

CRIMINAL PROTECTION OF THE ELECTORAL PROCESS

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Abstract: *The current global context marked by a security crisis that affects the world economy and generates social movements that result in political changes, requires special attention to maintaining the fundamental rights of citizens in a fundamentally democratic state. The right to choose and to be chosen, the right to a freely expressed vote, the right to free elections and the fairness of the electoral process are fundamental guarantees through which the state, through its means, protects its citizens. The Romanian legislator has provided for the criminalization of any antisocial acts that endanger the fairness of the electoral process by violating the rules of conduct regarding voting and attempting to fraud the vote, both through contraventions and through crimes. My scientific research aims to treat electoral crimes.*

Keywords: *electoral crimes; freedom of vote; voter corruption; electronic vote; vote fraud; ballot paper; polling station; illegal influence on elections; altering the electoral process through social media.*

Introduction

The democratization of the Romanian state in the post-communist period has gone through several electoral cycles (local, parliamentary, presidential, and European parliamentary), each representing, among other things, both a test of electoral maturity and an opportunity for deviations from social coexistence norms and for committing offenses specific to election periods. I intend to analyze the electoral offenses in the Romanian Criminal Code in the context of the post-communist

experience of electoral cycles up to the year 2025, from the perspective of concrete manifestations of electoral process fraud - from vote buying, manipulation of electoral lists, and electoral tourism, to the use of administrative resources and the influence of the digital environment in recent years. The vigilance of the authorities empowered to prevent electoral criminality has direct implications for public trust in democratic institutions. Modern democracy bases its legitimacy on the free and fair expression of citizens' will through voting. In post-communist Romania, the electoral process has, from the very beginning, served as a barometer of democratic maturity and of the functioning of the rule of law. Nevertheless, each electoral cycle has been accompanied by suspicions, criminal investigations, and public debates regarding possible electoral fraud, which has led to increased attention from the legislator toward regulating electoral crimes. Criminal law plays an essential role in protecting the integrity of the electoral process by sanctioning acts that distort the free expression of the vote. In the current Criminal Code, electoral offenses are regulated in Title IX, Articles 385–392, supplemented by provisions of special laws concerning parliamentary, presidential, local, and European Parliament elections.

The Legal Framework of Electoral Offense in Romanian Criminal Law

Electoral offenses are provided for in the Criminal Code, Title IX: Article 385 – Obstruction of the exercise of electoral rights, an offense designed to sanction the coercion of a person to vote or not to vote, or to vote in a certain way; Article 386 – Voter corruption, which concerns the offering or giving of money, goods, or other benefits in order to determine a voter to cast their vote in a certain way; Article 387 – Voting fraud, which criminalizes multiple voting, voting on behalf of another person, or falsification of voting instruments; Article 388 – Electronic voting fraud, which targets the fraudulent access of the electronic voting system and falsification of electronic ballot papers; Article 389 – Violation of voting confidentiality, which protects the principle of secret voting; Article 390 – Breach of the ballot box regime, which targets fraud

through the manipulation of the ballot box; Article 391 – Falsification of electoral documents and records, which concerns falsifying documents from electoral offices and the use of software to manipulate election results; Article 392 – Acts committed in connection with a referendum, which sanctions criminal offenses not only during elections but also in the case of referendums.

The provisions of the Criminal Code are supplemented by regulations from special laws, each containing specific rules on the organization of elections and complementary sanctions: Law no. 115/2015 on the election of local public administration authorities, for the amendment of the Law on Local Public Administration no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 on the Status of Local Elected Officials; Law no. 208/2015 on the election of the Senate and the Chamber of Deputies, as well as for the organization and functioning of the Permanent Electoral Authority; Law no. 370/2004 on the election of the President of Romania. The right to free, periodic, and fair elections, as well as the right to a referendum, together with the right to vote and to be elected, are fundamental rights enshrined in the Constitution of Romania, in Article 2 regarding the sovereignty of the people and in Articles 36, 37, and 38 concerning electoral rights.

