

EXERCISING THE RIGHT TO VOTE IN ROMANIAN HIGHER EDUCATION INSTITUTIONS

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ABSTRACT. The adoption by the Romanian Parliament of the new Law No.1 / 2011 - national education law, as amended and supplemented, the new legal framework created the one-man management positions, but also in respect of the establishment of the collegiate governing bodies within any higher education institution in Romania resulted in a radical changes of these two aspects, aiming for a clear sign of respect for the principle of university autonomy. These pieces of legislation incidents were appreciated by most specialists in the field, but also by many members of the academic community in Romania, even if the adoption of this law and so far, its application has been shown in many cases to be difficult, if not impossible. Regardless of the approach to specific aspects of the right to vote, the introduction of the possibility of each university to designate its management with legislative powers, but also executive, was and is a beneficial one, though, some electoral campaigns held by many candidates in breach of the stated internal dispositions, have turned education institutions into a field of personal reckoning without regard to moral and ethical values and virtues, which the quality of a member of the academic community implies.

KEY WORDS: election, voting rights, university, campaigning, academic community.

1. INTRODUCTION

The Universal Declaration of Human Rights [1] adopted by the General Assembly of the United Nations, states that: Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country.

In the same context, the opinion of C. Gilia [2], although not expressly, the Declaration proclaimed electoral rights as fundamental human rights. Voting rights belong to the exclusively political rights in the Constitutions of the world states and through their nature guarantee to the citizens the opportunity to participate in government or the wider sense in the political life of the community they belong to. Other political rights may be considered the right of freedom of thought, freedom of expression, right of peaceful assembly, freedom of association, the right to participate in public life. To the voting rights belongs the right to choose and, in some countries or some periods, the right to revoke the active rights on the one hand and the right to be chosen on the other hand.

A. Gorun, A. and H.T. Gorun [3] considers that political changes produced after December 22, 1989 were intensely felt in the education system in Romania.

Lato sensu, the right to vote in Romania is of constitutional nature, being the first one regulated by the Constitution of this country, which according to Article 36 thereof provides:

(1) Citizens have the right to vote from the age of 18 years old by election day.

(2) Mentally deficient or alienated, laid under interdiction, and any persons convicted by final judgment, or the ones that lost their electoral rights cannot vote.

Constitutional provisions concerning voting rights (right to vote) found applicability including in education, especially in the higher education in Romania.

Moreover, in studying the contents of Law No.1 / 2011 - national education law [4], but also for the other laws governing the organization and conduct of the referendum in this area, one can see a similarity in the regulation of the conditions for the exercise of this right, by retaining and applying specific aspects of higher education. Therefore, the right to vote is a fundamental right that is part of the fundamental electoral rights. We could say, without fear of being mistaken, that by adopting the above mentioned legislative act, the right to vote is recognized to any member of the academic community within any university, under the conditions provided by law.

If we extend the analysis on the holders of voting rights as Romanian citizens and EU citizens residing in Romania, only in certain cases, in an institution of higher education, holders of voting rights (right to vote) are all teachers and research staff within that university and student representatives of the university senate and faculty councils. In a general sense, persons deprived of the right to vote are expressly mentioned by the constitutional provisions and the stricto sensu in universities are exempt from voting all other employed persons who are not teachers or research staff, are not holders in that university and people who do not have the quality of student representatives in the university senate and faculty councils.

So, not any employee or student of a university may hold the right to vote, something that I consider fairly and lawfully. With reference to constitutional provisions and specific regulations on the right to vote traits, we note that under the revised Article 62 of the Constitution, the vote is universal, equal, direct, secret and freely expressed, and if normative acts, which govern the right to vote in universities, the vote is characterized as universal, direct and secret.

One consequence of adopting the new law on national education in Romania was the radical change of the legal framework on the way of appointing the rector, on the one hand, and his election and election of members of the collegial governing bodies, on the other hand.

