

## CONSIDERATIONS ON THE ELECTORAL CODE OF PRACTICE IN ROMANIA

**Marian ENACHE, PhD**

Judge, Constitutional Court (ROMANIA)

**Cristina TITIRIȘCĂ, PhD**

Counsellor, Constitutional Court (ROMANIA)

*cristina\_titirisca\_r@yahoo.com*

### **Abstract**

*The Romanian people exercise their national sovereignty through its representative bodies, constituted through free, regular and truthful elections, as well as by referendum. The specific framework in which the people exercise their sovereign right to mandate their representatives within the state is a technical one, namely the electoral system, the party system and the voting system. These elements fall under the scope of constitutional provisions and legal regulations, which regulate the obligations of the state bodies regarding the rules of organization and conduct of the elections, as well as those of establishing, centralizing and communicating the results of voting. Therefore, the relationship between parties, voters and electoral systems explains the natural functioning of democracy and the rule of law.*

**Keywords:** *code of practice, electoral system, parliamentary elections, presidential elections, local elections*

### **1. PARLIAMENTARY ELECTIONS. THE PARLIAMENT OF ROMANIA AND THE EUROPEAN PARLIAMENT**

Closely related to the electoral rights is the electoral system, which refers to the distribution of mandates obtained by each political party or candidate after the citizens' vote and which "is an essential tool for elections and for a democratic and representative government" [1]. In principle, the electoral system must offer equal opportunities for all citizens to influence both the policy and the practices of the Government.

Immediately after the 1989 Revolution, when adopting Decree-Law no.92/1990 [2], also known as the Election Law, resulted "the historical context that allowed the Romanian nation to express its will in relation to its own beliefs" [3]. This is an essential act of the Provisional Council of National Union [4], which regulated the main authorities

of the political regime - the bicameral Parliament, composed of the Assembly of Deputies and the Senate, the President of Romania, elected by universal, equal, direct and secret ballot, and the Government, of parliamentary origin, as well as the electoral system, based on the principle of proportionate representation. In fact, Decree-Law no.92/1990 was a "mini-constitution", a normative act of a constitutional character that anticipated some of the principles of the organization of the state established by the 1991 Constitution, such as the bicameral structure of Parliament and the principle of separation of the legislative, executive and judicial powers [5].

After the 1989 Revolution, members of the Constituent Assembly voted the 1991 Constitution according to an electoral system of proportionate representation, based on a list vote [6]. The same voting system was preserved for the 1992, 1996 and 2000 parliamentary elections, organized according to Law no.68/1992 on the election of the Chamber of Deputies and of the Senate, as subsequently amended and supplemented [7], as well as for those of 2004, organized according to the Law no.373/2004 on the election of the Chamber of Deputies and of the Senate, as amended and supplemented [8]. Thus, these regulations provided that deputies and senators were elected in electoral constituencies, based on lists of candidates and independent candidates, according to the principle of proportionate representation, and that the norm for the election of the Chamber of Deputies was a deputy to 70,000 inhabitants, and the one for the election of the Senate is a senator to 160,000 inhabitants.

The reasoning of the system of voting on lists can be found in the fact that the first elections after the Revolution had to be characterized by simplicity, because, on the one hand, the voters at that time were "less trained in democratic instruments"[9], and on the other hand, it was desired to reach the widest possible representation of the historical or newly created political forces in the legislative [10]. Otherwise, as Romanian doctrinaires have judiciously stated [11], if the uninominal vote had been held, the Council of the National Salvation Front would have been represented by an overwhelming majority, given that other political forces had not acknowledged themselves on the political scene.

In the meantime, however, this system of voting revealed some shortcomings, among which we can mention: the drawing up of electoral lists by the parties, which, thus, hold the key to the elections, the weak link or even the breaking of the connection between

the elector and the elected, the lack of accountability of the parliamentarians before the citizens, the burden of forming a government majority and the need to create alliances or coalitions, given the fact that we were dealing with a fractured Parliament, favouring political conflicts, creating a political basis for the emergence of extremist political parties [12]. Thus, more and more voices demanded the change of the electoral system, which led to the adoption of Law no.35/2008 on the election of the Chamber of Deputies and the Senate and on amending and completing the Law no.67/2004 on the election of the authorities of the local public administration, the Local Public Administration Law no.215/2001 and the Law no.393/2004 on the statute of local elected representatives, as subsequently amended and supplemented [13], on the basis of which the parliamentary elections of 2008 and 2012 were organized. This normative act provided for the election of deputies and senators in uninominal colleges, while maintaining the norm of a deputy to 70,000 inhabitants, respectively a senator to 160,000 inhabitants.

