electoral documents and records (Article 391);*
- *acts committed in connection with a referendum (Article 392).*

**KEYWORDS:** *elections; contraventions; prevention of the exercise of electoral rights; fraud to vote; violation of the confidentiality of voting; falsification of electoral documents and records; Body of electoral experts; chairman of the polling station electoral bureau.*

**JEL CODE:** *K 16*

According to the provisions of art. 15 par. (2) of the 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, the chairman of the electoral commission of the polling station and his deputy shall be appointed by the Permanent Electoral Authority in

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\* Assistant Ph.D, National University of Political Studies and Public Administration, Faculty of Public Administration; Parliamentary advisor, Permanent Electoral Authority, ROMANIA.

a public meeting announced 48 hours before, by computerized lottery, organized at county or Bucharest level, 15 days before the date of the elections, on the positions of the persons registered in the Body of the electoral experts with domicile or residence in the respective county, based on the criterion of approaching the domicile or residence at the headquarters of the department voting, as well as the criterion of graduate studies. Priority is given to the graduates of the undergraduate studies in the field of juridical sciences and then to the undergraduate graduates and to art. 16 paragraph (2) of the same law in the situation where the number of graduates of a university degree in the field of legal sciences or other fields in a locality is insufficient, persons who have graduated at least the general education required.

According to the provisions of art. 16 paragraph (3) of the 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, admission to the body of the electoral experts is based on the favorable opinion given by the Permanent Electoral Authority for the previous activity as chairman of the polling station electoral bureau; as well as on the basis of an examination.

The specific activities of the procedure are carried out according to the legal provisions in force.

The principles applicable to the procedure are: legality (observance of the legal conditions, namely: Romanian citizenship, Romanian speaking and speaking language, having the right to vote and a health condition corresponding to the fulfillment of the position, not to be part of a political party) , transparency (assessment by examination or lawsuit file), efficiency (obtaining maximum results with minimal resources).

The polling station electoral bureaus are made up of a president, a deputy and members (representatives of political parties, political alliances, electoral alliances, and citizens' organizations belonging to national minorities participating in the elections). They can not work with less than 5 members.

The election of the president of the polling station electoral bureau and of its deputy shall be made by the Permanent Electoral Authority, 15 days before the date of the elections, on the positions of the persons registered with the Body of the electoral experts.

In carrying out their duties, the members of the electoral bureaus exercise a function involving the exercise of the state authority. The correct and impartial exercise of the office of a member of the electoral bureau is mandatory. Members of the electoral bureaus are also understood as their chairmen and deputies.

The violation by the members of the electoral bureaus of the obligation to participate in the activity of these offices is a contravention and is sanctioned by a fine from 1,500 lei to 4,500 lei.

During the election, the chairman of the polling station electoral bureau shall present at the polling station headquarters at 18.00 with the other members of the polling station electoral bureau and the computer operator.

The chairperson of the polling station electoral bureau receives from the mayor the materials necessary for the voting on the basis of the delivery-reception border and ensures, together with the deputy of the electoral bureau and with the logistic support of the mayor, the transport of the materials necessary for voting in the voting space under the supervision of the staff of the structures of the Ministry of Business Interior.

The chairperson shall identify the other members of the polling station electoral bureau by comparing the identification data entered in the constitution minutes and the minutes of filling in the polling station electoral bureau with the identification data in their identity papers.

Check with the other members of the polling station electoral bureau the materials necessary for the vote, check the identification data included in the decision of the Permanent Electoral Authority that has designated the computer operator and the entries in his / her identity card, check with the operator the computer, the operation of the tablet, the communications and the computer application, ensures that the polling station's premises have a sufficient number of voting and voting booths, as well as a special ballot box. Cabins and urns must be placed only in the voting room. The chairperson of the polling station electoral bureau has the necessary measures to ensure the order and the correctness of the voting operations and, where appropriate, requests the removal of any type of electoral propaganda material from and from the polling station's premises and also fixes the guard posts around the voting space. Upon departure, he / she seals all entry paths to the voting area with paper tapes, signing them and applying the stamp to them. It is forbidden to leave the voting hall with the control stamp, stamps marked "VOTAT", ballot papers or electoral lists.