Post-Communist Evolution of Electoral Fraud

The first two post-communist decades were characterized by a weak legal infrastructure and by social tolerance toward so-called irregularities in the electoral process. Phenomena such as the transportation of voters between localities (commonly known as electoral tourism), voting on supplementary lists, and influencing voters through material promises were documented by NGOs and international observers (OSCE, Transparency International) and sanctioned by courts of law.

The first free elections of May 1990, held under the auspices of the National Salvation Front, were marked by massive participation (over 85%) but also by accusations of state apparatus involvement and media

influence (OSCE/ODIHR, 1991, p. 7). In the 1990s, the lack of a clear coercive framework meant that phenomena such as electoral tourism, voting on supplementary lists, and vote buying were treated merely as administrative irregularities (Institute for Public Policy (IPP), 2015, p. 22).

The period 2009–2019 marked the digitalization of the electoral process and the emergence of new forms of fraud. The introduction in 2016 of the Electronic System for Monitoring Voter Turnout and Preventing Illegal Voting (SIMPV) significantly reduced cases of multiple voting (The Permanent Electoral Authority, 2025). At the end of 2019, a Decision for approving the Methodological Norms regarding the operation of the SIMPV, the selection and appointment of computer operators in polling stations, verification of the consistency of minutes recording voting results, as well as the conditions for audio-video recording of operations performed by polling station members during vote counting, was adopted (Permanent Electoral Authority, 2019). However, new challenges emerged, such as influencing voters through online means, disinformation during campaigns, and the use of personal data from the Electoral Register without consent.

The period between 2020 and 2024 represented the consolidation of the system, but also the emergence of new vulnerabilities, which prompted the authorities to strengthen criminal legislation in this area. After the year 2000, the context changed with the consolidation of the Permanent Electoral Authority and the introduction of monitoring mechanisms such as SIMPV (Electronic System for Monitoring Voter Turnout), introduced in 2016, which—as previously mentioned—significantly reduced multiple voting cases (Permanent Electoral Authority, 2021, pp. 60–77). The pandemic period created the framework for elections held under exceptional conditions. Observers noted a decrease in material fraud, but an increase in informational fraud, through online manipulation of public opinion, fake accounts, and disinformation campaigns, as a consequence of the digitalization of electoral campaigns (Transparency International Romania, 2023, p. 18). At the same time, increased absenteeism and the reliance on postal voting

(especially in the diaspora) created new risks for the falsification of electoral documents.

Electoral fraud is not limited to the material act of vote falsification. In its extended sense, electoral fraud may include: Organizational fraud, meaning the modification of voting circumstances, manipulation of voter lists, or relocation of ballot boxes (Expert Forum – EFOR, 2020, pp. 2–4, 6–8); Media and informational fraud, meaning negative campaigns, *fake news*, and political deepfakes (OSCE/ODIHR, Romania Final Report, 2021, p.12); Administrative fraud, namely the misuse of public resources for campaign purposes - “blurring the line between official duties and the campaign” (OSCE/ODIHR 2021 Report, p. 12); Economic fraud, meaning vote buying through direct or indirect material advantages (Article 386 of the Criminal Code). In legal doctrine (Hotca, 2018), these manifestations are analyzed from the perspective of concrete social danger, i.e., the actual impact on legally protected values: freedom of vote, citizens’ equality, and the authenticity of the electoral process.

Although the number of proven criminal cases remains relatively low, the public perception of fraud persists, indicating a problem of trust in the enforcement of the law rather than its legality. The number of criminal cases concerning electoral fraud is relatively small, yet their public impact is significant. The Public Ministry’s Report shows that between 2012–2023, over 400 cases related to electoral offenses were handled, but the conviction rate was below 15% (Public Ministry, 2022 p. 95). This discrepancy reveals evidentiary difficulties and a high level of social tolerance toward such acts. From a social standpoint, even the suspicion of fraud erodes citizens’ trust in democratic institutions. From a legal standpoint, the strengthening of electronic monitoring mechanisms and cooperation with OSCE/ODIHR has led to visible professionalization of the electoral process.

