

CONTROVERSIES RELATED TO THE ESTABLISHMENT OF THE ELECTORAL BUREAUS OF THE COMMUNAL, CITY AND MUNICIPAL CONSTITUENCIES IN THE ELECTIONS OF JUNE 9, 2024 FOR THE ELECTION OF ROMANIAN MEMBERS OF THE EUROPEAN PARLIAMENT AND FOR THE ELECTION OF LOCAL PUBLIC ADMINISTRATION AUTHORITIES

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Abstract

In the case of the elections of June 9, 2024 for the election of Romanian members of the European Parliament and for the election of local public administration authorities, the Central Electoral Bureau assumed the competence to resolve complaints directed against the manner of designating the presidents or deputies of the electoral bureaus of communal, city and municipal constituencies. The practical difficulties related to the resolution of these complaints were primarily related to the identification of the electoral bureau competent to judge them and to the interpretation of Article 26 paragraph 5 of Law no. 115/2015 for the election of local public administration authorities, for the amendment of the Local Public Administration Law no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 on the Statute of Local Elected Officials. The Central Electoral Bureau considered that the resolution of such complaints is its responsibility and made an innovative interpretation of Article 26 paragraph 5 of Law no. 115/2015, which was sanctioned by the competent courts: the courts of appeal in first instance and the High Court of Cassation and Justice in appeal. The legal consequence of this situation did not stop there, but was the basis for the formulation of legal actions whose object was to request compensation for the prohibition of the right to participate in the electoral process, the compensation being equivalent to the rights of which the plaintiffs were deprived.

Keywords: *local elections, competence of the Central Electoral Bureau, appointment of presidents or deputies of the electoral bureaus of communal, city and municipal constituencies, complaint.*

1. Introduction

In the case of the elections of June 9, 2024 for the election of Romanian members of the European Parliament and for the election of local public administration authorities, the Central Electoral Bureau assumed the competence to resolve complaints directed against the manner of designating the presidents or deputies of the electoral bureaus of communal, city and municipal constituencies. The practical difficulties related to the resolution of these complaints were primarily related to the identification of the electoral bureau competent to judge them and to the interpretation of Article 26 paragraph 5 of Law no. 115/2015 for the election of local public administration authorities, for the amendment of the Local Public Administration Law no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 on the Statute of Local Elected Officials. The Central Electoral Bureau considered that the resolution of such complaints is its responsibility and made an innovative interpretation of Article 26 paragraph 5 of Law no. 115/2015, which was sanctioned by the competent courts: the courts of appeal in the first instance and the High Court of Cassation and Justice in the appeal.

The subject is relevant for the matter of local elections considering that the situation described above occurred for the first time in 2024 and therefore there is no relevant specialized literature on this subject.

In order to verify the correctness of the Central Electoral Bureau's approach, we will proceed to analyze the legislation in force and present the practice of the Supreme Court of Justice subsequent to the 2024 elections.

The subsequent practice of the SCJ outlined the directions of action for future elections, which the presidents of the courts will have to take into account when appointing the presidents and deputies of the local electoral bureaus, but this practice is not immune to criticism. If in the case of delegated judges we can identify a justification related to a possible territorial distance from the headquarters of the electoral bureaus (an inconvenience that each judge assumes when requesting to be appointed, when he can assess through his own

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examination whether he can cope with the task that will be entrusted to him), in the case of prosecutors, as well as magistrates, the exclusion is not thoroughly justified (only references are made to the distinct class of magistrates) and may generate future litigation.

2. Brief history

The first attestation of the Central Electoral Bureau in the post-December period dates back to 1990, when, through Decree-Law 92¹, for the election of the Parliament and the President of Romania, it received a new configuration. Thus, according to this normative act, the Central Electoral Bureau, consisting of 7 judges of the former Supreme Court of Justice and 10 representatives of political parties and formations, designated in descending order of the number of lists of candidates throughout the country, which they had proposed for the parliamentary elections, had as its main duties the supervision of the preparation of electoral lists, bringing them to the attention of citizens and the legal submission of candidacies, verifying and registering the results of the elections and fulfilling the other duties that fall to it according to the provisions of this decree-law, as provided for in art. 12.

