

LEGAL RESTRICTIONS IN THE USAGE OF PROMOTION TECHNIQUES IN THE EUROPEAN PARLIAMENT ELECTIONS

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The European Parliament is made up of the representatives of the European Union member state peoples. Any citizen of a member state has the right to vote and be elected a European member of Parliament in the European Union country where he resides, for which reason he is considered an European citizen. The election of the representatives of the European Parliament is governed, in each member state, by the national legal norms. The legislative regulations in the promotion techniques field used in the political *marketing are ample and varied, covering a wide range of actions or inactions which can be implemented by the political actors in their electoral "fight". The legal restrictions grant the guarantee of a fair electoral competition in order to elect the persons wanted by the Romanian electorate for the European member of Parliament mandate.*

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At art. 38 related to the right to be elected in the European Parliament, the Romanian Constitution stipulates: under the conditions of the accession of Romania to the European Union, the Romanian citizens have the right to elect and be elected in the European Parliament.

1. The European Parliament and the Europarliament elections

The European Parliament has appeared by means of the institutive Treaties. Through the Resolution of 20 March 1958, the three similar institutions have been reunited in the European Parliament Assembly, which has produced its effects starting 1960.⁵⁰⁷ Through the resolution of the European Parliament Assembly of 30 March 1962, the name European Parliament has been established, which also exists nowadays.

The European Parliament is made up of the representatives of the European Union member state peoples.⁵⁰⁸ The representatives of the peoples thus form an organism which represents not one people but a plurality of peoples (made up of all the citizens of the European Union considered collectively).⁵⁰⁹

Any citizen of a member state has the right to vote and be elected a European member of Parliament in the European Union country where he resides, for which reason he is considered an European citizen. The election of the representatives for the European Parliament is governed, in each member state, by the national legal norms.⁵¹⁰

At present, the president of the Parliament is Joseph Borrell Fontalles (from 2004 to 2009).⁵¹¹

Under the conditions of the accession of Romania to the European Union, the citizens of the Union who meet the requirements of the organic law have the right to elect and be elected in the public administration authorities.⁵¹²

2. Legal conditions regarding the usage of promotion techniques in the Europarliament campaign

The electoral campaign is considered to be that period of time during which the electoral competitors develop propaganda activities in order to determine the electors to express their votes in their favour.⁵¹³ The electoral campaign starts when the election date is made public, and ends 2 days before the voting day. Voting starts on reference day 7 June 2009, 7,00 o'clock. Voting also ends on reference day 7 June 2009, 21,00 o'clock; the electors who at 21,00 o'clock are in the room where it is voted, can express their right to vote.

507 Fuerea, A.: Instituțiile Uniunii Europene. Editura Universul Juridic, București. 2002, p. 83.

508 Lefter, C.: Fundamente ale dreptului comunitar instituțional. Editura Economică, București. 2003, pp. 121 și urm.

509 Mureșan, L.: Drept comunitar. Protecție juridică și responsabilitate socială. Editura Universității Transilvania din Brașov. 2008, pp. 38-40.

510 Manolache, O.: Drept comunitar. Editura All Beck, București. 2003, pp. 94-106.

511 See official site of European Parliament: <http://europarl.eu.int/>

512 Romanian Constitution (Republished in Monitorul Oficial no. 767 of 31. 10.2003), Art. 16 alin. 4.

513 Poțincu, C.: Ethical Aspects Related to the Political Marketing. in Proceedings of the 4th Edition of the International Scientific Conference: European Integration – New Challenges for the Romanian Economy, May 30-31, 2008, Oradea pp. 1100-1101.

The reference day of the European Parliament elections is established and made public by the Government, by decision, at least 90 days before. The reference day is established within the period decided upon with this purpose by the European Union Council.⁵¹⁴

Decision no. 217 of 04.03.2009 regarding the approval of the Calendar schedule of the action to be taken for electing the Romanian members in the European Parliament in 2009 approves of this calendar schedule provided in its annex, annex which is part of the decision.

