When *more* might be *less*. The Strange Case of Independent Candidates in Romanian Local Elections

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Abstract:
In this paper we propose only a case study, without any comparative or generalizing claims. We will analyze the electoral system currently provided by Article 100 of Law no. 115/2015 on the election of local public administration authorities. We will focus on the provisions concerning the allocation of local council seats to independent candidates, to show how they are often disadvantaged, and more rarely, advantaged. Furthermore, we will bring several examples on how the regulations concerning the independents affect the allocation of seats as a whole, identifying some adverse effects that we may call paradoxes. Finally, we will make some proposals for their removal.

Keywords: *electoral system, independent candidate, formula, threshold, quota, seat, paradox.*

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When more might be less. The Strange Case of Independent Candidates in Romanian Local Elections

Local elections and independent candidates remain marginal topics in electoral studies. A recent report of the Congress of Local and Regional Authorities of the Council of Europe notes that while "rather a marginal political force in national electoral races" (CoE, 2022: 12), independent candidates "are a central element of democratic pluralism, particularly at local and regional levels" (CoE, 2022: 15), as a "key element of the identity of grassroots communities, increasingly representing an important alternative to running in elections" (CoE, 2022: 12). The analysis focuses on the "significant obstacles to their electoral participation on par with candidates from political parties," emphasizing "administrative or legal obstacles affecting registration, campaigning, or access to the media" (CoE, 2022: 13). Thus, giving the concept of "electoral system" a very broad meaning, the technical aspects of transforming votes into seats – i.e., the "electoral system" in the narrow and hard sense – are left/sent into the background. There is much more interest in the conditions under which independents can run than in those under which they can be elected. For the latter, we have the clarification that "the choice of electoral system is at the discretion of states, as long as it meets the standards for democratic elections", with reference to the old Code of Good Practice in Electoral Matters (CDL-AD, 2002), which, however, does not contain anything concrete. The only aspect addressed in the 2022 report is the need to harmonize proportional representation – in fact, list voting – with the possibility of independent candidacies.

This is most often put into practice by equating an independent candidacy with a "one-person party, presenting a list with only one name", which wins a seat "if he or she receives enough votes in the elections". This is also the case in Romania. But everything depends on what is meant by "enough votes"(CoE, 2022: 12-13). This is a discussion that we cannot avoid if we claim to take the issue seriously.

Earlier studies on independent candidates in national elections have undoubtedly provided valuable insights that cannot be ignored in future research. For example, based on a statistical analysis of elections in 34 countries between 1945 and 2003, Dawn Brancati's pioneering work concluded that majoritarian/plurality systems are more favourable to independents than proportional ones. She also observed that their positions were stronger in the first democratic elections than in subsequent ones, so transition periods can be considered conducive to them (Brancati, 2008: 652-653, 660). A few years later, a study commissioned by the European Parliament's Committee on Constitutional Affairs, at the EU-27 level, confirmed the positive association of independents' performance with plurality or preferential voting systems. Surprisingly, the multivariate analysis found no statistical significance for the average magnitude of constituencies, electoral thresholds and ballot structure (EP, 2013: 9). As we will see, magnitude and threshold will be at the centre of our discussion.

Even in highly ambitious works (Gendzwill, Kjaer, Steyvers, 2022), the electoral systems of different countries are presented in a rather general way (ballot structure, district magnitude, electoral formula), ignoring the details introduced by law in the electoral formulas. Attempts at statistical or comparative analysis should therefore be treated with caution. Their conclusions should not be absolutized.

What we propose in this paper is only a case study, without any comparative or generalizing claims. We will analyze the electoral system currently provided by Article 100 of Law no. 115/2015 on the election of local public administration authorities, identifying some adverse effects, even "paradoxes". We will focus on the provisions concerning the allocation of local council seats to independent candidates, to show how

they are often disadvantaged, and more rarely, advantaged. But we will not stop there. Being generally referred to as "marginal vote-getters" (EP, 2013) or "marginal political force" (CoE, 2022: 12), the whole issue may seem marginal and can be overlooked, as has been the case until now. However, the regulations concerning independents affect the allocation of seats as a whole, making them "potentially important «game changers»" (CoE, 2022: 17).

At first glance, the system established for local elections seems to be characterized by "the simplicity of proportional representation", assuming a "simple ballot structure" (blocked lists and independents treated as single-name lists), which "translates into easy counting procedures and a relatively straightforward determination of the election results" (LR – Hare) (Stănuş, Gheorghiță, 2022: 543-546). It is difficult to assess how "relatively", given that the legal doctrine in this field is limited to mere reformulations of the legal text (Preda, 2008: 224-227; Roș, 2015: 62-63), sometimes even with an erroneous understanding (Roș, 2015: 256; Apostolache, 2020: 288-289).