Electoral Offenses

1. Obstruction of the Exercise of Electoral Rights

The Romanian Criminal Code, in Article 385, regulates the offense of obstruction of the exercise of electoral rights, consisting of preventing, by any means, the free exercise of the right to vote or to be elected, while the aggravated form consists of an attack, by any means, against the premises of a polling station. In accordance with Article 392 of the Criminal Code, the aforementioned acts also constitute an offense when committed during a referendum.

1.1. Pre-existing Conditions

The legal object of the offense consists of the social relations that protect every person's right to vote and to be elected - a fundamental right guaranteed by Articles 37 and 38 of the Constitution of Romania - or to participate in voting. As these are constitutional rights, they are protected guarantees, and their violation endangers democracy itself, the very foundation of social relations in a democratic state. Under paragraph (2), the primary specific legal object consists of those social relations that safeguard the safe conduct of elections; however, there is also a secondary legal object, namely the social relations that protect the integrity and life of persons or property when the attack targets such goods or individuals. The material object of the offense does not exist in its typical form; however, in the aggravated form, the material object consists of the body of the attacked persons or the property that is the target of the attack (for example, the furniture of the polling station, the building itself, or even the ballot papers).

The active subject of the offense can be any person criminally liable. Criminal participation is possible in all forms (co-authorship, instigation, complicity). The primary passive subject of the offense is the state, through its authorities responsible for the organization of elections, while the secondary passive subject may be the person prevented from

voting or from being elected, as well as the individual against whom the attack was carried out.

1.2. The constitutive content

Objective element: In the standard form of the offense, the material element consists of the act of preventing a person from exercising their right to vote or to be elected. In the aggravated form, the material element consists of an act characterized by violence directed against a polling station (the attack necessarily involves violence- such as destruction, assault, etc.). In both forms, a concurrence of offenses may also be retained if, in committing the offense, elements are used that constitute another offense which is not absorbed by the offense of hindering the exercise of electoral rights. The immediate consequence represents a socially dangerous result: in the standard form, it consists of the impossibility for a person to exercise their electoral rights; in the aggravated form, it consists of bodily harm or the deterioration or destruction of property. Under these circumstances, the causal link must be demonstrated -specifically, it must be proven that the prevention of the exercise of the right to vote resulted from the perpetrator's action. **Subjective element:** The form of guilt is direct or indirect intent. It is not necessary for the offense to have a specific purpose or motive.

1.3. Forms. Modalities. Sanctions

Forms: Preparatory acts, although possible, are not punishable. The offense is susceptible to attempt, and according to Article 393 of the Criminal Code, the attempt is punishable. Regarding the normative modalities, the legislator has provided for a standard form and an aggravated form of the offense. As for the factual modalities, these can take various forms—for example, hindering the exercise of electoral rights may be committed by denying access to the polling station, by stealing or hiding a person's identity card, by fraudulently removing from the electoral lists the person who wishes to run as a candidate, or, in the aggravated form, by destroying the ballot papers. **Sanctions:** The legislator has established, for paragraph (1), the penalty of imprisonment

from 6 months to 3 years; and for paragraph (2), the main penalty is imprisonment from 2 to 7 years, accompanied by a *complementary penalty* consisting of the prohibition of exercising certain rights.

2. Voter Corruption

The offense of voter corruption, regulated under Article 386 of the Romanian Criminal Code, is an offense with a long-standing tradition in Romanian legislation — it can be found as early as the Law on Elections of July 2, 1864 — and has evolved in close connection with the political regime changes in our country. Voter corruption is also an offense more frequently encountered in practice than other electoral crimes, as it involves electoral bribery. This offense is present in all states that uphold democratic principles. For example, the German Criminal Code, in Article 108b (1), criminalizes the offering of material advantages to voters and defines it as the act of a person who offers, promises, or grants another person gifts or other material benefits in exchange for the latter's abstention from exercising the right to vote or exercising it in a certain manner. The penalty prescribed by law is imprisonment of up to 5 years or a fine.