During the electoral campaign, the candidates, parties and political formations, citizens, including all social organizations have the right to express their opinions freely and with no discrimination, by means of meetings, assemblies and mass information means. But in order for the means used and actions developed to be legal, they must be compliant with the rightful order.⁵¹⁵

The establishment of the timetable for the electoral campaign and the distribution of the allocated broadcasting time for the access of the political parties, political alliances and independent candidates to the public radio and television services are made after the candidatures have been confirmed.⁵¹⁶

The electoral campaign consists in an open competition, regulated by legal norms between the candidates proposed by the parties and alliances in elections for gaining the suffrages of the electorate. It is one of the key-moments of the electoral competition.⁵¹⁷

Under the conditions of expressing the political pluralism and competition between parties and candidates, the free and periodical elections are the defining element of the modern democratic system. By means of this mechanism, the democratic societies periodically elect their political leaders, or can replace them by means of non-violent procedures.

The elections take place within a well-defined framework of rules and procedures referring to all stages and operations which this process must cover, from the preliminary political conditions to the technical procedures for awarding mandates and validation of the election results. These rules and regulations are codified in a package of legislative and procedural regulations called electoral system.

The electoral systems are the ensemble of norms and procedures defining the conditions which must be met by a citizen, in order for him to be able to express his fundamental political rights, the right to elect and be elected, the guarantees which he must grant the authorities for the correct development of the elections, rules of correct organization and development of elections, rules of practical organization and development of the poll, as well as the principles and mechanisms for awarding the mandates further to the elections.⁵¹⁸

During the electoral campaign, the candidates shall benefit from the constitutional stipulations regarding the freedom of speech. Thus, art. 30 of the Romanian Constitution stipulates that the freedom of expressing one's thoughts, opinions or beliefs, and the freedom of creations of any kind, orally, in writing, by means of images, sounds or other means of public communication, are inviolable, and the censure of any kind is forbidden. Moreover, the freedom of speech cannot prejudice the dignity, honour, private life of the person or right to his own image. But these legally protected rights have also limits, the defamation of the country and nation, the urge to aggression war, national, racial, class or religious hatred, the instigation to discrimination, the territorial separatism or public violence, as well as the obscene manifestations, contrary to good faith being forbidden by the law.

We will proceed to the constitutional regulation of the right to information in art. 31. Thus, the mass, public and private information means must provide the correct information of the public opinion. The public radio and television services are autonomous. They must grant these services to the important social and political groups. We will reach the organic regulation of the audiovisual. At art. 3, law no. 504 of 11 July 2002 of the audiovisual⁵¹⁹ establishes that, by means of broadcasting and retransmitting the programme services, the political pluralism is achieved and ensured, while observing the fundamental liberties and rights of the human being. All providers of audiovisual media services are obliged to provide the objective information of the public by correctly presenting the facts and events, and to favour the free formation of opinions. In this field, an important role is played by the National Audiovisual Council, which is the autonomous public authority, under parliament control, guarantor of the public interest in the audiovisual communication field.

Art. 26¹ of Law no. 504/2002 encourages and facilitates the pluralist expression of the currents of opinion, the broadcasters are obliged to reflect the electoral campaigns in an equitable, balanced and impartial manner. For the correct application of the previous provisions, the Council issues obligatory norms, controls the observance of the legal stipulations and issued norms, and sanctions their violation. Thus, the Code for the regulation of the audiovisual content adopted by the NAC in 2006 establishes the provision of correct information and pluralism in

514 Fabian, G., Mihiu, N., Veress, E.: *Parlamentul European*. Editura Wolters Kluwer, București. 2007, p. 41

515 Ionescu, C.: *Regimul politic în România*. Editura All Beck, București. 2002, pp. 134-135.

516 Gilia, C.: *Sisteme și proceduri electorale*. Editura CH Beck, București. 2007, p. 213

517 Tănăsescu, E. S.: *Legile electorale. Comentarii și explicații*. Editura CH Beck, București. 2003, p. 178.

518 Fulga, Gh.: *Societăți și sisteme politice contemporane. Doctrină și realități*. Editura Economică, București. 2004, pp. 141-142.

