

МІЖНАРОДНЕ ПРАВО



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PARLIAMENTARY REPRESENTATION OF MINORITIES IN ROMANIA – CURRENT CHALLENGES

Presented article is prepared within the Research Project “Law of Political Parties” held by the faculty of Law and International Relations of Georgian Technical University. The purpose of the article is to analyze the main mechanisms that guarantees the parliamentary representation of national and ethnic minorities in Romania. Authors review in detail the correlation of concept of equality principle and positive discrimination in regard with national and ethnic minorities. Clear distinction is given between Hungarian minority, as a successfully political movement and all other minorities, which were able to gain mandates only through positive discrimination. In conclusion authors underline some advantages of

Romanian electoral system, but also refer to weaknesses, which should be eliminated and suggest some recommendations for possible improvements.

Keywords: Parliamentary Representation; Minority Elections; Political Rights; Romania.

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Представництво меншин у румунському парламенті: поточні проблеми

Статтю підготовлено в рамках дослідницького проекту «Право політичних партій», який реалізується факультетом права і міжнародних відносин Грузинського технічного університету. Основною метою публікації є аналіз механізмів, що гарантують представництво національних і етнічних меншин у парламенті Румунії. Докладно розглянуто співвідношення концепції рівності і позитивної дискримінації по відношенню до національних та етнічних меншин. Чітке розмежування проводиться між угорською меншиною як успішним політичним рухом і всіма іншими меншинами, які змогли отримати мандати тільки завдяки позитивній дискримінації. Зазначено певні переваги румунської виборчої системи, а також окреслено недоліки, які потребують усунення. Сформульовано рекомендації, спрямовані на поліпшення цієї системи.

Ключові слова: вибори; представництво в парламенті; політичні права меншин; Румунія.

1. Introduction

Since national and local representation of diverse groups and their interests in a country is the key feature of modern democracy, free and fair elections is the main means of implementation of abovementioned. Though free and fair elections not always guarantee that the interests of all groups will be taken into consideration.

The consideration of national, ethnic, and religious minorities is especially important in the regions, where the main reason of conflict was abovementioned grounds; it's important to minimize undesirable consequences for peaceful co-existence.

Minority issues are political ones and they require political solutions. Minority groups can never form majority in central government unless the good-will, self-interest and moral responsibility of the states. The importance of the participation of minorities in public life has been highlighted by many international organizations through legally binding treaties [6, p. 6].

Presented article aims to analyze the parliamentary representation of national and ethnic minorities in Romania, in particular whether Romanian system is an effective one for the representation of minority interests and can we spread the same model for other Central and East European Countries.

2. The principle of equality

The principle of equality in elections is one of the manifestations of the political equality of citizens, the guarantees of which are the equal expression of votes, equal electoral powers and equal opportunities [1, p. 146].

Equal representation means that all voters have an equal number of electoral votes, which in turn means the exclusion of a plurality of votes. But this principle, primarily serves the idea “one voter – one vote”.

Electoral districts can be single-mandate and multi-mandate. In single-mandate districts only one candidate is elected, and in the multi-mandate districts – several.

With the exception of the two types of districts mentioned above, in some exceptional cases we have a single constituency system (the Netherlands) and a mixed constituency system (Japan) [2, p. 46].

The principle of equality is linked to a “plurality”, which implies several vote for one citizen. Similar practices exist in local government elections in Australia and New Zealand. It means, that a concrete segment of the population, in particular large property owners, has several votes, which is quite controversial to the principle of democracy [2, p. 48].

Equal powers can exist only if the boundaries of the districts are determined by the same criteria, namely by the total number of voters.

All candidates and parties participating in the elections must be guaranteed equal opportunities by the state [1, p. 147].

Equal opportunities in different states can be interpreted differently, in particular rigid and proportional equality.

In strict equal opportunities, all candidates or parties are equally supported by the state, no matter how many representatives they have in parliament and how many supporters they have. In the case of proportional equal opportunities, however, specific circumstances warrant differentiated assistance (representation in parliament, number of electorate) [3, p. 447].