In fact, a majority uninominal vote was not reached, but a hybrid electoral system was created, with several elements that generated negative aspects in the organization and conduct of the elections, the determination of their results and the reflection of voters' will in the final electoral result. Thus, according to the law, depending on the norm of representation, electoral constituencies are divided into uninominal colleges. Only whole uninominal colleges can be constituted in an electoral constituency, while the territory of an uninominal college must be on the territory of the one and the same county or of the Bucharest Municipality, a provision that was likely to create unequal uninominal colleagues, ultimately affecting the principle of population representation and equal suffrage.

In order to organize the elections, Law no.35/2008, as subsequently amended and supplemented, establishes the organization at central level of a Permanent Electoral Authority and, during the organization of elections, of a Central Electoral Bureau, of district electoral bureaus at the county level, respectively at the Bucharest Municipality, of the electoral sector offices in the case of the Bucharest Municipality and of a constituency electoral bureau for Romanian citizens residing outside the country, as well as of electoral bureaus of the polling stations. These electoral bodies include jurists and

representatives of political parties, of political alliances and of electoral alliances, as well as of the organizations of citizens belonging to national minorities.

Another novelty introduced by Law no.35/2008, as subsequently amended and supplemented, shall be the Electoral Register. This is a centralized database in which are enrolled all Romanian citizens, including those with their domicile or residence abroad, who are 18 years of age and have the right to vote. Citizens enrolled in this register are then included in the electoral lists that may be permanent or supplementary.

Another important explanation of Law no.35/2008, as subsequently amended and supplemented, is the reference to the voters' cards. To exercise the right to vote, voters must have the identity card and the voter card on them. Although even since the Decree - Law no.92/1990 [14] it was made a reference to the issue of voter cards, the use of these documents was not made at any electoral ballot up to Law no.35/2008, as subsequently amended and supplemented, although these voter cards were developed and distributed to the population. Voter cards serve as a guarantee of the vote as exercised by the voters only once, thus avoiding the multiple voting.

In uninominal colleges, each electoral competitor may have only one application. These proposals are submitted to the district electoral bureaus, and if the nomination is made by the organizations of citizens belonging to national minorities, it is submitted to the Central Electoral Bureau. Candidates may also take part in the elections as independent, if they are supported by at least 4% of the total number of voters in the permanent electoral lists of the uninominal college where candidates, but no less than 2,000 voters for the Chamber of Deputies and 4,000 voters for the Senate.

Regarding the establishing of the election results, according to the Law no.35/2008, with subsequent amendments and completions, the minutes concluded at the level of the polling stations shall be transmitted to the district electoral bureaus, which, after centralizing the results of the voting, shall send them to the Central Electoral Bureau, with military security, within 48 hours, in the in view of establishing the electoral threshold. Based on the threshold of 5-8% required by law, one establishes if the political parties, political alliances, electoral alliances and organizations of citizens belonging to national minorities meet or not the electoral threshold.

Electoral competitors who have exceeded the electoral threshold participate in the distribution of parliamentary mandates. This division is done in two stages: one is carried out at the level of the constituency and the other at the central level. At the level of the electoral constituency, the first operation that is being carried out concerns the establishment of the electoral coefficient of that constituency. It is calculated by dividing the number of valid votes cast by the number of deputies and senators to be elected in that constituency. Then, for each electoral competitor, the total number of valid votes cast is divided on the electoral coefficient. Based on this result it is determined the number of seats allocated by the electoral constituency to the electoral competitor in the constituency, at this stage of allocating of the seats. The second stage, the distribution of mandates, takes place at the central level and considers the unused votes or the ones lower than the electoral coefficient, obtained by the electoral competitors.

It follows a summation of these votes by the Central Electoral Bureau throughout the country. Summarizing is done separately for the Chamber of Deputies and for the Senate. The number of votes thus obtained by each political party, political alliance and electoral alliance is divided by 1, 2, 3, 4, etc., making as many divisions operations as the seats that have not been distributed to the constituencies. The results, calculated with eight decimals, are placed in descending order up to the number of not allocated seats; the lowest number is the national electoral coefficient for deputies or senators. This electoral coefficient refers to the total number of valid votes cast for the respective political party, political alliance or electoral alliance. The reporting is made on the total number of unused votes and of votes lower than the electoral coefficient of the constituency.

The second phase of the distribution of mandates of deputies and senators is improper for the majority electoral systems. It is a true copy of the previous electoral system, which was based on proportionate representation. Such a system allowed the use of the unused votes cast at national level and, based on the d'Hondt system, a reassignment of mandates to electoral competitors. This is the main reason why the electoral system instituted by Law no.35/2008, with its subsequent amendments and completions, does not follow the rules of a proper uninominal vote, being a pseudo-uninominal election that results in outcomes that are not reflected in the electoral reality. This explains why, in the elections organized according to the mentioned normative act,

the winners in the competition were declared candidates who have obtained fewer votes than those who have basically won the electoral battle in electoral colleges, and the number of parliamentarians has increased considerably [15].