Furthermore, Article 108c provides that, in addition to a sentence of at least 6 months, the court may prohibit the exercise of the right to hold public office, the right to vote, and the right to stand for election. The French legislation provides for this offense in Article L.106 of the Electoral Code, with the following legal content: any person who, through gifts or donations in money or in kind, through promises of gifts, favors, public or private jobs, or other special advantages, made with the purpose of influencing the vote of one or more voters, has obtained or attempted to obtain their votes, either directly or through an intermediary, or any person who, through the same means, has determined or attempted to determine one or more voters to abstain from voting, shall be punished with two years of imprisonment and a fine of €15,000. Similarly, Belgium, through its Electoral Code, Article 181, criminalizes this act: anyone who directly or indirectly gives, offers, or promises - even in the form of a wager - money, goods, or any other advantage or guarantee in exchange for a vote, abstention, or authorization to vote mentioned in

Article 147bis, or who offers such advantages depending on the election result, shall be punished with imprisonment between 8 days and one month and a fine between €50 and €500, or with only one of these two penalties.

According to Article 386 of the Romanian Criminal Code, the legal content of the offense of voter corruption consists of offering or giving money, goods, or other benefits for the purpose of determining a voter to vote or not to vote for a particular list of candidates or a particular candidate. Under Article 392 of the Criminal Code, the above provisions apply correspondingly to acts committed during a referendum as well.

2.1. Pre-existing Conditions

The special legal object of the offense consists of the social relations that ensure the fairness of elections, which necessarily implies the exclusion of any form of voter corruption aimed at influencing electoral choices. This offense has no material object. In the author's opinion, the money or goods offered or given by the perpetrator do not represent the material object of the offense, but rather the means by which the offense is committed. The active subject may be any person with criminal capacity, as the legislator does not require any specific status or qualification, even though the perpetrator may have a vested interest in influencing electoral options. Criminal participation is possible in all its forms—co-authorship, instigation, or complicity. The primary passive subject of the offense is the state, through its authorities with electoral responsibilities, while the secondary passive subject may be the candidate disadvantaged as a result of the commission of the crime.

2.2. The constitutive Content

Objective element: The material element consists of the act of offering or giving money, goods, or other benefits. In the case of offering, it is important to note that the existence of the material element of the offense does not depend on whether the person who is to vote actually receives the money, goods, or benefits offered. The act of giving, on the other hand, represents the actual transfer of the money, goods, or

benefits; the difference between the two lies in the fact that, in the case of giving, the recipient of the electoral bribe takes possession of the items or advantages (Boboc, 2025, p. 3).

The legislator has provided, under paragraph (2), that goods of symbolic value, inscribed with the emblems of a political party, do not fall within the category of goods referred to in the legal content of the offense. It may therefore be stated that the legislator conditions the offense on the value of the goods—if the value is low or symbolic, the offense no longer exists—while also requiring that the goods be marked with political insignia. However, the term “symbolic”, used by the legislator in Article 386 (2) of the Criminal Code, may generate non-uniform judicial practice, leaving it to the discretion of the judicial body to determine the maximum threshold for a symbolic good. This subjective assessment of value may vary from one person to another, contradicting the principle of the imperative nature of criminal norms. In doctrine, it has been proposed to eliminate this ambiguity, either by expressly defining the goods that the legislator considers to be of symbolic value, or by listing them, or by establishing a value threshold (Gorunescu, 2013, pp. 181–186). Moreover, Romanian legislation already contains an explicit provision defining symbolic goods — Article 55 of Law no. 35/2008 on the election of the Chamber of Deputies and the Senate — which states that materials and objects of electoral propaganda such as: posters, leaflets, postcards, calendars, notebooks, illustrated cards, pens, lighters, matchboxes, badges, name tags, DVDs, pennants, flags, mugs, bags, T-shirts, caps, scarves, vests, hats, gloves, raincoats, or jackets inscribed with the electoral symbols of political parties or candidates participating in elections, do not constitute goods forming the object of the offense. Other electoral propaganda objects bearing the electoral symbols of political parties or candidates are also exempted, provided that their value does not exceed 10 lei (excluding VAT) per item, and that such goods cannot consist of food, alcoholic or non-alcoholic beverages, or tobacco products. However, this provision was not incorporated into the current Criminal Code.

The immediate consequence consists of a state of danger created for the fair conduct of elections or referendums. The causal link results directly from the materiality of the act (*ex re*).