State support includes funding, the use of mass media, the creation of conditions appropriate to the election campaign, and etc. [1, p. 147].

With regard to the principle of equality, the quotas provided in the laws of a number of countries that grant privileges to national and ethnic minorities are very interesting.

In 1990, representatives of the Turkish minority organization in Bulgaria gained 9 % proportional mandates; In 2002, the Albanian representation in the Macedonian Parliament was 26 out of 120 MPs. According to the constitution of Bosnia and Herzegovina, Muslims, Serbs and Croats should be proportionally represented in the representative body [4, p. 61].

In some countries where ethnic minority parties are prohibited, minority groups are elected only within the political parties, which is the only way to gain a parliamentary mandate (Turkey) [4, p. 61].

3. Electoral System and Legal Framework in Romania

The Romanian Parliament is composed of two chambers – a lower chamber (the House of Deputies) and an upper chamber (the Senate). Both chambers of Parliament are directly elected through a system of pure proportional representation. Each Romanian citizen has 2 votes, one vote for the lower chamber and one vote for the upper chamber. The Romanian Parliament is elected for 4 years. A total of

311 single-member districts for the Chamber of Deputies, and 135 single-member districts for the Senate, are established across 42 counties on the basis of a legally established quota, in particular 1 deputy for 70000 and 1 senator for 160000 citizens. Candidates are elected either by obtaining an absolute majority of votes or through mandate allocation designed to ensure proportional representation at the national and county levels.

The Romanian Parliament is composed of two chambers – a lower chamber (the House of Deputies) and an upper chamber (the Senate). Both chambers of Parliament are directly elected through a system of pure proportional representation. Each Romanian citizen has 2 votes, one vote for the lower chamber and one vote for the upper chamber.

Mandates are first assigned to candidates who obtain an absolute majority of valid votes cast in their single-member districts. The remaining seats are distributed by the greatest remainder formula, first at the county level and then nationally among the parties or organizations that cross the national threshold: five per cent of valid votes cast nationwide or, alternatively, six deputy and three senate seats won by absolute majority. The additional allocation of mandates to ensure the proportional representation of each party or coalition results in the total number of mandates changing from one election to another [7, p. 5].

Minority Party that does not meet the national threshold, the candidate with the largest number of votes nationwide obtains a seat in the lower house, if the number of votes received by the respective party exceeds 10% of the nationwide natural threshold. The nationwide natural threshold is the total number of valid votes cast divided by the number of single-member districts for the Chamber of Deputies [7, p. 5].

As for the *legal framework*, its an adequate one for democratic elections. However, a consolidated election code that would regulate all types of elections has not been adopted.

After the overthrowing Ceausescu regime in December 1989, the idea of parliamentary representation of national minorities was born in Romania. The first elections after Ceausescu were held in May 1990.

“Decree-Law no. 92/1990 for the election of the Parliament and the President of Romania (adopted by CPUN on March 1990) stipulated the right of ethnic parties to one seat in the House of Deputies if they were to fail to obtain any MPs through the normal procedure (Decree-Law 1990, Art. 4)” [4, p. 64].

The importance of Decree-Law 92/1990 adopted before the Constitution of 1991, was its content, which included the regulation election procedure, functions of Parliament and the President until the adoption of the new Constitution.

New Constitution of Romania, adopted in 1991, included the principle of positive discrimination for parliamentary representation of minorities. This issue was also incorporated in detail in electoral law no. 68/1992, which replaced Decree-Law 92/1990 and with some amendments, is still valid today.

Presently, Parliamentary elections are primarily regulated by the 1991 Constitution, amended in 2003, and the 2008 Law for the Election to the Chamber of Deputies and the Senate (Election Law). Additional legislation includes the 2003 Law on Political Parties, the 2006 Law on Financial Activity of Political Parties and Electoral Campaigns (Political Finance Law) supplemented by a 2007 government decision on its application, and the 2002 Law on Radio and Television Broadcasting (Broadcasting Law) [7, p. 6].

