Legal Restrictions regarding the Ecological Aspects Integrated in the Promotion Techniques Used in the Romanian Political Marketing

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Abstract: - The ecological stipulations regulating the field of the promotion techniques used in the Romanian political marketing should be developed; the adoption of laws providing a real protection of the natural environment becomes essential.

Key-Words: - ecological aspects, promotion techniques used in the political marketing, legal aspects, electoral campaign, electoral propaganda, electoral posters.

1. Romanian Legislation Regulating the Promotion Techniques Used in the Political Marketing

The electoral campaign is considered to be that period of time during which the electoral competitors perform propaganda activities with the purpose of determining the electors to express their votes in their favour. [3] The electoral campaign starts on the date the election date is made public, and ends 2 days before the voting day.

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 in the electoral campaign to be legal, they must be compliant with the rightful order. [1]

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. [4]

The legal framework regulating the election period in Romania includes the rules and procedures according to which all stages and operations of the electoral process must take place. The electoral process is strictly legally regulated starting with the preliminary political conditions and ending with the technical procedures for awarding the mandates and validating the election results. The totality of these rules and legal procedures are included in a series of normative documents adopted in Romania, normative documents forming the Romanian electoral system.

During the electoral campaign, the candidates shall benefit by the constitutional provisions regarding the freedom of speech. Thus, art. 30 of the Constitution of Romania stipulates that the freedom of expressing thoughts, opinions or beliefs and 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 also have 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. [2]

The right to information is regulated in art. 31 of the Constitution of Romania. The means of mass information, both public and private, are legally constrained to provide the correct information of the public opinion. The public radio and television services are autonomous and must guarantee these services to the important social and political groups.

The organic audiovisual regulation is made through Law no. 504 of 11 July 2002 of the audiovisual. [5] Art. 3 stipulates that by broadcasting and rebroadcasting the programs services, the political pluralism is achieved and ensured, while complying with the fundamental rights and liberties of the human beings. All audiovisual media service providers have thus the legal obligation to provide the objective information of the public by correctly presenting facts and events, and favour the free formation of opinions.
In this field, an important part 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.

The Code for the regulation of the audiovisual content adopted by NAC in 2006 establishes the provision of correct information and pluralism in Title IV. Art. 71 provides that, within the news and debate programs, 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 the free formation of opinions, by presenting the main opposing points of view, during the period in which the issues are under 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 programs, 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 under debate.

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

In this respect, Law no. 35/2008 is even more restrictive, forbidding the inclusion of electoral publicity videos in shows other than the electoral ones, according to art. 38, align. 4.

2. Legal Protection Offered in Romania to the Ecological Aspects which can be Endangered by the Promotion Techniques Used in the Political Marketing

“The electoral propaganda activities cannot affect in any way the green areas, natural reservations and ecologically protected areas” stipulates art. 18 of Law no. 33 of 16 January 2007 at align. 9. [6]

This is the only provision included in the legislation regulating the electoral campaign in Romania.

During the Romanian electoral campaign for the European Parliament elections, electoral posters placed on the trees located on the side of national roads have been used. These posters have been attached on the tree trunks using transparent tape.

Fig.1 [11]

In this way, green areas have been affected by the promotion activities of a Romanian political party.

This is an example of a breach of legal stipulations regulating the political marketing performed by the Romanian political actors.

The fact that the natural environment has been endangered, although the law forbids it, indicates a total indifference towards the Romanian legislation containing ecological stipulations.

The issue which is revealed in this case is not unusual in the ecological field, and indicates a lack of control in complying with the legal stipulations. This issue is caused by the lack of control performed by the state authorities having attributions in this field. In the case in which the compliance with the law is not controlled by
the authorities having legal attributions in the field, a large part of the political actors involved in the electoral “fight” will no longer comply with the law in force. If the sanctions established through this law are not applied, without causing any fear towards the legal norms, these norms are practically inexistent.

This deed performed by the Romanian political party is considered a contravention according to art. 21¹ align. 1 letter z, and it is sanctioned with fines amounting to 1.000-2.500 lei. The organism legally certified to control the application of this ecological provision is the Romanian Police Department, being established through art. 21² align. 2, letter a.

Moreover, according to Law no. 35/2008, the mayors are obliged, within 5 days from communicating the election date, to establish special places to be used for the electoral posters.[ 7] The provision of these special places to be used for the electoral posters oblige the political parties to observe them. Align. 5 of art. 39 establishes, as an exception, that the electoral posters are allowed in places other than the especially established ones for this purpose, only with the approval of the owners, or as the case may be, holders. In this respect, referring to the trees on the side of the public roads, it is highly unlikely that the Romanian state, through the agency of its administrative organisms, had allowed the respective political party to display electoral posters on the public domain.

If the political party using electoral posters placed on the trees on the side of the national roads, had most likely not received the approval to affect the green areas from the Romanian state, the respective political party has committed a contravention, according to art. 50, align. 1 letter g, sanctioned with fines amounting to 1.000-2.500 lei. The Romanian Police Department is legally certified to ascertain the perpetration of this contravention, according to art. 51 align. 2.

3. Legislative and Institutional Proposals Regarding the Ecological Aspects which Can Be Included in the Romanian Legislation Regulating the Promotion Techniques Used in the Political Marketing

The latest elections in Romania, i.e. the European Parliament elections of 7 June 2009, have been organized based on Law no. 33 of 16 January 2007 regarding the organization and development of the elections for the European Parliament, as special regulation legislation. [8] This normative document adopted in Romania transposes the Council Directive no. 93/109/CE of 6 December 1993 which establishes the conditions under which the right to vote is expressed, and the conditions under which the citizens of the European Union residing in a member state whose citizenship they do not possess, can run for the European Parliament elections,[9] and the Document of 1976 regarding the election of the members of the European Parliament, through direct universal vote,[10] with its subsequent modifications.

Law no. 33/2007 does contain just a stipulation regarding the ecological aspects which can be endangered through the promotion techniques used in the political marketing in Romania. Even if the European community legislation does not contain stipulations in this respect, nothing stops the Romanian Legislator from adopting other stipulations for the natural environment protection, during the development of the electoral campaigns in Romania. The European directives can be more broadly applied in the internal legislation of the member states.

In connection to that provision, singular in the Romanian electoral system, we consider that it could be developed in order to cover a wider range of situations in which the natural environment is “sacrificed” in the electoral “fight” of the political actors in Romania.

As for the lack of control of the existing legislation, achieved by the executive power in Romania, we consider that the legally certified authorities should carry on a more efficient activity, and should not let themselves be influenced by the political actors in Romania.

4. Conclusions

Further to the above, we consider that the ecological stipulations regulating the field of the promotion techniques used in the political marketing in Romania should be developed; it is even necessary to adopt laws providing real protection of the natural environment. Moreover, a more effective activity of the administrative authorities having control attributions would grant a real protection of the natural environment in the field of promotion techniques used in the Romanian political marketing.

References:


[6] Article 18\(^2\) has been included through Emergency Ordinance no. 11 of 25 February 2009 for the modification and completion of Law no. 33/2007 regarding the organization and development of the elections for the European Parliament.