The first local elections in Romania in the post-December period were held on February 9, 1992 (first round) and February 23, 1992 (second round)², a consistent period since the last elections in 1937.

The Central Electoral Office succeeded the Central Electoral Commission, both in terms of its powers and its role.

According to art. 28 of Electoral Law no. 67 of December 20, 1974³, the Central Electoral Commission had the following powers:

- "monitors the application of the legal provisions regarding elections and provides guidance on all issues related to their application;
- ensures the timely preparation of voter lists and their public disclosure, as well as the timely formation of polling stations;
- resolves complaints regarding the operations of the constituency electoral commissions and the meetings held within their competence;
- verifies and records the results of the elections in the electoral constituencies;
- takes care of the production of ballot papers, printouts and control stamps, according to the model established by the Council of State."

The Central Electoral Commission shall submit the election files to the Grand National Assembly.

Over time, the powers of the Central Electoral Bureau or its equivalent institution have been mainly limited to the supervision of elections and the centralization of election results⁴. In addition, this entity has been granted the capacity to issue decisions on the legality of the operations of hierarchically lower electoral bureaus.

Current legal regulation.

According to art. 39 para. 1 let. c, d and e and of Law no. 115/2015⁵ on the election of local public administration authorities, amending the Law on local public administration no. 215/2001, as well as amending and supplementing Law no. 393/2004 on the Statute of Local Elected Officials, the Central Electoral Bureau has the following powers, in terms of the power to censor the acts of lower electoral bureaus:

- "c) monitors and ensures compliance with and correct application of the legal provisions regarding elections throughout the country; ensures the uniform interpretation of their provisions;
- d) resolves any objections regarding its own activity and any complaints regarding the establishment, composition and activity of the electoral bureaux of the county constituency and of the municipality of Bucharest;
- e) receives and resolves any complaint regarding the organization and conduct of the election of local

¹ Decree-Law 92/14 March 1990 for the election of the Parliament and the President of Romania was published in the Official Gazette no. 35 of 18 March 1990.

² <https://www.agerpres.ro/flux-documentare/2017/02/09/documentar-25-de-ani-de-la-primele-alegeri-locale-libere-9-februarie-1992-10-33-17>.

³ Electoral Law No. 67 of December 20, 1974 was published in the Official Gazette No. 161 of December 23, 1974.

⁴ 1919: PRIMELE ALEGERI PARLAMENTARE DIN ROMÂNIA MARE, source: roaep.ro: documentat pe baza informațiilor furnizate de Arhivele Naționale ale României.

⁵ Law no. 115/2015 on the election of local public administration authorities, amending Law no. 215/2001 on local public administration, as well as amending and supplementing Law no. 393/2004 on the Statute of Local Elected Officials was published in: Official Gazette No. 349 of 20 May 2015.

public administration authorities, other than those which, by this law, are given to the competence of the electoral bureaux of the constituency or the courts.”

3. Content

The issue that generated discussions and caused a high number of legal actions since the last elections organized under Law no. 115/2015 was whether at the level of the electoral bureaux of communal, city and municipal constituency magistrates, other than those from the courts and prosecutors' offices attached to the courts, could be designated as presidents or deputies thereof, by drawing lots.

Law no. 115/2015 explicitly provides in art. 26 paragraph 5 that the appointment of the president of the constituency electoral bureau and his deputy is made in a public session by the president of the tribunal, by drawing lots, from among the magistrates and other jurists who are registered in the Body of Electoral Experts and have at least 5 years of experience in legal positions, based on the criterion of proximity of the domicile or residence to the locality or administrative-territorial subdivision in which the constituency electoral bureau will operate.

The same text of the law provides that the drawing of lots is made with priority from the list of magistrates, first for presidents and then for deputies.

