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## **The Right to Vote of Romanian Citizens Living Abroad**

Romanian scientific literature uses the expression diaspora to describe citizens living abroad. This expression is simultaneously understood to mean the emigrants – those who have permanently settled down in another country; those who have kept or reacquired their Romanian citizenship and also those migrants who reside abroad temporarily for purposes of work, studies or for any other reason. Therefore, the emigrant and migrant element is mingled in the notion of the diaspora, while we talk about Romanian citizens in both cases, meaning that in terms of the exercise of the right to vote as a constitutional right, we cannot differentiate between the two categories.

Data relevant to the dimensions of the diaspora are more uncertain than the content of the notion itself since there are only estimations in this respect, which might mean millions more in the number of diaspora than it is in reality.

In the case of emigrants, their number is uncertain: if they emigrated before 1945, they presumably did not lose their Romanian citizenship and due to this fact their descendants are also Romanian citizens. If, however, they emigrated during the Communist regime either legally or illegally, then they definitely lost their citizenship, but were allowed to reacquire it after 1991 based on the new Citizenship Law through repatriation.

Consequently, Romanian emigrants as a community is not equivalent to the community of emigrants with Romanian citizenship living abroad, the latter is part of the former.

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As far as Romanian emigrants are concerned, their number is uncertain because a significant and non-negligible part of them resides in the given state on an irregular basis (e.g. with a legal employment permit) – although they are free to move in the Member States due to the accession to the EU. Therefore, we shall consider them “to be in hiding” with respect to the exercise of the right to vote or in relation to any registration of other nature.

Despite all this, Romanian political public opinion and legislation are both actively engaged in the debate on the right to vote of citizens living abroad, more accurately on the assurance of this right.

In Romania, the last EP elections took place in 2007, general parliamentary elections in 2008, and the presidential elections were held in 2009. We can examine the right to vote of citizens living abroad and the questions arising in terms of the exercise and practice of this right, based on the experience of these elections, primarily the latter two.

## **I. Constitutional and Legal Framework**

The right to vote of Romanian citizens living abroad is determined by three fundamental laws: the Constitution, the Electoral Law and the Citizenship Law.<sup>2</sup>

In Romania, following the political transition of 1989, a new Constitution was adopted in 1991, which was modified in 2003.

This modification affected the electoral system and the right to vote of citizens living abroad.

The most important relevant provision of the Constitution is the recognition of the right to vote (both active and passive) as a fundamental right. The constitution also guarantees the exercise of these rights as fundamental rights. The 2003 modification significantly eased the conditions for the exercise of the right to vote and extended it to dual citizens regardless of their permanent residence.

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<sup>2</sup> The present Romanian Constitution was adopted in 1991, and modified in 2003. The Electoral Law currently in force regulating general parliamentary elections is Law No. 2008/35. Citizenship is regulated under Law No. 1991/21, modified many times, the last time in 2007.

The recognition of the right to vote is of outstanding significance for Romanian citizens living abroad not only for political and democratic reasons or in relation to the framework of the rule of law, but also with respect to the assurance and exercise of fundamental, human rights. This is because Romania got over such a grave dictatorship, in which leaving the country was punished by deprivation of citizenship.

Under Article 5(2) of the Constitution it is declared that those, who became Romanian citizens by birth (in accordance with the principle of *ius sanguinis*) cannot be deprived of citizenship.

Article 36(1) of the fundamental law attaches the exercise of the right to vote to the passing of 18 years of age by the day of election. In the next subsection, the Constitution disqualifies those from voting who are “mentally deficient or alienated persons, laid under interdiction, as well as the persons disenfranchised by a final decision of the court”<sup>3</sup>.

Those who have Romanian citizenship and permanent residence shall be able to stand as candidates in the elections if they are not constitutionally barred from being members of a political party. Constitutional judges, ombudsmen, judges, prosecutors, active duty members of the armed forces and other public servants specified by law are affected by this constitutional restriction.