However, in its case-law [16], the Constitutional Court stated that “in its activity (...) it solved several cases regarding the constitutionality of some provisions of Law no.35/2008 on the election of the Chamber of Deputies and of the Senate, finding that the current regulation of the Romanian electoral system presents a series of imperfections and, as such, it needs to be reconsidered from the perspective of the parliamentary elections (...), ensuring, in all aspects, the organizing and the holding of democratic elections in Romania. In this regard, the Court considers it necessary, first, to start from the economic, political and social realities of the country, the role of the political parties in the electoral process, the need for rationalization of the Parliament and, finally, to be regulated a type of ballot corresponding to the drawn conclusions and having a correspondent in the types of ballot that are found in most European states.

Law no. 35/2008, as subsequently amended and supplemented, regulates an electoral mechanism that has nothing to do with the content elements of the uninominal majority type of voting, organized in one tour and practiced in other states. It should be noted that no electoral system regulating a single uninominal majority voting with a single ballot provides for an electoral threshold, while Law no.35/2008 provides for two types of alternate electoral thresholds.

The results of the parliamentary elections of November 2008 showed that the mechanism used for the assignment of the mandates resulted in consequences that did not correspond to those specific to a type of uninominal majority vote, consequences determined by the mathematical calculations regulated by the rules of the electoral procedure of the uninominal vote provided by Law no.35/2008. This is how the nomination of some MPs has been made based on calculations, without such a designation resulting from the elections, after the political options were voted. In the context of concerns about the revision of the electoral law, greater attention should be paid to the possibility of the Romanian citizens with voting rights residing abroad, and not only of them, to exercise their right to vote in a special procedure, including the electronic vote, which will take

place in correlation with the official hours of Romania between which the voting process is conducted” [ 17].

This mixed voting system (in which people are voted, but the proportionality of the representation of political parties in the legislature is preserved) has also been preserved for the parliamentary elections in 2012, when the total number of MPs has seen a spectacular growth, from 471 in 2008 to 588 in 2012, due to the fact that one of the alliances (The Social Liberal Union) has obtained an electoral score of more than 50% of the votes cast [18].

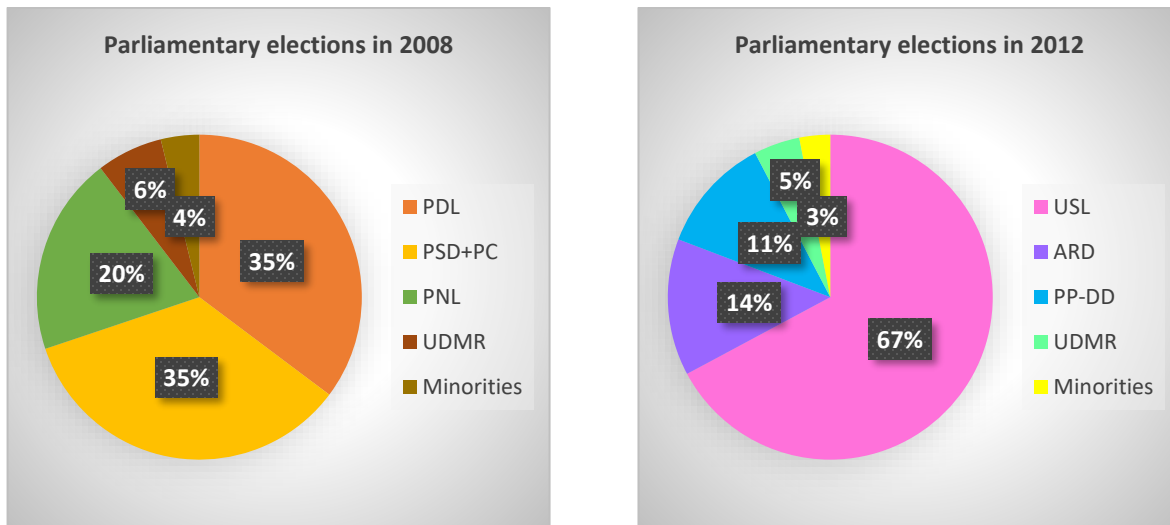
Thus, in 2008, 334 seats were assigned to the Chamber of Deputies [Liberal Democratic Party - 115, Political Alliance Social Democratic Party and Conservative Party - 114, National Liberal Party - 65, Hungarian Democratic Union of Romania - 22, and 18 mandates were assigned under article 62 paragraph (2) of the Constitution] and 137 seats to the Senate [Liberal Democratic Party - 51, Political Alliance Social Democratic Party and Conservative Party - 49, National Liberal Party - 28, Hungarian Democratic Union of Romania - 9].