We note that nowhere in the content of the reference article is the capacity of magistrate nuanced by reference to a certain level of court. When the legislator wanted to restrict the scope of magistrates who have a vocation to hold the position of president or deputy, he did so explicitly, as happens, for example, in the case described in art. 26 of Law No. 33/2007⁶ on the organization and conduct of elections to the European Parliament, when the recruitment of judges who are to be presidents, respectively deputies, is carried out by drawing lots, among its acting judges, or in the case of the electoral bureau of the Bucharest municipality sector, among the acting judges of the sector court.

The only criterion of preference among persons who have the vocation to occupy the position of president or deputy of the electoral bureaux of the communal, city and municipal constituency is the proximity of the domicile or residence to the locality or administrative-territorial subdivision in which the electoral bureau of the constituency will operate.

Following the designation of presidents and deputies of the electoral bureaux of the communal, city and municipal constituency, in the procedure initiated for the election of local public administration authorities, several electoral experts filed complaints, addressed both to the electoral bureau of the county constituency and to the Central Electoral Bureau.

Regarding the complaints registered with the Central Electoral Bureau, the first issue that arises is its competence in relation to their resolution, and the second is related to the application of substantive law norms.

In essence, the legislator has granted the electoral bureaux the power to verify and sanction any irregularities in a descending order, meaning that the activity of the lower electoral bureau is verified by the immediately superior electoral bureau, thus avoiding excessive congestion of the activity of the superior electoral bureaux. Art. 39 para. 1 let. d of Law no. 115/2015 provides that the Central Electoral Bureau resolves complaints regarding the manner of establishment, composition and activity of the county constituency electoral bureaux.

The law does not confer on the Central Electoral Office the power to sanction any irregularities that may have occurred at the time of the establishment of the county constituency electoral offices or regarding their composition. The power to deal with complaints related to the establishment of the communal, city and municipal constituency electoral offices or their composition belongs to the county constituency office, the superior office of the three categories of offices described, as also provided for in art. 41 paragraph 2 of Law no. 115/2015.

However, through a series of decisions issued in April 2024, of which we mention for example Decision 19/H/16.04.2024, Decision 29/H/19.04.2024, Decision 30/H/19.04.2024, Decision 31/H/19.04.2024, Decision 32/H/19.04.2024, Decision 33/H/19.04.2024, Decision 34/H/19.04.2024⁷, the Central Electoral Bureau assumed the competence to resolve appeals regarding the method of appointing the presidents and deputies of the

⁶ Law no. 33/2007 on the organization and conduct of elections to the European Parliament was initially published in the Official Gazette of Romania, Part I, no. 28 of January 16, 2007.

⁷ Available on the website <https://locale2024.bec.ro/documente/hotarari/>.

constituency electoral bureaus for the counties of Buzău, Dolj, Giurgiu, Ialomița, Mureș, Argeș, Alba, pronounced solutions on the merits, in the sense of abolishing the minutes of establishment of the electoral bureaus of the communal, city and municipal constituency and resuming the designation procedure.

It is outrageous that the Central Electoral Bureau, in resolving the complaints, retained the incidence of the same art. 26 paragraph 5 of Law no. 115/2015, which does not justify the differentiation contained in the above-mentioned decisions, in which it was held that the lists drawn up by the president of the tribunal also included judges from other courts. In addition, the decisions included an innovative interpretation on the same issue: thus, the new list of the president of the court had to include only the judges in office at the respective court and the prosecutors from the corresponding prosecutor's office, and only in the event that, after drawing up the list, it was found that the number of magistrates was insufficient to cover the number of persons required to be designated as presidents and deputies of the electoral bureaus of the communal, city and municipal constituency, could the list of magistrates include judges in office at the courts located in the constituencies of the courts, respectively prosecutors from the prosecutor's offices attached to them. Only if, even after supplementing the list with the above-mentioned magistrates, the number of persons required to be designated as presidents and deputies of the electoral bureaus of the communal, city and municipal constituency was still not covered, would a draw be made among the persons on the list of electoral experts.