The age requirements for standing as a candidate are, under Article 37(2) of the Constitution: “up to or on the election day, at least twenty-three in order to be elected to the Chamber of Deputies or the bodies of local public administration, at least thirty-three in order to be elected to the Senate, and at least thirty-five in order to be elected to the office of President of Romania”.<sup>4</sup>

Comparing these provisions with the Citizenship Law, which does not prohibit dual or multiple citizenship, it can be determined that persons having dual or multiple citizenship are not excluded from the right to vote and only permanent Romanian residence is only a prerequisite to exercise the right to stand as candidate in the elections.

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<sup>3</sup> Constitution of Romania, Article 36 (2). [http://www.cdep.ro/pls/dic/site.page?den=act2\\_2&par1=2#t2c2s0a36](http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0a36)

<sup>4</sup> See *supra*.

The Romanian Constitution recognizes four types of elections with the direct participation of the citizens; these are:

**1) General parliamentary elections** – In this case dual citizens are also entitled to vote and also those Romanian citizens, who reside abroad either permanently or temporarily. Only those have the right to stand as candidates who are Romanian citizens or dual citizens but have a permanent Romanian residence.

**2) Presidential elections** – The right to vote is governed in accordance with the rules of general parliamentary elections above; however, the presidential candidate must be a person who is a Romanian citizen and has a permanent Romanian residence.

**3) Local government elections** – Relevant EU norms are in effect, EU citizens living in the territory of the country may vote or stand as candidates in the given regional-administrative unit, where they live.

**4) EP elections** – In accordance with EU rules.<sup>5</sup>

The parliamentary electoral system currently in effect is regulated by the Electoral Law that entered into force in 2008. It is a cornerstone of this piece of legislation that the former proportional party-list electoral system was replaced with an electoral system of one round based solely on single-member constituencies, but it still can be said to be proportional. This in effect has formally created the parliamentary representation of Romanian citizens living abroad.

This representation is to be considered formal due to the following facts: Previously the Romanian citizens living abroad could only vote for a national party-list and under the new electoral system they can vote for individual candidates, who – however – are also party candidates. On the other hand, their representation is restricted to 4 MPs and 2 senators.

In the above-mentioned new electoral system the parliamentary representation of Romanian citizens living abroad is realized by establishing a 43<sup>rd</sup> district besides the 42 Romanian election districts, this 43<sup>rd</sup> effectively included the entire electorate beyond Romanian.

The 42 election districts encompass the existing counties and individual (single-member) constituencies which were created in

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<sup>5</sup> Regulated by Articles 36-38, 62, and 81 of the Constitution.

different numbers (depending on the size and population of the county) in these. In order to demonstrate the discrepancies, I would like to mention that while in Brasov, which counts as a big county, there are 8 seats for representatives and 4 for senators to be obtained, in the smaller county of Satu Mare, there are 5 seats for representatives and 2 for senators to be obtained.

Based on this pattern, in the 43<sup>rd</sup> election district there are 4 single member constituencies for representatives and 2 for senators.<sup>6</sup>

### **The territory of constituencies for the election of representatives:**

- 1. European district** – consisting of EU Member States;
- 2. Asian district** – consisting of non-EU states and the territory of Asia;
- 3. American district** – consisting of North and South-America as well as Australia and New Zealand;
- 4. African district** – consisting of the Arab states of the Middle East, Israel and African states;

### **The first and second districts form one of the two districts of senators, whereas the third and the fourth form the other one.**

According to official estimates, in 2008 1.3-1.5 million Romanians resided abroad legally, most of them in EU Member States. If we add to this the number those residing abroad unofficially and not entirely legally, this figure might increase by a million, thus reaching even 2.5 million.

In spite of this, more than 72,000 voters cast their votes on the 2007 EP elections, 24,000 on the 2008 general elections, and almost 150,000 on the 2009 presidential elections. Despite the significant discrepancies, voter participation is rather low in comparison to the number of those residing abroad.

The reasons behind this have been assessed by those concerned as follows:

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<sup>6</sup> The structure of the Romanian Parliament is bicameral, it comprises a House of Representatives and a Senate. For further details on the topic: Varga Attila, Veress Emőd.; Román alkotmányjog – egyetemi jegyzet (Romanian Constitutional Law – Course Material for University Students), Status Kiadó, Miercurea Ciuc, 2007

**a) Political apathy** exacerbated by the lack of information and disinterest in Romanian political life. This is essentially the prolongation of domestic voter behavior abroad.