2. ASPECTS OF ORGANIZATION AND REFERENDUM IN ROMANIAN UNIVERSITIES

A. Gorun and A. Neamțu [5] believes that the education market is currently expanding at European level fact that will favor an increase in competition in terms of education and research. In this context, decisions at the level of education and research in Romania, Romanian model will be aimed at integration in the European frame and too little for an adaptation to a European education to the concrete conditions of Romania.

In any higher education institution in Romania, the referendum deadline has applicability in terms of choosing its rector. In fact, the mandatory referendum is one of the changes made by the new National Education Law, taken in and through each university charter.

Under art.209 of Law No.1 / 2011 mentioned above:

(1) state and private universities rectors are appointed by one of the following ways:

a) on the basis of a public competition, based on a methodology approved by the newly elected senate, according to this law; or

b) through universal vote, direct and secret of all tenured teachers and research staff within the university and student representatives of the university senate and faculty councils

(2) The method of appointment of the rector, among those under par. (1), shall be at least six months before each appointment of the rector, by universal vote, direct and secret of all tenured teaching and research staff within the university and student representatives of the university senate and faculty councils.

In fact, only modality referred to in paragraph 1 letter b) and paragraph 2 shows interest, which states the obligation of holding a referendum to determine the designation of Rector and those participating, voting in this referendum. Currently, all public and private universities in Romania have complied with these legally binding provisions, so by inserting such provisions in their own University Charter (procedure consisting in submitting for debate for the entire academic community, approved by the University Senate and endorsed by the Ministry of resort.

However, at each university has drafted and approved a methodology on how to elect the rector, approved by the University Senate. In reality, the vast majority of state and private universities have opted to designate the rector, after the elections, by universal vote, direct and secret by all tenured teachers and research staff within the university and student representatives in the university senate, faculty councils that make up each institution of higher education.

Specifically, all of the aspects of the referendum are detailed and stated, including by Ministry of National Education nr.4062 / 15.04.2011 of the methodology - the framework for organizing university-wide referendum [6] to decide the manner of appointment of the rector and academic leadership from this Methodology - frame, all universities are developing and approving its own internal methodologies. The University Senate is a collegial governing body that sets the theme of the referendum, the date, the time, transmits all this to the ministry, while publishing it on its website.

One aspect that should be highlighted is that of the applicability of the term referendum only in respect of matters concerning the way of appointing the rector, collegiate governing bodies of universities, representing in all cases only by organizing elections, under the same conditions as in the rector's case, but with the application of specific legal provisions. Under the provisions of article 1 paragraph 4) - 6) of the same Order, confers to the referendum a binding and periodical character, and the organization and deployment of the university referendum and are based on enshrined principles which should be respected: the principle of legality, university autonomy, transparency of public responsibility, accountability, managerial and financial efficiency, rights and freedoms of students and academic staff and the respect of professional ethics.

The same Order stipulates mandatory on the Ministry of resort the printing of ballot papers, which then they transmit to the university, and the persons eligible to vote entered on the electoral lists of the university, will apply the voting stamp on one of the variants listed on the

vote ballot of their choice (public competition / by universal suffrage, direct and secret of all tenured teachers and research staff within the university and student representatives of the university senate and faculty councils).

Regarding the people voting, they are all teachers and researchers employed by a labor contract of indefinite duration within the university and student representatives of the university senate and faculty councils. Regarding the validation of the referendum, the quorum is not up to the universities, but is set by the same order, at least half plus one of the voting persons entered on the voting lists. If the referendum is validated, its result is set with the simple majority of votes cast, and if it is not validated then we will hold a referendum one week later, because the participation rate is no longer a criterion of validation.

If not validated the first referendum and organization of the second, the location of the polling stations does not change (determined by the university senate in a single location where you can place more polling stations, in case of large universities), the electoral committee of the university (which has its own control stamp that is applied to ballots and is appointed by the University Senate), and, in all cases, the referendum result will be made known to the academic community and the ministry of resort within 2 calendar days from the conclusion of the vote, but no later than July.