In contrast, in 2012, 412 mandates were assigned to the Chamber of Deputies [Social Liberal Union - 273, Right Romania Alliance - 56, People's Party - Dan Diaconescu - 47, Hungarian Democratic Union of Romania - 18 and 18 seats were assigned under article 62 paragraph (2) of the Constitution] and 176 mandates to the Senate [Social Liberal Union - 122, Romania Right Alliance - 24, People's Party - Dan Diaconescu - 21, Hungarian Democratic Union of Romania - 9]. As such, the Social Liberal Union had 66.26% of the votes in the Chamber of Deputies and 69.31% of the votes in the Senate.

Given all of the above, as well as the popular pressure that criticised that the result of the 2009 referendum on the reduction of the number of MPs has not been taken into account, Law no.208/2015 on the election of the Senate and of the Chamber of Deputies, as well as on the organization and functioning of the Permanent Electoral Authority [19], as subsequently amended and supplemented, was passed, on the basis of which the 2016 parliamentary elections were held, a law which returns the election system to the list ballot, according to the principle of proportionate representation and only to the organization of electoral constituencies, and not of the uninominal colleagues, but

increasing the representation norm. It is currently for a deputy to 73,000 inhabitants and a senator to 168,000 inhabitants.

The distribution of mandates in the legislative body is shown below:



At the same time, the provisions of art. 62 paragraph (2) of the Constitution, also taken up by the electoral law, according to which "organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law". Consequently, to the extent they are established as independent organizations, such organizations are assimilated to political parties and participate in the electoral process (e.g. the Hungarian Democratic Union of Romania); in this process, the organizations of citizens belonging to national minorities are entitled to submit applications and to participate in the election campaign on an equal basis with the other political forces which will be competing for parliamentary seats. If these organizations do not obtain a mandate in the Senate or the Chamber of Deputies, they enjoy a privilege, respectively to obtain a rightful place in the Chamber of Deputies, if they have obtained, throughout the country, a number of votes equal to at least 5% of the average number of votes validly expressed in the country for the election of a deputy [art. 56 paragraph (1) of the Law no. 208/2015].

With the accession of our country to the European Union, a different type of elections appeared, namely that concerning **the elections for the European Parliament**, regulated by Law no.33/2007 on the organization and conduct of the elections to the



European Parliament, republished [20], as subsequently amended. Immediately after Romania's accession to the European Union, representation of our country in the European Parliament took place without elections and based on a decision of the Parliament, who appointed the representatives of Romania among the deputies and senators [21]. The criterion used to designate them was the political configuration of the two Chambers. Subsequently, in 2007, the above-mentioned normative act was implemented, which was a premiere in the Romanian legal system, because, for the first time, the appointment of the members of Romania in the European Parliament was regulated by universal, equal, direct, secret and free ballot, expressed for a 5-year term [22].

Members of Romania in the European Parliament are elected on a list-based ballot, according to the principle of proportionate representation, and based on independent candidatures, and at the ballot boxes present themselves the European voters and the national voters. An European voter means any citizen of a Member State of the European Union, other than Romania, who has the right to vote in Romania for the European Parliament, having his/her domicile or residence in Romania, in accordance with the provisions of the law, and by national voter is understood any citizen of Romania, domiciled or residing in the country or abroad, who has the right to elect members from Romania to the European Parliament in accordance with the provisions of the same law. To elect members of Romania in the European Parliament, both the national voter and the European voter are entitled to a single vote. The eligible European citizen is any citizen of a Member State of the European Union who has the right to be elected to the European Parliament, domiciled or residing in Romania.

Romanian citizens who are 18 years of age, age reached at the reference date, have the right to elect members from Romania to the European Parliament. Persons who are not entitled to vote are offenders and alienated people placed under interdiction and persons who, on the day of reference, are convicted by a final court decision to the loss of their electoral rights. On the other hand, Romanian citizens who have the right to vote and have reached the age of 23, until the reference date, have the right to be elected to the European Parliament.

Another element of novelty introduced by this law is the term “election period”, which, in fact, replaces that of “electoral campaign” existing in other electoral laws. “Election Period” means the specific period that begins on the day of bringing the “reference day” to public knowledge and ends with the publication of the results of the election in the Official Gazette of Romania, Part I. The legislator keeps state, however, that within the “election period” is also the period between the public disclosure of the “reference day” and the start date of the electoral campaign. As such, the electoral campaign and electoral operations are part of this “election period”.