A first step towards understanding how things stand today is to look at how they stood before.

Brief History of the Local Election System

The first Romanian post-communist law (no. 70 of November 26, 1991) introduced a simple and fair system for both the direct election of local councillors and the indirect election of county councillors: the natural quota method with the largest remainder rule (LR - Hare), without any electoral threshold and any distinction between competitors. Each received as many seats as the electoral quota was included in the number of its votes, the quota being calculated by dividing the total number of valid votes cast by the total number of councillors in the constituency. Any remaining seats after this first stage were allocated to all participants in descending order of their unused votes (art. 66). This system was rightly considered to be one of the most favourable or "least unfavourable" to small parties (Martin, 1999: 79; Gallagher, Mitchell, 2005: 589) and to independent candidates, especially in constituencies with high magnitude (i.e., big cities). That law governed the local elections of February 1992 and June 1996, with a single clarification introduced by Law no. 25 of April 3, 1996, namely that the operation of the second stage of the allocation is repeated until the seats are exhausted. One consequence was that a large number of small parties, independent lists and independent candidates obtained only one seat in various local councils.

In 1998, an additional amendment was made to the law, which was ambiguous and revealed a misunderstanding of the mechanism: "in the second stage, the electoral bureau of the district will record the number of unused votes for each party, political formation, political alliance, electoral alliance or independent candidate; the unused votes of the independent candidate(s) who were awarded seats in the first stage will be divided equally among the parties, political formations, political alliances, or electoral alliances that obtained the electoral quota in the first stage, adding to their unused votes; the unallocated seats will be allocated to the political parties, political formations, political alliances, and electoral alliances that obtained the electoral quota in the first stage, in descending order of the number of unused votes, one for each political party, political formation, political alliance, or electoral alliance, until they are exhausted" (Law no. 164 of July 9, 1998).

The text represents an initial expression of hostility towards small parties and independent candidates by perverting the rule of the largest remainders. This is because

they are excluded from the second stage if they have not already obtained a seat in the first stage. Furthermore, the amendment introduced some unnecessary operations: (1) It was pointless to determine the unused votes of those who had not reached the quota, if they were excluded from the further distribution. (2) There was no point in dividing "equally" the unused votes of the independents who had won seats, because this did not change the order of the parties that had reached the quota and did not make any difference between those that had not reached it.

These provisions were never applied, because shortly before the local elections of June 2000, an emergency ordinance brought a major change: the introduction of an electoral threshold, equal to "the 5% limit if the electoral quota is higher than the 5% limit" or to "the electoral quota, if it is lower than the 5% limit" (OUG no. 28 of April 12, 2000). Since both were calculated in relation to the total number of valid votes cast, it resulted that different thresholds were established depending on the magnitude of the constituency and, relatively, the population of the administrative division (Law no. 69 of the local public administration): 5% for constituencies with up to 19 councillors, 4.76% for 21, 4.34% for 23, 4% for 25, 3.22% for 21, 2.85% for 35 and 1.53% for 65 (Bucharest). In the first stage, the seats were allocated according to the quota and in the second stage, in the order of "unused votes", but only to parties that had passed the threshold, with the exclusion of independents who, in constituencies with up to 19 seats, were above the threshold, but below the quota. This rule was applied only to the 2000 local elections. Four years later, Law no. 67 of March 25, 2004 on the election of local public administration authorities generalized the electoral threshold to 5% of the total valid votes cast (with the exception of political or electoral alliances, which were required to have 7% for two members, and 8% for three or more), expressly stating that "the allocation of seats will be made taking into account only the political parties, political alliances, electoral alliances and independent candidates who have met the electoral threshold" (art. 92). Independents were admitted to the first stage, they received one seat each if they met the quota (the total number of votes of those who met the threshold divided by the number of seats), and if not, they were excluded from the second stage (the allocation of the remaining seats in the order of "unused votes"). The law was applied for the local elections of June 2004, 2008 and 2012.