Another important detail is that of determining the number of polling stations by the Office of the University Senate. ALSO the University Senate Office determines the number of stamps vote per precinct, their model being unique in the country.

3. PEOPLE ELIGIBLE TO VOTE IN THE ACADEMIC COMMUNITY

According to Chapter II The Statute of teaching and research staff in higher education, Section 1, University Norma Art. 291 para. (3) and (4) of Law No.1 / 2011 - national education law, with subsequent amendments:

(3) Permanent teachers means teachers that occupy a teaching position at a university, obtained through competition for an indefinite period under the law. The employee chooses where he has the basic function. Personal tenured teaching staff is benefiting from job reservation according to the law. Teachers and researchers temporary employed have a statute of teaching and research associates.

(4) Tenure exists only in relation to one higher education institution or one institution of research and development; When a teacher teaching or performing research in several institutions of higher education or research and development, the quality of tenure may be only to one of them, and in the other, the quality is teaching or research associate. The higher education institution in which the teacher is the holder has the obligation to maintain and manage, according to law, the labor card or employees registry with the entitlement specification.

From the interpretation of these legal texts results the following:

Permanent teachers within any higher education institutions are those that fulfill the following mandatory and cumulative conditions:

- Teachers will have to fill a teaching position - professor, associate professor, lecturer (lecturer), assistant etc. or have the post reserved;

- The teaching position is to be occupied indefinitely by competition and have completed an individual contract of indefinite duration, being declared admitted after the contest for the respective teaching position.

Also, according to Chapter II The Statute of teaching and research staff in higher education, Section 4 Rights and duties of teachers, art. 304 para. (1) (10) (11) and (16) of Law No.1 / 2011 - national education law, with subsequent amendments states:

(1) higher education staff has rights and duties arising out of the University Charter, Code of academic ethics, the individual employment contract and the law.

The voting rights of teachers, as permanent teachers that is a right that must result or arise from the University Charter, but also the individual employment contract (if indefinite confers the status of a holder) and from the legislation (including the Law no.1 / 2011 - national education law, with subsequent amendments and other legislation)

(2) The protection of employees' rights and the creation of intellectual property rights on scientific, cultural or artistic work is guaranteed and ensured in accordance with the Charter of university and specific legislation in force.

The protection of this right to vote of employees (only teachers and research staff) is guaranteed and ensured in accordance with the Charter of university and specific legislation in force.

(10) A tenured teaching staff in an university teaching position, which from its own initiative requests to specialize or participate in scientific research in the country or abroad, is entitled to unpaid leave. The total duration may not exceed three years in a span of 7 years. Approvals in these situations are the responsibility of the higher education institution's management or, where appropriate, the Board, if evidence for that activity is made.

The text of the law governing the right to unpaid leave of permanent teachers on a university teaching position in which he or she seeks to specialize or participate in scientific research in the country or abroad, and provided that such approvals leave to return to the management or, where appropriate, the Board of Directors, upon evidence for that activity, which means, indirectly, that in conditions they may lose their tenured position absurdly, would no longer be needed these approvals.

It is obvious evidence that during the period when a teacher or research staff is on leave without pay, he does not lose his status as a holder.

(11) The teaching staff tenured on a teaching job in a university may receive unpaid leave for one academic year, once in 10 years, with the approval of the higher education institution, booking the department on that period.

Interpretation of the previous paragraph also applies to this second case in which a teacher may receive unpaid leave, with the approval of the institution of higher education, with the express mention that on that period operating and reserve position. In both situations, but especially in the latter case, they are incidental and legal provisions on job reservation, which maintains the tenured status on that period.

As per the laws and internal regulations of any institution of higher education, the university Rector is elected according to the election results within each University organized by universal suffrage, direct and secret of all the permanent teachers, researcher holders or representatives of students and faculty councils the University Senate. So, teachers and research staff that vote (the vote is universal, equal, direct and secret) for choosing an university Rector

must be tenured within that university, at the election date, to have an indefinite employment contract or have the post reserved.