On the election day, between 06.00 and 07.00, the chairperson of the polling station electoral bureau checks together with the computer operator the operation of the tablet, communications and computer application. It also ensures that the control stamp is applied to the last page of each ballot, as ballot papers are opened.

During polling and opening of the polls, complaints and appeals may be made regarding these operations. These are settled on the spot by the chairman of the polling station electoral bureau. Appeals shall be submitted to the chairperson of the polling station electoral bureau. They are written in two copies, one of which, signed and stamped by the president, remains with the contestant.

The chairperson of the polling station electoral bureau immediately decides on the appeals whose settlement is not delayed. At the conclusion of the minutes, the chairperson of the polling station electoral bureau: ensures the electronic verification of the data to be recorded in the minutes by the electoral office of the polling station, according to the procedure established by the Central Electoral Bureau.

The electronic verification of the data to be recorded in the minutes is done with the support of the computer operator of the electoral bureau of the polling station by enrolling them in the special software for this purpose installed on the computer terminal (tablet) provided by the The Special Telecommunications Service, according to the Decision of Permanent Electoral Authority no. 9/2015, as amended and supplemented.

The above-mentioned software application will ensure that the legal correlations between the data to be recorded in the records (legal control keys) are verified and will report any errors or inconsistencies to be corrected / corrected to ensure that the minutes are completed, law.

Verifies that the names of political parties, political alliances, electoral alliances and citizens' organizations belonging to national minorities participating in elections, as well as the names and names of independent candidates included in the personalized minutes of the minutes correspond to those in the ballot papers used in the section voting.

Ensures correct inclusion in the minutes of valid votes cast for each political party, political alliance, electoral alliance, national minority nationality and independent candidate according to the results of the vote count.

Upon completion of the above actions and the signing by the members of the polling station of the polling station of the minutes completed in the polling station, it shall ensure the electronic transmission of the data recorded in the minutes drawn up to the Central Electoral Bureau. This operation is carried out with the support of the computer operator of the polling station electoral bureau through the application made available by the Special Telecommunications Service which ensures the transfer of the data entered in the minutes to the central electoral bureau data collection server Central, so that interim results of the elections can be made available to the public. Minutes shall be signed by the Chairperson, by his / her deputy, as well as by the members of the polling station electoral bureau and having its stamp of control.

The minutes are signed by the members of the polling station on each page, observing the imperative condition to sign only to the left of the pages of these minutes, so that the figures contained in the minutes are not in any way affected . The lack of signatures of some members of the polling station electoral bureau does not affect the validity of the minutes, but the reasons that prevented signing must be mentioned.

Criminal liability is the "criminal legal relationship of corruption, born as a result of the commission of the offense, between the state on the one hand and the offender, on the other hand, a complex report whose contents form the law of the state as a representative of society, to punish the offender, to apply the sanction prescribed for the offense committed and to compel him to execute it, as well as the obligation of the offender to answer for his deed and to obey the sanction applied in order to restore the rule of law and restore the authority of the law . "

## 1. CONTRAVENTIONS AND INFRACTIONS

Contraventions shall be considered, if they are not committed in such conditions as to constitute criminal offenses under the criminal law, the following facts:

Contravention	Sanction	Who detect it and applies the sanction
Destruction, deterioration, dirtying, covering by writing or in any way of electoral lists, display platforms or any other posters or printed electoral propaganda advertisements	from 1.500 lei to 4.500 lei	officers and police agencies within the Romanian Police and officers and non-commissioned officers of the Romanian Gendarmerie.
Failure to observe the decisions and decisions of the offices and electoral offices; non-compliance with the decisions, decisions and instructions of the Permanent Electoral Authority	from 4,500 lei to 10,000 lei	- officers and police officers within the Romanian Police and officers and non-commissioned officers of the Romanian Gendarmerie where the act is committed by natural persons or by legal persons of private law, - the hierarchically superior electoral bureau for the acts committed by the electoral bureaus - the delegates of the Permanent Electoral Authority Chairman if the act is committed by political parties, political