Regarding the subjective element, the form of guilt is direct intent, qualified by purpose—the purpose being to determine the voter to vote or not to vote for a specific candidate or list of candidates. Judicial practice has established that the offering or giving of money, goods, or other benefits must occur solely with the specific intent of influencing the exercise or non-exercise of the right to vote, in favor of or against a particular candidate or list (The Constitutional Court of Romania, 2018).

2.3. Forms, Modalities, Sanctions

Forms: Preparatory acts and attempts, although possible, are not punishable. Modalities: The legislator has provided a single variant of the offense consisting of two normative modalities - offering and giving - but in practice, these can take a multitude of forms. Sanctions: The main penalty consists of imprisonment from 6 months to 3 years, accompanied by the complementary penalty of prohibiting the exercise of certain rights.

3. *Vote Fraud*

Regulated under Article 387 of the Criminal Code, the offense of vote fraud consists of the act of a person who votes without having this right, votes two or more times, inserts more ballot papers into the box than allowed, or uses a voter's card or an identity document that is null or falsified, or a false ballot paper. According to Article 392 of the Criminal Code, the aforementioned acts also constitute offenses when committed during a referendum.

3.1. Pre-existing Conditions

The special legal object consists of the social relations that safeguard the fairness of the electoral process and the integrity of the persons participating in elections.

The offense of vote fraud has a material object, represented by the extra ballot papers inserted into the box or by false ballot papers used. The active subject of the offense may be qualified or unqualified, depending on the manner in which the act is committed. A person who votes without having this right may only be, according to Article 36 of the Constitution of Romania, one of the following categories of individuals deprived of voting rights: those declared legally incapacitated (the mentally ill or intellectually disabled placed under interdiction); and persons convicted by final court decisions to the loss of electoral rights.

In the case of mentally ill or legally incapacitated persons, the provisions of Article 28 of the Criminal Code on irresponsibility apply. In other normative modalities provided by law, the active subject may be any person with criminal capacity. The primary passive subject is the state, through the authorities responsible for organizing elections, while the secondary passive subject is the candidate affected by the fraudulent vote. Criminal participation is possible in the form of instigation or complicity.

3.2. The constitutive Content

Objective element: The material element consists of the act of illegal voting or of using a voter's card, identity document, or ballot paper that is null or falsified. The essential requirement is that the voting be carried out unlawfully. The illegal voting act may also consist of voting two or more times, or inserting into the ballot box more ballot papers than the voter is entitled to. If the act is committed through the use of a falsified voter's card, identity document, or ballot paper, the perpetrator may also be held liable in concurrence for the offense of forgery of official documents, if they are also the author of the falsification. The immediate consequence is the creation of a state of danger for the proper conduct of the electoral process. Consequently, the causal link results directly from the materiality of the act (*ex re*). **Subjective element:** The form of guilt with which the perpetrator commits the offense is intent, whether direct or indirect. Although the legislator does not explicitly provide for a specific purpose or motive, in

practice the intent is generally direct, with the purpose of creating an advantage for certain candidates and disadvantaging others.

3.3. Forms, Modalities, Sanctions

Forms: Preparatory acts, though possible, are not punishable. According to Article 393 of the Criminal Code, attempt is possible and punishable. Modalities: The legislator has criminalized the offense in a typical variant with several normative modalities: voting without having the right to vote; voting two or more times; inserting into the ballot box more ballot papers than allowed; and an assimilated variant — voting using a voter's card, identity document, or ballot paper that is null or falsified. There can be a multitude of factual modalities, depending on the creativity of each perpetrator in implementing the criminal act. Sanctions: The main penalty is alternative — either imprisonment from 6 months to 3 years or a fine, together with the complementary penalty of prohibiting the exercise of certain rights.

4. Electronic Voting Fraud

The offense of electronic voting fraud, provided under Article 388 of the Criminal Code, consists of printing and using false access data, fraudulent access to the electronic voting system, or falsification by any means of electronic ballot papers. According to Article 392 of the Criminal Code, the aforementioned acts also constitute offenses when committed during a referendum.