As regards the right to vote of permanent teachers who are in one of the situations: post reserved, unpaid leave, sick leave, maternity leave, leave for child growth, following specifications are required:

- reservation of the post, through the legal texts mentioned above, the tenured, having that right does not lose its tenure, whilst the reservation is operating. As a result of this right, the individual contract of employment of the teachers receiving job reservation does not stop, but is suspended.

- permanent teachers that are in one of the forms of leave (of rest, salary, medical, maternity or parental, they do not lose their tenured teaching position held by virtue occupied by competition and indefinite individual labor contract.

- In the field of labor law, the employee quality hired on a post teaching position, etc., under a contract of indefinite duration does not cease

- The period during which an employee (even titular teacher), employed by individual contract of indefinite duration are on leave without pay, sick leave and maternity leave for child growth that does not result in contract termination, but its suspension.

- Suspension of an individual employment contract of indeterminate duration does not lead to loss / termination of the employee or titular teacher.

- Only individual termination of an indeterminate labor contract and deficiencies of other prerequisites required by law to maintain the entitlement may lead to the loss of this quality.

As a final clarification, the right to vote cannot be restricted, except to the extent provided by law and the statements above may not be limited as long as the law does not do this. Moreover, the legislator through these aforementioned provisions explicitly regulates the quality of the titular teacher, job reservation, so in conjunction with other legal provisions, to clarify other situations such as shown.

In conclusion, in any public or private universities in Romania, all teachers and research staff covering a tenured teaching position within it, obtained through competition for an indeterminate period (indeterminate individual employment contract), have post reservation or are in one of the forms provided by law, namely, unpaid leave, sick leave, maternity leave, leave for child growth etc., have the right to vote.

4. CONCLUSIONS

In the context of the new Law No.1 / 2011 - national education law, as amended and supplemented, for the organization and whole conduct of future activities within any institution of higher education, the advantages of introducing the right to vote for the office of rector of a university or establishment of collegiate governing bodies are numerous and very important.

For this reason, the legislature, by adopting this law, considered necessary and appropriate to intervene only in terms of general regulation of these issues, but also as evidence of compliance and enforcement of the principle of university autonomy. Without interfering in each university's option to internally regulate the way of appointing the rector, he has left to all academic community organizing and conducting periodic elections, stating only minimum obligations and general tasks.

Through these provisions, the mission of the ministry remained just that of issuing an order confirming the rector, the person who won elections organized in this respect.

The way for organizing and running every election depends on the success and fairness of the electoral process in any academic community in Romania. The major responsibility regarding the organization of elections, regardless of their purpose, returns to the University Senate and other structures, committees involved in this.

Usually, the elections for rector, but also for collegiate governing bodies are organized during a single day, in a time that cannot be lower, as duration, than the university's daily work program based on an election timetable established and approved in the same conditions. Regarding the validation of elections, provided a quorum is required in relation to the number of the people voting in the university. If the above quorum fails after the first round, there will be a new round, in the timing of the election.

The result of the second ballot is validated, regardless of the number of those voting (number of voting persons that are present in the vote). Choosing the collegiate governing bodies at a university or in departments, faculties are organized and conducted according to applicable legal provisions in force on Election Day.

Also, the election is based on direct universal suffrage and secret ballot, each person having the right to one vote and representation is prohibited, being a secret vote. The duration of a mandate, in the case of rector or members of the collegiate governing bodies is 4 years. From the collegiate governing bodies must be part any of the Universities representative teachers with scientific and teaching prestige, but also with moral authority and managerial skills. In fact, the vast majority of mandatory legal provisions for the referendum on how to elect the rector designate identical methods that also apply for rector election or members of the collegiate governing bodies.

However, from the analysis of specific legislation governing the above matters by reference to the law governing elections for central and local public administration authorities, one can notice a number of similarities, but also identical issues.

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