		alliances, citizens' organizations belonging to national minorities, central or local public administration authorities.
Refusal to grant access to the polling station of candidates, accredited persons, members of the offices and electoral offices and representatives of the Permanent Electoral Authority to assist in the conduct of electoral operations.	from 1.500 lei to 4.500 lei	- officers and police agencies within the Romanian Police and officers and non-commissioned officers of the Romanian Gendarmerie.
Refusal to receive and record a complaint, complaint, appeal or written complaint submitted in accordance with the provisions of Law no. 208/2015, as amended and supplemented.	from 1.500 lei to 4.500 lei	- the hierarchically superior electoral bureau for the acts committed by the electoral bureaus.
Handing of the ballot to a voter who does not present the identity document or refuses to sign on the electoral roll in which he is registered for the receipt of the ballot and the voting stamp.	from 4,500 lei to 10,000 lei	- officers and police agencies within the Romanian Police and officers and non-commissioned officers of the Romanian Gendarmerie
The non-affixing of the stamp with the mention "VOTAT" or sticker stamp, as well as the retention of the identity document without good reasons by the members of the polling station electoral bureau.	from 1.500 lei to 4.500 lei	- officers and police agencies from the Romanian Police and the officers and non-commissioned officers of the Romanian Gendarmerie.
Drafting the minutes in violation of the legal provisions.	from 1.500 lei to 4.500 lei	-the hierarchically superior electoral bureau for the acts committed by the electoral bureaus.
Violation of the provisions of art. 16; the continuation of the electoral propaganda after its conclusion and the counseling of voters at the polling station to vote or not to vote for a particular political party, a political alliance, an electoral alliance, an organization of citizens belonging to a national minority or a independent candidate.	from 4,500 lei to 10,000 lei	-officers and police agencies within the Romanian Police and officers and non-commissioned officers of the Romanian Gendarmerie.
Wearing, during voting, by members of polling station electoral bureaus or by persons accredited with badges, badges or other signs of electoral propaganda.	from 1.500 lei to 4.500 lei	- officers and police officers within the Romanian Police and officers and non-commissioned officers within the Romanian Gendarmerie.

The refusal of the president of the electoral bureau or his deputy to issue a certified copy of the minutes to the persons entitled under the legal provisions.	from 1.500 lei to 4.500 lei	- the hierarchically superior electoral bureau for the acts committed by the electoral bureaus.
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The following acts are the electoral offenses:

*Preventing the exercise of electoral rights*

According to art. 385 par. 1 of the New Criminal Code, constitutes the offense of preventing the exercise of electoral rights to prevent, by any means, the free exercise of the right to elect or to be elected. The offense is punishable by imprisonment from six months to three years.

Also, the attack by any means on the polling station shall be punished by imprisonment from two to seven years and the prohibition of the exercise of certain rights (Article 385 paragraph 2 of the New Penal Code).

Attempts to the offense provided in art. 385 of the New Penal Code is punished.

In accordance with Art. 386 par. 1 of the New Criminal Code, constitutes the offense of corruption of voters offering or giving money, goods or other benefits in order to determine the voter to vote or not to vote a certain list of candidates or a certain candidate. The offense is punishable by imprisonment from six months to three years and a ban on the exercise of certain rights.

We note that it does not fall under the category of goods provided in art. 386 par. 1 of the New Penal Code the goods of symbolic value, inscribed with the symbols of a political formation.

*Fraud to vote*

According to art. 387 par. 1 of the New Penal Code, the offense of voting fraud is the act of the person who votes:

- a) without having this right;
- b) two or more times;
- c) Several ballots are put in the ballot box than a voter is entitled to.

The offense provided by art. 387 par. 1 of the New Penal Code shall be punished by imprisonment from six months to three years or by a fine and a ban on the exercise of certain rights.

With the same punishment, the use of a void or a null or false identity card or a fake ballot (Article 387 paragraph 2 of the PCN) is sanctioned.

Attempts to the offense provided in art. 387 of the New Penal Code is punished.