To participate in the elections for members of Romania in the European Parliament, political parties, political alliances and organizations of citizens belonging to national minorities can be associated with each other only at national level, on a protocol basis, as an electoral alliance. A political party, a political alliance or an organization of citizens belonging to national minorities can only be part of a single electoral alliance. The electoral alliance that has participated in the previous elections, regardless of their type, under a certain name, may only preserve it if it has not changed its initial composition. Also, that name may not be used by another alliance. The protocol for constitution of the electoral alliance shall be submitted to the Central Electoral Bureau within 48 hours from its establishment, which shall pronounce itself in public session on the admission or rejection of the protocol for the constitution of the electoral alliance, within 24 hours from its registration. The decision of the Central Election Bureau to admit the constitution of the electoral alliance may be challenged by any interested natural or legal person, before the High Court of Cassation and Justice, within 24 hours of its display. The decision of the Central Electoral Bureau to reject the protocol for constitution of the electoral alliance may be disputed by the signatories of the protocol before the High Court of Cassation and Justice, within 24 hours of its display.

Certain officials cannot be elected as members of Romania in the European Parliament, respectively Romanian citizens belonging to the following categories: Constitutional Court judges, People's Advocates, magistrates, active members of the army, police officers and other categories of civil servants, including those with special statutes, established by organic law. Also, the membership of the European Parliament is incompatible with the capacity of deputy or senator in the Romanian Parliament, of a

member of the Romanian Government or with equivalent functions in the Member States of the European Union. In the European electoral process, Law no.33/2007, republished, as subsequently amended, also introduces the National Integrity Agency, which is called upon to ascertain the cases of incompatibility provided by law, consequently communicated to the Permanent Electoral Authority within 15 days from its finding.

## **2. ELECTION OF THE PRESIDENT OF ROMANIA**

As regards the election of the President of Romania, ever since the Decree-Law no.92/1990, it was established the system of election of the President of Romania by direct vote, each voter having the right to pronounce himself/herself on the person who will hold the position of head of state. The system has also been preserved by the Law no.69/1992 on the election of the President of Romania, as subsequently amended and supplemented [23], and by the current regulation - Law no.370/2004 on the election of the President of Romania, republished [24], with subsequent amendments and completions.

In the presidential election, each voter is entitled to one vote in each ballot organized for the election of the President of Romania. According to art. 81 of the Constitution of Romania, republished, the President of Romania is elected by universal, equal, direct, secret and freely expressed vote. Elections for this position are held in one ballot or in two rounds. If a candidate obtains in the first round the absolute majority of the votes of the voters included in the electoral lists, he/she is declared elected. If no candidate has met this majority, a second ballot shall be held, attended by the first two candidates who have obtained the largest number of votes in the first ballot. This time shall be declared elected the candidate who obtained the highest number of votes.

It is important to note that, within the conditions of eligibility, the Constitution provides that a person who served as President of Romania for two terms cannot run for a third one. The Fundamental Law further specifies that the term of office of the President is 5 years and is exercised from the date of the oath. This term of office was established by the Constitution as revised in 2003. Until this date, the presidential term was 4 years, which made the presidential elections to coincide with the parliamentary ones.

Whithin the public opinion it has been established, however, the belief that a candidate for the Presidency who comes from a political party can influence the outcome of parliamentary elections, becoming a kind of “locomotive” of the respective party and giving it a strong popular electoral support. The Revision Assembly has endorsed this largely shared view, and, upon the revision of the Fundamental Law, it delayed the presidential and the parliamentary elections, establishing a term of five years for the President of Romania and one of four years for deputies and senators.

By creating a gap between parliamentary and presidential elections, the parliamentary majority may have a different political colour than the one which gave the presidential candidate. This way, a contradictory relationship between the President and the Parliament might appear, which may, ultimately, lead to the suspension of the President and possibly to a dismissal, following a referendum held at the national level. Also, the constitutional provisions allow the President of Romania to have a certain conduct on Parliament. Thus, the President has the right to present messages to the Parliament on the main political issues of the nation, to dissolve the Parliament and to consult the Parliament in order to organize a referendum on issues of national interest.

According to the law, the day of the presidential election is Sunday. Elections for the position of President of Romania take place in the month before the term of office of the President is reached. Elections are under the scrutiny of the Constitutional Court, which is mandated to resolve complaints about the registration or non-registration of applications, to supervise the deployment of electoral operations, to proclaim the results of the elections and, where appropriate, to nominate the first two candidates to take part in the second round of elections.

The Constitutional Court validates the result of each round, ensures the publication of the election results in the mass-media and in the Official Gazette of Romania, Part I for each ballot and validates the election result for the elected president. According to art.82 paragraph (2) of the Constitution, the candidate whose election has been validated submits before the Chamber of Deputies and the Senate, in a joint sitting, the following oath: “I solemnly swear that I will dedicate all my strength and the best of my ability for the spiritual and material welfare of the Romanian people, to abide by the Constitution and laws of the country, to defend democracy, the fundamental rights and freedoms of

my fellow-citizens, Romania's sovereignty, independence, unity and territorial integrity. So help me God!”.