519 Published in *Monitorul Oficial* no. 534 of 22.07.2002.

Title IV. Art. 71 provides that within the news and debate programmes the information referring to issues of public, political, economic, social and cultural interest must comply with the following principles:

1. Provide the impartiality, balance and favour of the free formation of opinions, by presenting the main opposing points of view, during the period in which the issues are in public debate;
2. Provide a clear distinction between the presented facts and opinions;
3. Avoid any forms of discrimination related to race, ethnicity, religion, nationality, sex, sexual orientation or age.

Presenting the main opposing points of view is usually ensured within the same show or exceptionally in the next shows; in case those required refuse to mention their point of view, this shall be mentioned on TV or radio.

In the news programmes, including sports news, out of the total time dedicated to the expression of politicians, the broadcasters shall allocate 60% to the representatives of the power, and 40% to the parliament opposition, independent members of parliament and non-parliament political parties, as well as their local representatives. The number of the power and opposition representatives who take part in debate shows, must be equal.

For the purpose of correct information and free formation of opinions, the broadcasters shall take into account the weight of the parliament parties and the importance of the issues in debate.

Section 5 of the Code for the regulation of the audiovisual content adopted by the NAC in 2006 deals with the political publicity and publicity referring to the practice of various professions. Thus, art. 155 establishes that, in the sense of this code, the publicity videos promoting a party, politician or political message is considered political publicity. This act completes this type of publicity with the interdiction of the political publicity, except for the electoral campaign periods.

Law no. 33 of 16 January 2007 regarding the organization and development of the elections for the European Parliament⁵²⁰ transposes the Council Directive no. 93/109/CE of 6 December 1993 which establishes the conditions of exerting the right to vote and to candidate in the European Parliament elections by the European Union citizens residing in a member state whose citizenship they do not possess,⁵²¹ and the Act of 1976 referring to the election of the European Parliament members, by means of direct universal vote,⁵²² with the subsequent modifications.

Art. 1. of this law establishes the general legal framework for organizing and developing the election of the Romanian members in the European Parliament. The Romanian members in the European Parliament are elected by universal, equal, direct, secret and freely expressed vote, according to the law. The mandate of the Romanian members in the European Parliament is of 5 years.

The modifications of Emergency Ordinance no. 11 of 25.02.2009 for the modification and completion of Law no. 33/2007 referring to the organization and development of the European Parliament elections must also be taken into account.

The purpose of this modification is the need to provide a correct and transparent electoral process taking into account the deficiencies found in the process of applying the dispositions of Law no. 33/2007 referring to the organization and development of the European Parliament elections, with its subsequent modifications and additions; all these aim at the public interest and are an extraordinary situation whose regulation cannot be postponed.

By “resortisant” elector, Law no. 33/2007 means any citizen of Romania, having his domicile or residence in Romania or abroad, who has the right to elect the Romanian members in the European Parliament.

During the electoral period, in case opinion surveys with electoral content are presented, according to Law no. 33/2007, these must be accompanied by the following information: name of the institution which made the survey; date or period of time during which the survey was made and the used methodology; size of the sample and maximum error margin; who requested and who paid for the survey.

The television vote or inquiries made in the street among the electorate must not be presented as representative for the public opinion or for a certain social or ethnical group.

48 hours before the reference day (7 June 2009), it is forbidden to present opinion surveys, television votes or inquiries made in the street.

Exit opinion surveys can be conducted by the public opinion surveying institutes of commercial companies or non-governmental organizations who are entitled to conduct opinion surveys and which are accredited by the Central Electoral Office, by decision, with this purpose. Their survey operators have access, based on the accreditation of the institution for which they work, to the voting station protection area, without having access inside the voting station.

On the voting day, it is forbidden to present exit surveys, before the voting has ended.

The political parties, political alliances, electoral alliances, citizen organizations belonging to the national minorities taking part in the elections, as well as the independent candidates are obliged to ask, until the date their candidatures have been confirmed, the management of the public radio and television services, for the granting of allocated broadcasting time. The requests made after this deadline are not taken into account.

520 Published in Monitorul Oficial no. 28 of 16.01.2007.

521 Published in European Communities Official Jurnal no. L 329 of 30.12.1993.

522 Published in European Communities Official Jurnal no. L 278 of 8.10.1976.

The access of political parties, political alliances, electoral alliances and citizens' organizations belonging to national minorities taking part in elections, as well as independent candidates to the public radio and television services is free of charge. The private radio and television channels shall apply the same tariff per show and time for all political parties, political alliances, electoral alliances and citizens' organizations belonging to national minorities taking part in elections, and the allocated broadcasting time offered to them must be proportional with those practised by the public channels. The failure to observe the provisions of this alignment by the private radio and television channels entails their sanctioning. The sanctions are established by decisions of the National Audiovisual Council.