*Fraud of electronic voting*

According to art. 388 of the New Criminal Code, constitutes the crime of electronic voting fraud and the use of false access data, the fraudulent access of the electronic voting system or the falsification by electronic means of any ballot papers. The offense is punishable by imprisonment from one to five years.

Attempts to the offense provided in art. 388 of the New Penal Code is punished.

*Violation of voting confidentiality*

The offense of violation of the confidentiality of the vote is the violation by any means of the secret of voting (Article 389 paragraph 1 of the New Penal Code). The offense is punishable by a fine.

If the act was committed by a member of the polling station electoral bureau, the punishment shall be imprisonment from six months to three years or a fine and a ban on the exercise of certain rights.

Attempts to the offense provided in art. 389 of the New Penal Code is punished.

*Failure to observe the ballot box regime*

According to art. 390 par. 1 of the New Penal Code, it is the offense of non-observance of the ballot box regime opening of the ballot boxes before the time fixed for closing the ballot. The offense is punishable by imprisonment from one to three years or by a fine and a ban on the exercise of certain rights.

It is also the offense of non-observance of the ballot box regime to entrust the special ballot to persons other than the members of the polling station electoral bureau or to transport it by other persons or under conditions other than those provided by law (Article 390, paragraph 2 of the CPC ). The offense is punishable by imprisonment from three months to two years or by a fine and a ban on the exercise of certain rights.

Attempts to the offense provided in art. 390 of the New Penal Code is punished.

*Falsification of documents and electoral records*

In accordance with Art. 391 par. 1 of the New Criminal Code, the falsification of documents and electoral records constitutes the falsification by any means of the documents from the electoral bureaus. The offense is punishable by imprisonment from one to five years and the prohibition of the exercise of certain rights.

With the same punishment, the persons who do not appear on this list (Article 391, paragraph 2 of the New Penal Code) are penalized with a copy of the permanent electoral list or the supplementary electoral list.

It also constitutes the offense of falsifying electoral documents and records, putting into use or using a computer program with vices that alter the recording or summing up of the results obtained in the polling stations or determines the distribution of the mandates outside the provisions of the law (Article 391 paragraph 3 of The New Penal Code). The offense is punishable by imprisonment from two to seven years and a ban on the exercise of certain rights.

The same punishment penalizes the introduction of data, information or procedures that alter the national information system to determine the results of elections (Article 391 paragraph 4 of the New Penal Code).

Attempts to the offense provided in art. 391 of the New Penal Code is punished.

*Deeds committed in connection with a referendum*

Regarding the acts committed in connection with a referendum we note that the provisions of art. 385-391 of the New Criminal Code also applies in the case of acts committed during a referendum, according to art. 392 of the New Penal Code.

The roll-out monitoring system implemented in all polling stations in the country has enabled the development of relevant national statistics and the reduction of the risk of voting fraud. The introduction of these devices solves to a great extent the issue of illegal voting - the system detecting any attempt of multiple voting by scanning voters' identity documents - by alerting the members of the polling station in real time, but also by reporting to the MAI at the same time, to start investigations. The same device also contributes to the transparency of the counting process by supervising it with the help of the video camera that for the first time in the electoral history of Romania recorded the entire countdown. Practically increasing methods of identifying electoral fraud and

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overseeing processes subject to human error - at minimal cost through the use of a single device - are welcome initiatives that have proven their worth.

We believe that SIMPV has proved effective in local and parliamentary elections. However, the system can be extended as functionality, in the sense that the reports can be transmitted through the tablet, in order to streamline the way of centralizing the results.

### **REFERENCES**

Law no.286 / 2009 on the New Criminal Code updated in 2015, published in the Official Gazette no. 510 of July 24, 2009,

Law no. 208/2015 of 20 July 2015 on the election of the Senate and the Chamber of Deputies and on the organization and functioning of the Permanent Electoral Authority AEP Decision no. 9/2015 for the approval of the Methodological Norms on the functioning of the Information System for Monitoring of the Voting and Prevention of Illegal Vote, the Selection and Designation of the Computer Operators of the Electoral Bureau Election Bureaus.