4. Representation of Minorities

Romania is one of the largest countries in South Eastern Europe with nearly 23 million population. Twenty groups are officially recognized as national minorities, based on the definition in the Election Law. The Election Law defines national minorities as groups represented in the Council of National Minorities, a government consultative body. They are Albanians, Armenians, Bulgarians, Croats, Czechs, Germans, Greeks, Italians, Jews, Macedonians, Hungarians, Lipovan Russians, Poles, Roma, Ruthenians, Serbs, Slovaks, Tatars, Turks, and Ukrainians. Czechs and Slovaks are represented by the same organization.

The largest groups are ethnic Hungarians and Roma. The Hungarian minority forms a majority of voters in two counties: Harghita and Covasna. The geographical distribution of Roma is relatively uniform, with larger concentrations in the counties of Mures, Calarsasi, and Zalau [7, p. 18].

Minority groups enjoy constitutionally guaranteed representation in the parliament under the terms of the Election Law [2, Art. 62 (2)]. While providing an alternate threshold for minority organizations not successful in crossing the national threshold, the Election Law also allows for preferential treatment of organizations representing national minorities.

According to Electoral Law of Romania, if two or more organizations claim to represent the same minority, then the organization that receives the highest number of votes gets the MP seat accorded to that minority. In the Elections held in 1992 and 1996 the MP seat for a successful ethnic party was awarded to the candidate who received the highest number of votes in his constituency, as compared to all other constituencies where the respective ethnic party run candidates. This means the MP elected for one minority was not always the candidate supported by the ethnic party's leadership. This rule was amended and, in the elections, held in 2000, the ethnic parties were allowed to present the same candidate (or the same list of candidates) in all 42 constituencies of Romania. This practice is strictly forbidden for all other political parties [4, p. 64].

In Romania, the ethnic parties first compete with all other parties and in the process of counting the ballots, the principle of positive discrimination starts working.

After adopting the Constitution, the first parliamentary elections were held in 1992, where threshold was introduced for the accession of political parties into Parliament:

- 3 % in the 1992 and 1996 elections.

- 5 % from 2000 elections (8.9 or 10 % for coalitions).

Abovementioned threshold meant that no minority group (except the Hungarians) would be able to meet it and therefore their only possibility of being represented in Parliament remained the positive discrimination system [4, p. 64].

UDMR (Uniunea Democrata Maghiara din Romania) was the only national minority organization that always overcomes the electoral threshold and doesn't need to rely on the principle of positive discrimination.

It's a fact that there is no other Hungarian organization that was able to be a serious competitor for UDMR. The number of votes and the territorial distribution shows that mostly all Hungarian voters support the UDMR. Due to the voting history the number of future MPs of UDMR is highly predictable, as are the electoral districts from which they will be elected.

The previous 2 parliamentary elections show the same, in particular:

	Political Party	Senate	Chamber of Deputies
2012	Social-Liberal Union	122	273
	Right Romania Alliance	24	56
	People's Party	21	47
	Democratic Union of Hungarians in Romania	9	18
	Other National Minority Organizations that Received at Least 10% of the natural Threshold	0	18

	Political Party	Senate	Chamber of Deputies
2016	Social Democratic Party	67	154
	National Liberal Party	30	69
	Union for Salvation of Romania	13	30
	Democratic Union of Hungarians in Romania	9	21
	Alliance of Liberals and Democrats	9	20
	People's Movement Party	8	18
	Other National Minority Organizations that Received at Least 10% of the natural Threshold	0	17

According to the statistical information, the Roma minority is the second largest minority group. Unlike the Hungarian and other minority groups, Roma are geographically dispersed throughout the country [8, p. 23].

The Roma minority has been represented in Parliament since 1992. In 2000, two Roma were elected to Parliament, representing the Roma Party and the PSD. In 2004, two Roma organizations registered candidate lists, the PRSD and the AURR. Organizations representing the Roma often appear to lack political experience, and subsequently fail to understand the election process adequately [8, p. 23].

Voter turnout among the Roma community is lower than the national average. The cause of the abovementioned is nonexistence of identity documents. According to some statistical information, nearly 20 % of Roma do not have identity documents and are therefore unable to vote [8, p. 23]. Other problem is that Roma communities were relocated to new settlements but remain registered in their old place of residence, thus encountering difficulties in exercising their right to vote [8, p. 24].