To begin with, it should be emphasized that all the decisions of the Central Electoral Bureau mentioned above provide a particular interpretation of art. 26 paragraph 5 of Law no. 115/2015, which in order to be valid should have preceded the decisions in which the Central Electoral Bureau ruled on the complaints sent by various petitioners.

Thus, art. 39 paragraph 5 of Law no. 115/2015 provides that:

"The decisions of the Central Electoral Bureau giving interpretations of certain provisions of this law shall be published in the Official Gazette of Romania, Part I."

In the local elections of 2024, the Central Electoral Bureau issued only 3 decisions on the interpretation of the law, which exceed the subject matter of the complaints that were the basis for issuing the seven decisions. Under these conditions, the inclusion of the interpretation of art. 26 paragraph 5 of Law no. 115/2015 in the content of ordinary decisions violates the rule imposed by art. 39 paragraph 5 of Law no. 115/2015, there being an obvious formal defect, lacking the publicity condition for the efficiency of the new interpretation provided by the Central Electoral Bureau.

Leaving aside the fact that at least in the last two rounds of the local elections in 2016 and 2020, identical practices did not generate complaints or the need for interpretative decisions, the new interpretation provided by the Central Electoral Bureau is in contradiction with the obvious meaning of art. 26 paragraph 5 of Law no. 115/2015.

The article provides for a two-stage designation of the presidents and deputies of the electoral bureaus of the communal, city and municipal constituency: in the first stage, magistrates are designated by drawing lots from the list drawn up by the president of the tribunal, with only the proximity of the domicile or residence to the locality or administrative-territorial subdivision in which the electoral bureau of the constituency will operate being active as a tie-breaking criterion, and to the extent that there are still unoccupied places, also by drawing lots, the list of electoral experts with at least 5 years of experience in the specialty is used.

The appointment takes place in two distinct stages which, although not expressly mentioned in art. 26 paragraph 5 of Law no. 115/2015, clearly result from the provision according to which the drawing of lots is made with priority from the list of magistrates.

The Central Electoral Bureau, through the interpretation provided, imposes a tripartite appointment: first, the president of the tribunal draws up a list with the judges in office at the respective tribunal and the prosecutors from the corresponding prosecutor's office, following which, if the list is not sufficient to appoint all the presidents and deputies of the electoral bureaus of the communal, city and municipal constituencies, this list is completed with judges in office of the courts located in the constituencies of the tribunals, respectively prosecutors from the prosecutor's offices attached to them.

The preparation of the list of magistrates in two stages is clearly without legal support, in addition, the Central Electoral Bureau does not justify the preference, by reference to legal texts in force, for judges from courts within the jurisdiction of the tribunals, respectively prosecutors from the prosecutor's offices attached to them, to the detriment of those from the courts, respectively higher prosecutor's offices. Also, the use of the phrase "in office" is in turn without legal coverage, not being mentioned in article 26 paragraph. 5 of Law no.

115/2015 and leads to the exclusion of judges, respectively prosecutors included in the organizational chart of the tribunals or prosecutor's offices attached to them, who are delegated or seconded.

In my opinion, magistrates who are eligible to be included in the list drawn up by the president of the tribunal can work at any court or prosecutor's office, what the law requires of all of them, in the case of local elections, is to have 5 years of experience, an aspect that results from the interpretation of art. 26 paragraph 5 sentence II of Law no. 115/2015: "The appointment is made, by drawing lots, among magistrates and other jurists who meet the conditions provided for in paragraph (51) based on the criterion of proximity of the domicile or residence to the locality or administrative-territorial subdivision in which the constituency electoral office will operate." The text of the law refers for both categories of jurists to the conditions provided for in paragraph (51), which establishes the minimum experience in the specialty of 5 years⁸.