For presidential elections to be held, polling stations, electoral bureaus, including the Central Electoral Bureau are set up. These electoral bureaus include lawyers or other people with a good reputation in the locality where they are set up. In presidential elections can participate, as candidates proposed by political parties or political alliances or as independent candidates, citizens who have the right to be elected, according to the law. Proposals for candidates must be signed by the leadership of the party or the political alliance or by their leaders or, as the case may be, by the independent candidate.

In the application, the name and surname, place and date of birth, civil status, domicile, studies, occupation and profession of the candidate, as well as the fact that he/she meets the requirements of the law to be able to apply, shall be specified. These proposals must also be accompanied by the declaration of acceptance of the candidature, written, signed and dated by the candidate, the declaration of assets, the declaration of interests, a declaration on the person's own responsibility, in the sense that he or she had or had not the quality of a security operative or collaborator, as well as the list supporters, whose number cannot be less than 200,000 voters.

The proposal for candidacy is filed and registered with the Central Electoral Bureau in one original file and three copies. The third copy is sent to the Constitutional Court, and the fourth copy, certified by the President of the Central Electoral Bureau, is returned to the depositor.

Voting is done at the polling stations, which are equipped with ballot boxes, cabinets and stamps with the mention “Voted”. At the polling station headquarters, voters shall vote where they are assigned according to their domicile, and those who are abroad vote at the polling stations organized by diplomatic missions and consular offices of Romania. At the end of voting, the electoral commission of the polling station shall determine the results of the voting by a minutes and send it to the district electoral bureau, which in turn sends it to the Central Election Bureau, which centralizes them and sends it to the Constitutional Court, who will either nominate the winner in the election or decide to hold a second round of voting, to which the first two candidates will participate.

We mention that there were two cases, in the 1990 and in the 1992 elections, when the candidate for the position of President of Romania was elected from the first round. In the other cases, the dispute over the position of President of Romania was completed in the second ballot.

### **3. LOCAL ELECTIONS**

Finally, the last type of election in our country is that on local elections, regulated, successively, by Law no.70/1991 on local elections, republished, as subsequently amended and supplemented [25], Law no.67/2004 on the election of the local public administration authorities, republished, as subsequently amended and supplemented [26], and currently, by Law no.115/2015 on the election of the local public administration authorities, for the amendment of the Local Public Administration Law no.215/2001, as well as for amending and completing the Law no.393/2004 on the statute of local elected officials [27].

It must first be noted that the revision of the Fundamental Law from 2003 introduced an important provision, that “after Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies” [art.16 paragraph (4) of the Constitution]. As outlined in the doctrine [28], the constitutional text is “the effort for the integration into European structures and becomes applicable under the conditions of the organic law and of the accession of Romania to the European Union”. The terminology used by Romanian Constituent is not accidental, since the right to vote may belong only to Romanian citizens, given that only they can take part in the exercise of state power in Romania, but the right to elect the authorities of the local public administration can also belong to European citizens who meet the requirements of the organic law.

At the same time, we make it clear that the organization of the local public administration is under the sign of the local autonomy. Local self-government, in accordance with the European Charter of Local Self-Government [29], means the right and the effective capacity of authorities of the local administration to solve and to manage, on behalf of the interests of the local communities they represent, the public affairs, in

terms of the law. The exercise of this right is conferred on the local councils and mayors, as well as on the county councils and their presidents, the authorities of the local public administration elected by universal, equal, direct, secret and freely expressed vote.

In the following we will refer briefly to some of the provisions of Law no.115/2015, based on which the local elections of that year were held. Thus, local councils, county councils and mayors are elected by universal, equal, direct, secret and freely expressed vote. The local councils and the county councils are elected on electoral constituencies, based on the list ballot, according to the principle of proportionate representation. The mayors of communes, cities, municipalities, sectors of Bucharest and the mayor of Bucharest are elected on electoral constituencies by uninominal vote. The presidents and the vice-presidents of the county councils, as well as the deputy mayors are elected by indirect vote, by the county councils, respectively by the local councils. The right to be elected as councillors and mayors belongs to citizens eligible to vote, who have reached, until Election Day, the age of at least 23 years, if they are not forbidden to join a political party, according to article 40 paragraph (3) of the Romanian Constitution, republished [30].