**b) Costs**, given that the voting booths and wards are situated in the establishments of the consulate or the embassy; often several hundred kilometers away from where the voters live.

**c) Possibility to vote** upon the certification of their permanent residence, or if not, of the fact that those intending to vote are entered on the Romanian electoral roll which would require them to travel home to vote, but they will not do so for this purpose.<sup>7</sup>

All this signifies that while authorities cannot do anything about turning away from politics, the administrative barriers can be surmounted by adequate regulations and measures, moreover, communication and information exchange can also be significantly improved.

## II. Experiences of the parliamentary and the presidential elections

Before going into detail on the concrete experiences, it should be pointed out that debate relevant to the right to vote of Romanian citizens living abroad livened before but primarily after the elections. This might result in the modification of the Electoral Law on the occasion of the 2012 upcoming elections.

It can be concluded generally that there are several pros and cons in terms of arguments for the right to vote of citizens living abroad. Among **the pros** we could mention the following:

**a) The constitutional institution of citizenship** presupposes – based on its content – the exercise of the full scope of related rights and the legal capacity of citizens to exercise of these rights in accordance with their status as citizens. Obviously, it follows from the foregoing that this includes the constitutional right to vote.

**b) Equality** as a principle of the regulation of citizenship, under which no distinction shall be made between Romanian citizens based

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<sup>7</sup> Reprezentarea diasporei si votul românilor din străinătate. Fundația Soros România. (The representation of the diaspora and the vote of Romanians living abroad. Romanian Soros Foundation.), Bucharest, 2009, p. 6-7

on residence, particularly if it comes to the exercise of a fundamental political right.

**c) Involvement in the political life** is made possible through the free exercise of this above-mentioned right.

**d) Maintaining ties with the motherland** is made possible through the free exercise of this above-mentioned right.

Among **the cons** we could mention the following:

**a) The gradually diminishing relationship** of Romanian citizens living abroad with the Romanian state leads to a diminished awareness of Romanian reality.

**b) Impossibility of the election campaign** due to great geographic distances within an election district and to other logistical obstacles which result in reducing the election campaign in reality.

**c) Candidates are offered by those in the motherland** which makes it questionable but also uncertain whether those living beyond the borders feel that they will represent them and their interests.

**d) The consequences of the political decisions** are not borne by those living abroad.

In the following, let us review a few problems of a technical nature in relation to elections.

Law No. 2008/35 on the election of the Parliament prescribed that an **electoral roll (register)** shall be established containing the Romanian citizens past their 18<sup>th</sup> year of age who are eligible to vote, including those who have their permanent or temporary residence abroad.

Based on the above, the local governments will prepare and update their own electoral rolls. **Electoral rolls (registers)** can be of two kinds: (i) a permanent electoral roll; (ii) a supplementary electoral roll – for those who cast their votes on election day in a voting ward or booth not corresponding to their residence.

Registration of Romanian citizens living abroad on the electoral rolls shall take place based on the data of the Passport Department of the Ministry of Internal Affairs and of the Ministry of Foreign Affairs.

The regularly recurring problem with the permanent electoral roll is that the mayors are in charge of the updating. This task is not easy. There is a lot of imprecision either due to the fact that the address has changed but the old address is still registered, or due to

the fact that those registered have deceased in the meantime, but they are still included in the register.

Technically, although citizens living abroad should be included in the permanent electoral roll, they are also included in a supplementary electoral roll that is compiled at the diplomatic outposts in the course of the election, based on their appearance at the election.

**Candidates** are offered by the parties, albeit the electoral system is based on single-member constituencies. Candidates are not bound by law to have a permanent residence in the constituency where they stand as candidates. Even though it does not pose a serious problem in the country, the issue arises abroad in a different context, due to the fact that if the candidates themselves are not Romanian citizens living abroad it is more difficult for them to address voters living abroad.

The **campaign** is significantly hard or impossible partially due to the above but also due to several other objective factors. It is sufficient to refer here to the great geographical distances within the districts. Besides these, candidates can often rely only on their own personal means and their knowledge of their situation.