4.1. Pre-existing Conditions

The legal object of the offense consists of the social relations that protect the security of the electronic voting system, as well as those that protect the fairness of participants in electoral processes. The material object of the offense includes both the electronic voting system itself and the falsified electronic ballot papers. The active subject is non-circumstantiated, meaning that any person with criminal capacity may be a perpetrator. Criminal participation is possible in all its forms (co-authorship, instigation, complicity). The primary passive subject is the

state, through its institutions responsible for organizing electronic voting, while the secondary passive subject may be the candidate affected by the fraudulent electronic vote.

4.2. The constitutive Content

Objective element: The material element consists of one of the following activities: printing or using false access data, fraudulent access to the electronic voting system, or falsification by any means of electronic ballot papers. In legal doctrine, it is considered that, in the case of the first modality of the material element, both actions — printing and using — must occur cumulatively for the offense of electronic voting fraud to exist (Boroi, 2023, p. 834). The immediate consequence consists of the creation of a state of danger for the proper conduct of the electronic electoral process. Accordingly, the causal link results directly from the materiality of the act (*ex re*). Subjective element: The form of guilt required by the legislator is intent, either direct or indirect. As in the offense of traditional vote fraud, the legislator does not explicitly provide for a purpose or motive in the commission of electronic voting fraud. However, in practice, the perpetrator typically acts with direct intent, the purpose being to create an advantage for certain candidates and to disadvantage others.

4.3. Forms, Modalities, Sanctions

Forms: Preparatory acts, although possible, are not punishable. According to Article 393 of the Criminal Code, attempt is possible and punishable. The legislator has criminalized the offense in a single typical variant with several normative modalities, namely: printing and using false access data, fraudulent access to the electronic voting system, or falsification by any means of electronic ballot papers. There may exist a multitude of factual modalities, depending on the creativity of each perpetrator in carrying out the criminal act. Sanctions: The main penalty consists of imprisonment from 1 to 5 years.

5. *Violation of Voting Confidentiality*

The offense of violation of voting confidentiality, provided under Article 389 of the Criminal Code, consists in violating, by any means, the secrecy of the vote.

If the act is committed by a member of the electoral bureau of a polling station, it is considered an aggravated offense. According to Article 392 of the Criminal Code, the aforementioned acts also constitute offenses when committed during a referendum.

5.1. *Pre-existing Conditions*

The legal object of the offense consists of the social relations that protect the right to the secrecy and confidentiality of each person's vote. The offense of violation of voting confidentiality has no material object. The active subject of the offense, in its typical form, is non-circumstantiated, meaning that it can be any person with criminal capacity. In the aggravated form, however, the active subject is qualified, namely a member of the electoral bureau of a polling station. In the typical form, criminal participation is possible in all its forms; in the aggravated form, when committed by co-authors, each perpetrator must hold the status of member of the same polling station electoral bureau. The primary passive subject is the state, through its bodies responsible for ensuring the integrity of the electoral process, while the secondary passive subject may be the candidate whose chances were diminished as a result of the offense, due to psychological pressure exerted on the voter whose vote was not kept confidential.

5.2. *The constitutive Content*

Objective element: The material element consists of an action, namely violating, by any means, the secrecy of the vote. By violation of the secrecy of the vote, one understands the disclosure of how a person voted, the content of their ballot paper. Although the legislator does not explicitly stipulate an essential requirement of the material element, the author's opinion is that the lack of consent of the voter regarding the disclosure of their vote must be present for the offense to exist. If such

consent exists, two situations may arise: either the act does not constitute an offense, or it constitutes another offense, for instance that provided by Article 386 of the Criminal Code (voter corruption), where the disclosure of the vote's content is an integral part of the offense (for example, when a voter photographs their ballot to prove they voted as instructed by the briber). The immediate consequence consists in creating a state of danger for the proper conduct of the electoral process. Consequently, the causal link results directly from the materiality of the act (*ex re*). Subjective element: the form of guilt provided by law is intent, whether direct or indirect. The legislator does not expressly require a specific purpose or motive for committing the offense of violation of voting confidentiality.