Candidates for local councils and county councils as well as for mayors are proposed by political parties or political alliances, constituted according to the Law on political parties no. 14/2003, republished. Candidatures can also be submitted by the electoral alliances established, under the law, by the organizations of citizens belonging to national minorities, as well as independent candidates. Candidate's lists for the election of local councils and county councils must be drawn up to ensure the representation of both sexes, except for those containing a single candidate. Electoral alliances can be constituted between political parties or political alliances at county or local level. A political party may belong, at the same level, to a single electoral alliance. A person can run for one local council and one county council and only for one post of mayor. A person may apply, at the same time, for the position of local councillor, county councillor and mayor. Also, a person can run, at the same time, for the position of local councillor and county councillor.

For the election of local councils and mayors, each village, municipality, city and administrative-territorial subdivision of the municipality constitutes an electoral

constituency. For the election of the county councils and of the General Council of Bucharest, each county, namely Bucharest, is an electoral constituency. The numbering of the county and Bucharest electoral districts shall be made by decision of the Government.

#### **4. CONCLUSIONS.**

Electoral systems, irrespective of their type, have both advantages and disadvantages. Thus, among the advantages of the system of proportionate representation (whose structural elements are the constituency, the voter, the vote and the technical aspects of calculation) are the faithful representation of the segments of the electorate, including the minorities, which proves the legitimacy of the Parliament and the high rate of participation to the vote and the good party discipline; the disadvantages of the system of proportionate representation are to be seen in the low responsibility of the elected officials before the electors and the political instability, as well as the continuous struggle for power, determined by the formation of the Government through coalitions rather than by majority parties. Among the advantages of the majoritarian systems (where the winner is declared the candidate with the most votes, with or without an absolute majority), we may distinguish the creation of a stable majority, which requires a good governance of the state, the reducing of the fragmentation of the political spectrum, the underrepresentation within the Parliament of the extremist parties, a natural connection between the MP and the constituency that elected him/her, the responsibility of the elected representatives towards the electors, electoral transparency; the main disadvantage of the majority system is the low representation of the electorate, a situation that can be created when an absolute majority of voters vote against the elected candidate. Finally, with regard to the mixed electoral system, resulting from the merging of the features of the majority system with those of the system of proportionate representation, the stable majority and the representation of the minorities stand out as advantages; the disadvantages lie in the underrepresentation of the minorities, namely through the use of the votes cast in favour of the minority by redistribution of mandates in a proportionate regime from a privileged position, which result in a lower number of mandates than the registered electoral score.



Choosing an electoral system or another gives expression to the political interests of a state, as they lead to the election of the governors, so that popular legitimacy is regularly reconfirmed through the elective act “towards the candidates who are engaged in the fight for the taking over, the exercising and the maintaining of power, aimed at achieving the objectives as agreed with the voters”[31].

#### References:

- [1] Muraru, Ioan, Tănăsescu, Elena Simina (coord.), *Constituția României. Comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2008, p. 334.
- [2] Decree-Law no. 92/1990 on the election of the Parliament and of the President of Romania, issued by the Provisional Council of the National Union, published in the Official Gazette of Romania, Part I, no.35 of 18 March 1990.
- [3] Bucur Ion, *Anul 1990: partide, ideologii și mobilizare politică*, Institutul Revoluției Române din Decembrie 1989 Publishing House, Bucharest, 2014, p. 79, available online at <http://irrd.ro/wp-content/uploads/2014/08/Anul-1990-Ion-Bucur-.pdf> [accessed in June 2018].
- [4] For details on the establishment of CPUN, see Enache, Marian, Constantinescu, Mihai, *Renașterea parlamentarismului în România*, Polirom Publishing House, Iași, 2001.
- [5] See Marian Enache, *Reforma constituțională din România*, in *Caietele Revoluției nr.5-6(60-61)/2015*, a journal of history and communication dedicated to the Romanian Revolution, Institutul Revoluției Române din Decembrie 1989 Publishing House, Bucharest, p. 121, available online at [http://irrd.ro/wp-content/uploads/2015/12/caiet-60\\_61\\_16-dec-2015.pdf](http://irrd.ro/wp-content/uploads/2015/12/caiet-60_61_16-dec-2015.pdf) [accessed in June 2018]; Enache, Marian, *Un sfert de secol de la adoptarea Constituției democratice a României*, in *Caietele Revoluției nr.2(67)/2017*, a journal of history and communication dedicated to the Romanian Revolution, Institutul Revoluției Române din Decembrie 1989 Publishing House, Bucharest, p. 37-38, available online at <http://irrd.ro/wp-content/uploads/2017/caietpdf/caiet-67.pdf> [accessed in June 2018]. In the same sense, regarding the nature of this normative act, also see Enache, Marian, *Natura și semnificația politico-juridică ale Decretului-Lege nr.92/1990 pentru alegerea Parlamentului și a Președintelui României*, in *Public Law Review no.2(23)/1998*, pp. 23-33.
- [6] Muraru, Ioan, Tănăsescu, Elena Simina (coord.), *op. cit.*, p. 334.
- [7] Published in the Official Gazette of Romania, Part I, no.164 of 16 July 1992.
- [8] Published in the Official Gazette of Romania, Part I, no.887 of 29 September 2004.
- [9] Muraru, Ioan, Tănăsescu, Elena Simina (coord.), *op. cit.*, p. 334.
- [10] *Idem.*
- [11] *Ibidem.*
- [12] Iancu, Gheorghe, Iancu, Vlad Alexandru, *Drept electoral*, 2<sup>nd</sup> edition, revised and added, Universul Juridic Publishing House, Bucharest, 2015, p. 71-72.
- [13] Published in the Official Gazette of Romania, Part I, no.196 of 13 March 2008.
- [14] Published in the Official Gazette of Romania, Part I, no.35 of 18 March 1990.
- [15] Moreover, regarding the number of MPs resulting from the application of this law, we recall here the referendum of 22 November 2009, organized at the initiative of the President of Romania, Mr. Traian Basescu, in which, to the question “Do you agree with the reduction of the number of MPs to a maximum of 300 people?”, answered 83.31% of the number of participants in the referendum. The results were recorded in the Constitutional Court's judgment no. 37/2009 regarding the observance of the procedure for the organization and holding of the national referendum of 22 November 2009 and the confirmation of its results, published in the Official Gazette of Romania, Part I, no.923 of 30 December 2009.
- [16] Decision of the Constitutional Court no.61/2010 regarding the exception of unconstitutionality of the provisions of art.48 paragraph (17) of the Law no.35/2008 on the election of the Chamber of Deputies and the Senate and on amending and completing of the Law no.67/2004 on the election of the authorities of the local public administration, of the Local Public Administration Law