Law no. 115 of May 19, 2015 for the election of local public administration authorities, for the amendment of the Local Public Administration Law, as well as for the amendment and completion of Law no. 393/2004 regarding the Statute of Local Elected Officials, in force today, has largely maintained the system, introducing a few detailed provisions that show some goodwill towards independent candidates. However, these may have much stronger effects on the election results and may create the "bizarre" situations we will discuss below. This time, "the allocation of seats is made taking into account only the *political parties, organizations of the citizens belonging to national minorities, political alliances and electoral alliances that have met the electoral threshold* [5%, respectively 7% or 8%][...] and the *independent candidates who have met the electoral quota*", the latter being calculated as "the whole number, without decimals, unrounded, resulting from *the division of the total number of valid votes cast for all the candidate lists and the independent candidates who have met the electoral threshold by the total number of councillors* in the respective constituency". "*The independent candidate who has obtained a number of votes at least equal to the electoral quota is declared elected*". Otherwise, he/she is excluded from the second stage (the allocation of the remaining seats in the order of "unused votes"). It can be

intuited that, in certain cases, an independent may become a local councillor even if he/she has not reached the electoral threshold and, in others, he/she may remain outside, even if he/she has exceeded it. We will come back to this. For the time being, we specify that the mechanism is fully taken over in the legislative proposal "Law on the Electoral Code of Romania", currently under debate in the Chamber of Deputies, although, five years ago, through the initiative "New People in Politics", its signatories supported the abolition of the electoral threshold for local elections.

A little bit of constitutional case law on the side of the topic

Electoral thresholds are not uncommon in proportional systems and it can be said that, even if they are not provided for by law, they exist anyway in fact, implicitly, being determined by the very magnitude of the constituency. The formula, often contradicted in Romanian local elections, $p = 75/(m+1)$, where p = effective threshold, and m = number of seats in the constituency (Gallagher, Mitchell, 2005: 13-14), has become famous. Legal or effective, thresholds undoubtedly represent limitations of proportionality, but it is difficult to say from what level upwards they become serious distortions of representation. What is certain is that their importance varies depending on magnitude. The same legal threshold can be a solid barrier in a large constituency and may not matter in a small one. In our case, 5% can block access for many in a municipality with 31 councillors but can be practically non-existent in a commune with 9 councillors.

In 2001, the Constitutional Court has had to rule on an exception of unconstitutionality in which it was considered that "the establishment of an electoral threshold and the redistribution of unused votes exclusively to political parties excludes the possibility of independent candidates being elected" (Decision no. 103 of April 10, 2001 – AEP, 2013: 243). It was then considered that "the establishment of an electoral threshold that candidates must reach in order to obtain the position of councillor, as well as the establishment of the method by which unused votes are allocated in the first stage, is a matter of opportunity, on which only the legislator is called to pronounce; the exclusion of independent candidates from the redistribution of the unused votes was intended to concentrate the votes, because, without political support, the activity of independent candidates is inefficient" (AEP, 2013: 247).

The first part is understandable, but we can ask why the Court continued to speak on the "opportunity", especially since its assessment does not fit very well with the electoral practice, since it allows – we could even say that it favours – the allocation of seats to minor, non-parliamentary political parties with less local electoral support than that of some independents.

In 2009, a new exception was raised, in which it was argued that the law is discriminatory because it "does not allow independent candidates who have met the electoral threshold to be included in the vote redistribution operation, but only political parties, political alliances and electoral alliances" and thus creates "privileges in favour of citizens who are registered in political parties and on their lists compared to independent candidates".

Even the court before which the exception was raised, the Neamț Tribunal - Civil Section, was of the opinion that the legal provisions "are unconstitutional by violating the constitutional provisions on the equality of citizens before the law and the avoidance of any discriminatory situations. In this sense, the court notes that, if in the first stage of the allocation of seats [art. 96, par. 3.a] the number of seats that each list of

candidates and independent candidate are entitled to is established on the basis of the electoral quota, in the stage of the allocation of unallocated seats [art. 96 par. 3.b], independent candidates are no longer found, their exclusion from the redistribution phase having no legal justification. A discriminatory regime is thus instituted between independent candidates and the other categories of candidates".

The Constitutional Court remained on the same position, ruling that: "This mechanism for allocating seats does not violate the equal rights of citizens and does not constitute discrimination, as claimed by the author of the exception and the court before which the exception of unconstitutionality was raised. The text does not establish discrimination in relation to the criteria of equality of rights enshrined in art. 4, par. 2 of the Fundamental Law, nor does it infringe the principle of equality of citizens before the law, set out in art. 16 of the Constitution, since it applies to all persons in the situation regulated by the hypothesis of the legal norm, without establishing privileges or discrimination on arbitrary criteria".