5.3. Forms, Modalities, Sanctions

Forms: Preparatory acts, although possible, are not punishable. According to Article 393 of the Criminal Code, attempt is possible and punishable. Modalities: the legislator has incriminated the offense as a single normative form: violation by any means of the secrecy of the vote, and an aggravated variant, when the act is committed by a member of the electoral bureau of a polling station. There can be numerous factual modalities, depending on each perpetrator's determination and skill in executing the criminal act. Sanctions: For the typical form, the main penalty is a fine. For the aggravated form, the main penalty is imprisonment from 6 months to 3 years or a fine, together with the complementary penalty of prohibiting the exercise of certain rights. It should be noted that the legislator has not considered the social danger of this offense, in its typical form, to be particularly high - this is one of the few offenses in the Criminal Code for which the main penalty is only a fine. The penalty is increased in the aggravated variant, precisely because it is committed by a person who has the legal duty to ensure the fairness of the electoral process on behalf of the state.

6. *Failure to Comply with the Ballot Box Regime*

The offense of failure to comply with the ballot box regime, provided under Article 390 of the Criminal Code, consists in opening the ballot boxes before the time set for the closing of voting. In the mitigated form, it consists in entrusting the special ballot box to persons other than the members of the polling station electoral bureau, or transporting it by persons other than those authorized, or under conditions other than those prescribed by law. According to Article 392 of the Criminal Code, the acts described above also constitute offenses when committed during a referendum.

6.1. Pre-existing Conditions

The legal object of the offense consists of the social relations that protect the confidentiality of each person's vote through the observance of procedures relating to the ballot box. The material object consists precisely of the special ballot box that is entrusted to unauthorized persons, or of ballot boxes opened before the time legally established for the closing of voting. The legislator does not expressly define the active subject of this offense, but practice shows that the person committing it must possess a certain official capacity, since otherwise they would not have access to the ballot boxes - either the special boxes or those located in polling stations. Thus, the active subject should have a special status, such as a member of the polling station, member of the county or central electoral bureau, election observer, or a person who, by virtue of their duties, is in a position to commit such an act. Criminal participation is possible in all its forms, with the observation that, for co-authorship, each co-author must possess the special capacity mentioned above. The primary passive subject is the state, through its institutions responsible for organizing elections, and the secondary passive subject may be the candidate affected by the offense.

6.2. The constitutive Content

Objective element: In the typical form, the material element consists of the act of opening the ballot boxes before the time set for the closing of voting. There is thus a temporal requirement explicitly established by the legislator: the action of opening the ballot boxes must

occur before the official closing time. In the mitigated form, the material element consists of two actions: Entrusting the special ballot box to persons other than members of the polling station's electoral bureau; or transporting it by unauthorized persons or under conditions other than those prescribed by law. The immediate consequence consists of the creation of a state of danger for the fair and lawful conduct of the electoral process. Accordingly, the causal link results directly from the materiality of the act (*ex re*). Subjective element: the form of guilt is intent, which may be direct or indirect. Although the legislator does not expressly provide a purpose or motive for committing the offense, one may exist, and the judge may consider it in individualizing the punishment. For example, the purpose could be opening the ballot boxes before the official closing time to avoid the vigilance of other polling station members and to extract ballots to the detriment of a certain candidate.

6.3. Forms, Modalities, Sanctions

Forms: Preparatory acts, although possible, are not punishable. According to Article 393 of the Criminal Code, attempt is possible and punishable. Modalities: The legislator has criminalized the offense in: a typical variant — opening the ballot boxes before the time set for closing the voting, and a mitigated variant — entrusting the special ballot box to unauthorized persons or transporting it under unlawful conditions. There may exist numerous factual modalities, depending on the circumstances and the perpetrator's resourcefulness. Sanctions: For the typical variant, the main penalty is imprisonment from 1 to 3 years or a fine, together with the complementary penalty of prohibiting the exercise of certain rights. For the mitigated variant, the legislator has provided for lighter penalties, consisting of imprisonment from 3 months to 2 years or a fine, and the complementary penalty of prohibiting the exercise of certain rights.