On the other hand, neither an eventually good campaign nor the most votes cast for a given candidate guarantees their receiving of a mandate in the end. Pursuant to the electoral system such a redistribution (compensation) mechanism was created, which might change the results achieved in the elections. This phenomenon was christened by Romanian experts as the Kötő paradox.<sup>8</sup> In the fourth Middle-Eastern and African constituency within the 43<sup>rd</sup> foreign election district the candidate of the currently governing Democratic Party was the Ambassador of Romania to Israel, who had a good knowledge of the area where he could expect the most votes. Eventually, he obtained the majority of the votes among all the candidates, approximately 1,200. However, in the course of redistribution, he ended up losing the mandate to another candidate, who obtained a mere 34 votes and became the MP for the constituency this way. This person was the candidate of the Democratic Alliance of Hungarians in Romania, József Kötő.

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<sup>8</sup> The expression was first used by political scientist Cristian Pîrvulescu, in an interview given to a national newspaper: *Inteviu cu Cristian Pîrvulescu, Adevarul* <http://www.adevarul.ro/articole-cristian-pirvulescu-deputatul-koto-nu-a-castigat-cu-voturile-din-diaspora.html>



The experts explained – correctly – that Kötó did not get the mandate with 34 votes, but all the votes cast for the Democratic Alliance of Hungarians in Romania. The total of these votes received in the country and in the 43<sup>rd</sup> district shall be added to that, that were “attributed to his account” in redistributing (compensating) the votes. This, as I have mentioned already, is one of the fundamental and general weaknesses of the whole electoral system, but it increases the importance of the votes cast in case of citizens living abroad, and diminishes the stake of participation in the elections since the question as to which candidate will eventually obtain a mandate will be decided by an *a priori* unpredictable mathematical equation. This might lead to significant frustration among voters but also in the elected representatives.

On the one hand, it can be determined that the law provides for the right to vote of Romanian citizens living abroad, but its exercise is significantly difficult. On the other hand, there is a reserved foreign election district with 4 constituencies for the election of representatives and 2 for the election of senators, but this does not mean and does not automatically result in the *de facto* parliamentary representation of Romanian citizens living abroad.

The **venue of voting** is also in question, since it is only possible to cast votes in the establishments of the diplomatic outposts, at the embassies and at the consulates, which are in many cases several hundred kilometers away from the residence of the voters. This can be considered an obstacle that restrains the exercise of voting.

On the occasion of the 2008 and 2009 elections about 221 election wards operated and were at the disposal of voters, a number, which is severely limiting.

In terms of **the method of voting**, at present, it is only possible to cast votes in person and only at designated areas. However, the possibility arose that postal voting be allowed. This proposal has more opponents than proponents, at the moment.

Lastly, allow me to mention the **election results** registered in the foreign election district.<sup>9</sup>

In the 2008 general election the number of votes validly cast for candidates to the House of Representatives was 23,560; this assured

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<sup>9</sup> Data can be found on the website of the Permanent Electoral Authority: <http://www.roaep.ro>

the 4 mandates (seats), while the number of the votes validly cast for the senatorial candidates of the Senate was 23,461, which qualified for 2 mandates (seats). If we consider that 1.5 million Romanian citizens lived abroad, based on the more modest estimation, this translates into an exceptionally low level of participation.

The 2009 presidential election was decided in the second round in favor of the incumbent president in office with a minimal difference and determined by the votes cast abroad. Based on the records of the Central Election Office 10,620,116 votes were cast in the second round, (signifying a 58.02 per cent participation), of which 10,481,568 votes (98.69 per cent) were validly cast, and an additional 138,476 (1.3 per cent) invalidly cast.

Traian Băsescu obtained 5,275,808 votes of those validly cast – 50.33 per cent of the votes –, while his opponent the Social-Democrat Mircea Geana obtained 5,205,760 votes, making up 49.33 per cent of the votes cast. The difference was 70,048 votes.

The number of the votes cast for the presidential candidates in the foreign election district was: 147,754, of this 146,876 were validly, 863 invalidly cast. Traian Băsescu (incumbent candidate supported by the governing party) received 115,831 votes, Mircea Geana (PSD) 31,045 votes, with a difference of 84,786 votes.