We first note the phrase "criteria of equality of rights", as if equality were conditional. Then, the implicit idea that the list of "criteria" in art. 4 of the Constitution would be exhaustive and, finally, the omission of the fact that among them is also listed "political affiliation". It is true that the mechanism "applies to all persons in the situation regulated by the hypothesis of the legal norm", but it does not take into account the possibility that the "hypothesis of the norm" itself may generate discrimination. The CCR also invoked the point of view of the People's Advocate, according to which "the situation of independent candidates is different from that of candidates proposed by political parties, political alliances and electoral alliances" (Decision no. 511 of April 9, 2009 – AEP, 2013: 305), without, however, explaining in any way the alleged difference.

We do not intend to discuss the constitutionality of the legal text on the mechanism for allocating local council seats. However, we believe that the CCR should, in the future, also consider the practical functioning of the system in order to evaluate whether its effects are consistent with legal and constitutional principles.

Some notes on electoral "rules" and "paradoxes"

The question of how to judge the "fairness" of an electoral system and what characteristics make a good system is a complex one. Here are some key criteria from the literature:

(1) *Representativeness*, that is, the ratio between the votes transformed into seats and the total number of votes cast. For example, in a single-member district where the winning candidate has 60% of the vote, the representativeness index will be 60. In a multi-member district where parties with 45% and 35% of the vote get all the seats, respectively, the index will be 80 (Martin, 1999: 92).

(2) *Avoiding biases*, that is, ensuring neither those with many votes nor those with few votes are significantly over- or under-represented (Balinski & Young, 2001: 105; Smith, 2007).

(3) *Proportionality*, that is, the ratio/ratios between the percentages of votes parties get and the percentages of seats they win. Several *indexes* have been developed to assess (dis)proportionality, each with its own strengths and weaknesses, depending on the particular situation (Gallagher, 1991; Kalogirou, 1999). Proportionality increases with the magnitude of the district and decreases with the electoral threshold.

(4) *Quota rule*. This means allocating each competitor a whole number of seats that's

close (either up or down) to the result of dividing their votes by the district's electoral quota. For example, if the calculation gives 8.45, the party should get either 8 or 9 seats (Smith, 2007).

(5) *Monotonicity*. This means respecting the hierarchy of votes when allocating seats. A party with more votes should get more or the same number of seats as a competitor with fewer votes. Otherwise, it is an illogical situation, or, as American electoral studies often call it, a "paradox". In the late 1800s, when discussing how seats were distributed among states in the House of Representatives, two specific forms have been identified:

(i) *House Monotonicity*: as the total number of seats increases, no competitor should lose seats compared to before, assuming their number of votes (population in the US) stays the same or increases. If they do lose seats, it's called the "Alabama paradox". In 1880, calculations showed Alabama should have gotten 8 representatives out of 299, but only got 7 out of 300 (Caulfield, 2010).

(ii) *Population-Pair Monotonicity*: no competitor should lose seats if its number of votes (population in the US) increases and other competitors' votes decrease or increase proportionally less (Smith, 2007). There is also a concept called the "new state paradox" (Caulfield, 2010) which is not relevant here and seems like a variation of one of the first two paradoxes anyway.

Before we look at the Romanian case, it is important to note that the LR-Hare system, while less proportional or representative than others, especially in small districts, is used widely around the world. It tends to favours smaller parties (Martin, 1999: 77; Gallagher & Mitchell, 2005: 589), always respects the quota and satisfies the overall monotonicity, but it produces paradoxes in terms of house and population monotonicity (Martin, 1999: 77-79; Smith, 2007). We need to keep these points in mind to distinguish between the distortions inherent in the formula and those created by the rules set by the Romanian legislature. It will be obvious from the figures that the legal provisions leave room for significant distortions of representativeness proportionality. However, we will not insist on them, following only the paradoxes.

Romanian Cases

The famous "Alabama paradox" is usually illustrated with hypothetical examples that are hard to believe in electoral reality. I prefer a Romanian example.

Table 1. Local Council Election – Siliștea Crucii (Dolj), 2020

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD	275	34.37	3.13	3	0	3
PNL	272	34.00	3.09	3	0	3
PRO România	206	25.75	2.34	2	0	2
PMP	47	5.87	0.53	0	1	1
Total	800	100	Quota: 88	8	1	9

Data Source: BEC 2020

Siliștea Crucii is a small commune with nine councillors. In 2020, 800 citizens voted and all parties passed the electoral threshold; therefore, the quota was 800/9 = 88. In the first stage, eight seats were allocated. The ninth seat was allocated in the second

stage to the smallest party, with the most unused votes. Let's imagine that Siliștea Crucii would have had 11 councillors (the next legal step) and the votes had been the same!