Despite the Electoral Law and principle of positive Discrimination, there are some problems during the formation process of Parliament. Oana Manolescu, who is the MP of the Albanian minority, was accused of being of Romanian ethnic origin by UCAR, the first Albanian ethnic party established in Romania. The contestation was denied by the lower chamber's validation committee because she was allowed to run for UCAR in the Dolj constituency in 1996. It was UCAR's strategy to win more votes to appoint her as a candidate, but the strategy failed when she received more votes in her constituency than the candidate chosen by the party leadership in her constituency; she was elected as MP. Later, she founded her own Albanian organization (LAR), received more votes in 2000 than her former party, and was re-elected to Parliament [4, p. 68].

Another Case is Ileana Stana-Ionescu Case, who was elected on the list of the Italian CIR, the only ethnic party that chose not to present the same candidate in all constituencies in 2000. CIR received 21,263 votes nationwide and Mrs. Ionescu gained the MP seat because she obtained 2,943 votes in her district, more than any other candidate of CIR in all the other electoral districts in Romania. Yet LCIR, the other Italian Party, contested her win, which put forward the same candidate in all constituencies and received a total of 16,266 votes. LCIR argued that their candidate received more votes than Mrs. Ionescu and that she should then be the MP for the Italian community, but after a review the law was interpreted in favour of CIR and Ileana Stana-Ionescu [4, p. 68].

One of the problematic cases was the Gheorghe Firczak Case, who was a schoolteacher with political ambitions from Deva in the district of Hunedoara. In 1996 he represented Free-Democrat Hungarian Party of Romania, but neither he nor his party received enough votes to enter Parliament. Later, he represented the Social-Democrat Party and finally he founded the Union of Ruthenian's in Romania and become its first president. In November 2000 he became MP for this minority. The legitimacy of Gheorghe Firczak's election to Parliament was contested by the entire opposition, but despite his unbelievable transformation from Hungarian into

Ruthenian in just four years he was also validated by Parliament after a few weeks [4, p. 69].

5. Conclusion

Considering abovementioned legal framework and existing cases, the Parliamentary representation of minorities in Romania is definitely an interesting case, but it's not applicable to all Central European Countries. It's Obvious that the Romanian System has its advantages, in particular:

- It's easier to administrate;
- It ensures a broad representation of minorities;
- It stimulates competition between ethnic parties.

Despite advantages the Romanian model needs some reforms for better and effective representation of minorities in legislative body. There are some recommendations for improvement:

- Relevant legislation should be included in a comprehensive election code. This would eliminate inconsistencies between relevant statutes and incorporate into law desirable practices that have thus far been only partially implemented through Government ordinance or instructions from the election administration.

- Provisions in the Election Law should be worded in a way which ensures that each recognized national minority is eligible for a special seat.

- Removing provisions which include different requirements for national minority organizations already represented in parliament and for extra parliamentary organizations.

- Effective action should be taken to ensure that currently disenfranchised Roma citizens are provided appropriate identification and residency documents to ensure their electoral rights.

- To intensify the Voter education among the Roma community.

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Представительство меньшинств в румынском парламенте – текущие проблемы

Данная статья подготовлена в рамках исследовательского проекта «Право политических партий», который реализуется факультетом права и международных отношений Грузинского технического университета. Основной целью статьи является анализ механизмов, гарантирующих представительство национальных и этнических меньшинств в парламенте Румынии. Авторы подробно рассматривают соотношение концепции равенства и позитивной дискриминации по отношению к национальным и этническим меньшинствам. Четкое различие проводится между венгерским меньшинством, как успешным политическим движением и всеми другими меньшинствами, которые смогли получить мандаты только благодаря позитивной дискриминации. Отмечены определенные преимущества румынской избирательной системы, а также выделены недостатки, требующие устранения, а также предложены рекомендации, направленные на улучшение этой системы.

Ключевые слова: выборы; представительство в парламенте; политические права меньшинств; Румыния.

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