no.215/2001 and of the Law no.393/2004 on the Statute of local elected officials, published in the Official Gazette of Romania, Part I, no.76 of 3 February 2010, *apud* Iancu, Gheorghe, Iancu, Vlad Alexandru, *op. cit.*, p. 122.

[17] *Idem.*

[18] For details on the coverage of this result in the press, see <https://www1.agerpres.ro/flux-documentare/2016/11/06/alegerile-parlamentare-din-2012-05-08-47>, as well as [http://www.romania-actualitati.ro/de\\_ce\\_a\\_crescut\\_numarul\\_parlamentarilor-46539](http://www.romania-actualitati.ro/de_ce_a_crescut_numarul_parlamentarilor-46539) [accessed in June 2018]. We also mention that that the results of the 2008 and 2012 parliamentary elections have been published in the Official Gazette of Romania, Part I, no.820 of 5 December 2008 and, respectively, in the Official Gazette of Romania, Part I, no.848 of 14 December 2012.

[19] Published in the Official Gazette of Romania, Part I, no.553 of 24 July 2015.

[20] Republished in the Official Gazette of Romania, Part I, no.627 of 31 August 2012.

[21] Parliament's Decision no. 43/2006 on the appointment of some Deputies and Senators as Members of the European Parliament, published in the Official Gazette of Romania, Part I, no.954 of 27 November 2006, whereby 35 deputies and senators were appointed as members of the European Parliament from 1 January 2007 to the date of validation of the mandates of elected European parliamentarians according to the law.

[22] By way of exception, the term of office of the Romanian members in the European Parliament, awarded on the basis of the first organized elections, ended at the conclusion of the European Parliament's 2004-2009 term.

[23] Published in the Official Gazette of Romania, Part I, no.164 of 16 July 1992.

[24] Republished in the Official Gazette of Romania, Part I, no.650 of 12 September 2011.

[25] Republished in the Official Gazette of Romania, Part I, no. 79 of 18 April 1996.

[26] Republished in the Official Gazette of Romania, Part I, no. 333 of 17 May 2007.

[27] Published in the Official Gazette of Romania, Part I, no.349 of 20 May 2015.

[28] Muraru, Ioan, Tănăsescu, Elena Simina (coord.), *op. cit.*, p. 153.

[29] Adopted in Strasbourg on 15 October 1985, when it was opened for signature by the member states of the Council of Europe, ratified by Romania through Law no.199 of 17 November 1997, published in the Official Gazette of Romania, Part I, no.331 of 26 November 1997.

[30] Art.40 paragraph (3) of the Constitution of Romania, revised: "Judges of the Constitutional Court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law, shall not join political parties".

[31] Alexandru, Ioan, *Democrația constituțională. Utopie și/sau realitate*, Universul Juridic Publishing House, Bucharest, 2012, p. 128.