7. *Falsification of Electoral Documents and Records*

The offense of falsification of electoral documents and records, a form of document forgery, is provided under Article 391 of the Criminal

Code and consists of: falsifying by any means the documents belonging to electoral bureaus; entering in the copy of the permanent or supplementary electoral list the names of persons who are not listed there; while in the aggravated variants, it consists of: introducing or using a defective software program that alters the recording or totaling of results obtained in polling stations, or that allocates mandates contrary to legal provisions; and introducing data, information, or procedures that distort the national information system used to establish election results. According to Article 392 of the Criminal Code, the acts described above also constitute offenses when committed during a referendum.

7.1. Pre-existing Conditions

The legal object of the offense consists of the social relations that ensure the proper conduct of the electoral process, based on the presumption of authenticity and veracity of documents held by electoral bureaus and of the software programs used in the electoral process. The material object is represented by the falsified documents of electoral bureaus, the copy of the permanent or supplementary electoral lists, as well as the software programs or the compromised national information system. The active subject, although not expressly defined by the legislator, should, in the author's opinion, possess specific qualifications or responsibilities related to the electoral process in order to be capable of committing the offense and to have access both to the software systems and to the documents within electoral bureaus or electoral lists. Criminal participation is possible in all its forms, with the observation that, in cases of co-authorship, each co-author must have specific competencies. The primary passive subject is the state, through its authorities responsible for organizing and conducting elections, while the secondary passive subject is the candidate disadvantaged as a result of the falsified election results.

7.2. The constitutive Content

Objective element: The material element is complex and consists of multiple actions. The first action in the typical variant is the falsification

by any means of the documents belonging to electoral bureaus - falsification that may be carried out through alteration or counterfeiting. The second action in the typical variant consists of entering into the copy of the permanent or supplementary electoral list the names of persons who are not legitimately listed. In the aggravated variant, the material element includes: introducing or using a defective software program that alters the recording or totaling of results obtained in polling stations or that determines the allocation of mandates contrary to legal provisions, and entering data, information, or procedures that alter the national information system used to establish election results. The immediate consequence is the creation of a state of danger for the integrity of the electoral process. The causal link results directly from the materiality of the act (*ex re*). Subjective element: The form of guilt is intent. Although the legislator does not expressly provide a purpose or motive, it is evident that the perpetrator acts with a specific purpose, since through such actions they alter or falsify election results, thereby compromising the electoral process.

7.3. Forms. Modalities. Sanctions

Forms: Preparatory acts, although possible, are not punishable. According to Article 393 of the Criminal Code, attempt is possible and punishable. Modalities: The legislator has criminalized the offense in two typical variants and two aggravated variants. As for factual modalities, there may exist a multitude, depending on the means and technological sophistication used. Sanctions: For the typical variants, the main penalty is imprisonment from 1 to 5 years, with the complementary penalty of prohibiting the exercise of certain rights. For the aggravated variants, the main penalty is imprisonment from 2 to 7 years, with the same complementary penalty of prohibiting the exercise of certain rights.

Conclusions. The Social and Legal Impact of Electoral Offenses

As mentioned at the beginning of this scientific research, electoral offenses—even when few in number and only partially proven and

punished by the authorities—have a major impact on the perceived legitimacy of the democratic system. Although after each electoral cycle there are numerous complaints from citizens, the authorities face difficulties in proving intent and identifying perpetrators, especially in cases involving the collective corruption of voters. Furthermore, electoral offenses have a symbolic component: they can undermine public trust in fundamental institutions (the Government, Parliament, Constitutional Court, Public Prosecutor's Office, and Ministry of Justice), generating a systemic delegitimization effect. An analysis of the period following 1990 shows that Romania has made significant progress in combating electoral fraud—from the lack of oversight in the early 1990s to the current digitalized monitoring of the electoral process. However, contemporary challenges have shifted from the material to the informational sphere. The rule of law requires not only the punishment of electoral offenses but also the creation of an environment of civic trust, transparency, and electoral education. Only in this way can the principle of sovereignty, enshrined in Article 2 of the Romanian Constitution, be genuinely realized.

De lege ferenda: Future electoral cycles will require the adaptation of criminal legislation to address the risks generated by artificial intelligence, digital manipulation, and the cybersecurity of electoral data.

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