This election result (also signifying low participation), indicates that the votes cast abroad decided the election of the president. This result increases the value of the right to vote of citizens living abroad, while it might also raise concerns for some on the home front.

### **III. Plans and proposals in terms of the modification of the Electoral Law**

Currently, preparations are in progress for the modification of the Electoral Law in the Romanian Parliament. There are debates on principles, professional and political discussions on how to conduct the 2012 general elections, what to preserve and what to reinforce, and what to change in the electoral system.

Starting with the experience of the previous 2008 elections, the criticism of the current compensation mechanism and of the clearly single-member constituency system becomes more and more

pronounced. The necessity to introduce a mixed system appears among the recommendations. This, obviously, even if only indirectly, affects the right to vote of Romanian citizens living abroad.

On the other hand, the idea rendering postal voting possible for Romanian citizens living abroad affects this subject much more directly.<sup>10</sup>

This is a recommendation of the currently governing party, but is opposed by everyone else since it lacks logistical conditions and concerns are raised due to possible abuse and the increased risk of election fraud.

Although there is a significantly serious dislike and objection to postal voting based on the above reasons, it is noteworthy to reflect on its advantages and disadvantages even outside the context of the current Romanian situation.

According to the recognized experts of the issue the reduction of election costs can be enumerated among the advantages. Furthermore, the voter is not obliged to show up at an election ward and travel several hundred kilometers on occasion, and the participation rates might also increase as a result.

It can be considered a disadvantage that a competent and suitable bureaucracy (personnel, logistics and financial resources) is necessary for this “correspondence”, the possibility of election fraud increases, the secrecy of voting might be violated, the election procedure is non-transparent, voters do not have equal access to the campaign and the voters casting their votes this way become insulated from the electoral process.<sup>11</sup>

All of these might create distrust in the voter who votes either by postal voting or traditionally, in person.

Postal voting requires the construction of a specific procedural system extending to the identification of the citizens eligible to vote, the delivery of materials necessary for voting, their adequate manage-

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<sup>10</sup> For more on this topic: Toma Burean, Carmen Greab și Iulia Georgescu: Implementarea unor metode de vot, alternative în România, între necesitate, utilitate și fezabilitate (Application of alternative voting methods in Romania – between necessity, usefulness and feasibility), in *Reprezentarea diasporei și votul românilor din străinătate*, Fundația Soros România, 2009.

<sup>11</sup> Thompson, Dennis F. „Electoral Simultaneity: Expressing Equal Respect”, *Journal of Social Issues*, 2008 vol. 64. Nr. 3, pp. 487-501.

ment, the conduct of voting, the return of the enveloped votes to the home-country, and control and tally of the result.

Every phase of this procedure is suitable for creating distrust among political rivals and to cast the shadow of the suspicion of an eventual election fraud in the whole process.

Other alternative methods of voting such as e-voting, preliminary or proxy voting did not even come up in the debates.

Other parts of the electoral system might be affected by the changes, primarily in respect of constructing such a redistribution (compensation) system that is more equitable and predictable than the current one, and the reduction of the number of seats in the parliament is also among the plans. All of these somehow touch upon the right to vote of Romanian citizens living abroad and the parliamentary representation. However, the real problem is how to create the conditions for the exercise of this right, which is essentially honest and insured against abuse.

Nonetheless, we cannot but mention that there is a recurring ulterior motive. It is a question whether domestic politics wishes to honestly include in the election process a layer of voters who do not live in the country. Their number is uncertain and their registration is lacking and they could be objects for political manipulation. The current Minister of Foreign Affairs, former Ambassador to Paris at the time of the 2009 elections said publicly at one of the national caucuses of the governing party that they should accept the possibility of postal voting and he (!) will ensure an additional one million votes for the party. It is not an accident, thus, that every political party tends to object even to the mentioning of the introduction of this facilitated voting method mentioned above.

However, it is hard to predict at this moment what modifications will be adopted in the electoral system by the Romanian parliament.

The right to vote of Romanian citizens living abroad shall remain, since it is a constitutional right and fundamental value. The question only remains: to what extent will the legislator - and later on the government through different administrative measures - help to dissolve the obstacles that stand in the way to the exercise this right.

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