Regarding the notion of magistrate, the differentiations made in the decisions of the Central Electoral Office depart from the definition given to this professional category by art. 1 para. 1 and 2 of Law 303/2022 on the status of judges and prosecutors⁹:

- "The judiciary is the judicial activity carried out by judges for the purpose of administering justice and by prosecutors for the purpose of defending the general interests of society, the rule of law, as well as the rights and freedoms of citizens.
- Judges and prosecutors have the quality of magistrates. "

Going beyond the substantive and formal defects of the decisions of the Central Electoral Bureau, they established a new legal reality, by admitting the complaints, which is in complete contradiction with the acts of the county electoral bureaus, which resolved the same complaints, in the sense of rejecting them.

Thus, two categories of administrative acts coexisted, issued by different electoral bureaus, both presumed legal and well-founded, which had contrary provisions regarding the same complaint.

Subsequently, the legal consequence of this situation was the basis for the formulation of legal actions whose object was to request compensation for the prohibition of the right to participate in the electoral process, the compensation being equivalent to the rights of which the plaintiffs were deprived.

As at the end of the electoral process, the capacity of use of the Central Electoral Bureau ceased, the passive procedural framework was formed by the Prefect Institution, the Ministry of Internal Affairs, the Romanian State through the Ministry of Finance and the AEP, each of these institutions having specific attributions in electoral matters. Thus, the funds intended for the elections were transferred by the Ministry of Finance, through the MIA, to the Prefect Institutions. Separately, budgetary allocations were made to the AEP, but the destination of the amounts to this entity has a distinct purpose. It is to distribute to the electoral competitors the amounts necessary for the implementation of the electoral campaign.

That is why I believe that a correct passive procedural framework in disputes regarding compensation must be formed by the Ministry of Internal Affairs and the Romanian State through the Ministry of Finance and the Prefect's Institutions, the latter having only the role of distributing the amounts received to the persons involved in organizing the elections, at the local level.

The disputes generated by this interference have not yet been definitively resolved, with the High Court of Justice of the Republic of Moldova ruling on the appeal, so a uniform practice in this matter is expected, given that the solutions of the lower courts were not homogeneous, not even in terms of establishing the passive procedural framework.

Consequently, the effects of the Central Electoral Bureau's decisions continue to propagate in the current legal space, the last category of disputes not being definitively resolved. However, given the procedural stage of the resolution of the last categories of disputes, it is expected that this issue will be resolved in the near future, which will have to be taken into account in the future elections, regarding the vocation to obtain compensation in the event of non-compliance in the designation of the presidents and deputies of the local electoral bureaus.

A step forward was the pronouncement of Decision RIL 12/2025 by the SCJ¹⁰, which established that:

The list of persons who may be designated, by drawing lots, as presidents of constituency electoral bureaus and their deputies, for general local elections, includes judges in office at the court competent to make their designation, as well as at the courts in their territorial constituency.

⁸ In the same sense, Elena Burba, *Evoluția organizării și desfășurării alegerilor electorale din România*, pg. 19, unpublished study.

⁹ Law 303/2022 on the status of judges and prosecutors was published in the Official Gazette No. 1,102 of November 16, 2022.

¹⁰ Published in the Official Gazette no. 805 of August 29, 2025.

However, the decision has power only for the future, the litigious situations described in this study arising before the publication of the decision in the Official Gazette.

4. Conclusions

For the first time, in the case of the elections of June 9, 2024 for the election of Romanian members of the European Parliament and for the election of local public administration authorities, the Central Electoral Bureau assumed the competence to resolve complaints for which art. 41 paragraph 2 of Law no. 115/2015 imposes another material competence and provided an interpretation of art. 26 paragraph 5 of Law 115/2015 that exceeds its obvious meaning, requiring the intervention of the courts to resolve the conflict generated by the violation of the rights of persons who wished to be designated presidents or deputies of the electoral bureaus of the communal, city and municipal constituency to participate in the draws organized for this purpose.

The influx of case law on this subject confirmed the existence of decision errors on the part of the Central Electoral Bureau.

In order to prevent the repetition of these situations, the express intervention of the SCJ for the practical explanation of the notions that generated litigious situations was welcome, although the removal from the circle of persons who have the vocation to be designated presidents or deputies of local electoral bureaus is forced and may be another source of future litigation, based on a possible discriminatory situation.

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