It is forbidden to include electoral publicity videos in other shows than the electoral shows.

The electoral propaganda activities cannot affect in any way the green areas, natural reservations and ecologically protected areas.

The following deeds are contraventions and are sanctioned with fines between 1,000 RON to 2,500 RON:

1. Destroying, deteriorating, dirtying, covering by writing or any other way of the displayed programme-platforms or any other posters or printed electoral propaganda notices;
2. Wearing during voting by the members of the voting station electoral offices, persons in charge of security or accredited persons, escutcheons, badges or any other electoral propaganda signs.

Moreover, promising, offering or giving money, goods or any other gains in order to determine the elector to vote or not to vote for a certain list of candidates or a certain independent candidate, as well as their being received by the elector, for the same purpose, are offences and are punished with prison from 6 months to 5 years. The attempt to these deeds is punished.

3. Conclusions

As resulted from the title of the work, the role of the legal norms adopted at internal and European level is to establish certain limits in developing the electoral "fight" for the positions distributed to Romania in the European Parliament.

The internal regulations of the legal framework regarding the European Parliament elections are harmonized with the normative acts in this field. These community normative acts establish the guidelines of the elections for the positions distributed to the Member States in the European Parliament. These internal legal regulations are called electoral system and include the ensemble of rules and procedures regarding all stages and operations which must be achieved by the political actors, from the preliminary political conditions to the technical procedures used to award mandates and validate the election results.

The study deals with the existing Romanian legislation in the field of promotion techniques used in the political marketing. The promotion techniques used by the political actors during the electoral campaign are restricted by legal norms transposing elementary ethical norms at the legislative level.

As for the freedom of speech of the candidates during the electoral campaign, the legal restrictions protect it against any censure. However, the legal restrictions also action contrarily. Thus, the exertion of the freedom of speech cannot prejudice the dignity, honour, private life of the person, or right to one's own image; it cannot libel the country or nation; it cannot instigate to aggression war, national, racial, class or religious hatred; it cannot instigate to discrimination, territorial separatism or public violence; it cannot have obscene expressions, contrary to good faith.

As for the right to information of the electorate, the public and private mass information means must provide the correct information of the public opinion. In order to achieve this objective, the National Audiovisual Council benefits by an ample legislation.

The legal interdiction of the electoral publicity videos in other shows than the electoral shows is interesting. This is a limitation of the usage of electoral publicity videos, instruments used by the political actors during the electoral campaign.

The legislative restrictions in this field interfere with the environmental legislative provisions. Thus, the electoral propaganda activities cannot affect in any way the green areas, natural reservations and ecologically protected areas.

The legislative restrictions refer to doing deeds of reduced or increased gravity, i.e. contraventions or offences.

Contraventions are the following deeds: destroying, deteriorating, dirtying, covering by writing or any other way the displayed programme-platforms or any other posters or printed electoral propaganda notices; wearing during voting by the members of the voting station electoral offices, persons in charge of security or accredited persons, escutcheons, badges or any other electoral propaganda signs.

Offences are the following deeds: promising, offering or giving money, goods or any other gains in order to determine the elector to vote or not to vote for a certain list of candidates or a certain independent candidate, as well as their being received by the elector, for the same purpose.

As it can easily be noticed, the legislative regulations in the field of promotion techniques used in the political marketing are ample and various, covering the entire range of actions or inactions which can be committed by the political actors in their electoral "fight". Thus, a much needed legal protection is created in using these promotion

techniques. The legal regulations grant the guarantee of a fair electoral competition for the election of the persons wanted by the Romanian electorate for the European Parliament member mandate.

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17. Decision no. 217 of 04.03.2009 regarding the approval of the Calendar schedule of the action to be taken for electing the Romanian members in the European Parliament in year 2009 published in *Monitorul Oficial* no. 146 of 09.03.2009.