Table 2. Electoral Simulation – Siliștea Crucii (Dolj), 2020

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD	275	34.37	3.82	3	1	4
PNL	272	34.00	3.77	3	1	4
PRO România	206	25.75	2.86	2	1	3
PMP	47	5.87	0.65	0	0	0
Total	800	100	Quota: 72	8	3	11

The electoral quota would have been 800/11 = 72. In the first stage, eight seats would still have been allocated, and the ninth would have gone, in the second stage, to the third-place party, for the highest number of unused votes. PMP obtained one council seat out of a total of nine, but would not have obtained it out of a total of 11.

It can be said that this example is just for entertainment, since the allocation of seats in elections does not involve the same risks as the apportionment of seats between states. I agree and yet I will go ahead with a new example, from which it can be seen that, due to the restrictive provisions applied to some candidates, the Romanian system is more prone to what might seem like an Alabama-like paradox than the simple LR-Hare/Hamilton.

Table 3. Local Council Election – Almăj (Dolj), 2020

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD	454	43.23	4.83	4	1	5
PNL	369	35.14	3.92	3	1	4
USR PLUS	128	12.19	1.36	1	1	2
Tălăban Aurică	91	8.66	0.96	0	-	0
PRO România	8	0.76	-	-		
Total	1050	100	Quota: 94	8	3	11

Data Source: BEC 2020

This time we have a slightly larger commune, with 11 councilors and 1050 voters, of which eight voted for a party that did not reach the threshold, so the quota was 1042/11 = 94. In the first stage, only eight seats were allocated. The remaining three were allocated in the second stage to the parties in the top three places, although the independent candidate in fourth place had the largest number of unused votes. This is because the law does not allow independents access to the second stage. What if the constituency had 13 seats?

Table 4. Electoral Simulation – Almăj (Dolj), 2020

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD	454	43.23	5.67	5	1	6
PNL	369	35.14	4.61	4	1	5
USR PLUS	128	12.19	1,60	1	0	1
Tălăban Aurică	91	8.66	1.13	1	-	1
PRO România	8	0.76	-	-	-	-
Total	1050	100	Quota: 80	11	2	13

The quota would have been 1042/13 = 80. In the first stage, 11 seats would have been allocated, one of which to the independent candidate, who would have met the quota. The remaining two seats would have been allocated to the first two parties, because they would have had the most unused votes. We note that the party in the third place, which received two seats out of 11, would have received only one out of 13. Apparently, it's an "Alabama paradox". In fact, the real case was a paradox, artificially created by the legal provisions, and the hypothetical example is a correct form.

This type of situation has happened many times in the Romanian local elections of the last two decades. It can be said that there is no risk for a competitor to lose a seat, since the total number can only change in another election, when the distribution of votes would be different. However, one can ask whether the intuition of the paradox could favour malapportionment operations.

For the population paradox, we will go to the commune of Cârna, where in 2020 the following results were recorded:

Table 5. Local Council Election – Cârna (Dolj), 2020

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD	441	55,12	5,01	5	0	5
PNL	309	38,63	3,51	3	0	3
PRO România	50	6,25	0,56	0	1	1
Total	800	100	Quota: 88	8	1	9

Data Source: BEC 2020

With a quota of 800/9 = 94, the first two parties received five and three seats, respectively. The ninth seat was allocated in the second stage to the third party, as it remained with the most unused votes. Here is what would have happened if the first party had lost 25 votes, 20 in favour of the second party and five in favour of the third!

Table 6. Electoral Simulation – Cârna (Dolj), 2020

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD	416	52.00	4.72	4	1	5
PNL	329	41.12	3.73	3	1	4
PRO România	55	6.88	0.63	0	0	0
Total	800	100	Quota: 88	7	2	9

In the first stage, the first two parties would have received four and three seats, respectively, and in the second stage, they would have taken the two remaining seats, because they would have had the most unused votes. The smallest party, with five more votes (10% increase), would have remained unrepresented. The second party, with 20 more votes (6.5% increase), would have received one more seat. The first-place party would have remained with the same number of seats, despite the loss of votes. Again, a question: can this paradox be tactically exploited? Can one party pump votes to another to disadvantage it?

In none of the examples so far have we seen a violation of the overall monotonicity or the quota rule. In a pure application of the LR-Hare/Hamilton method, this can only happen if a list is allocated, according to the quota, more seats than candidates (in the case of independents, more than one). In the Romanian system, it happens frequently, even outside of such a situation, and to illustrate both violations at once, we will refer to the Plenița case (2016).

Table 7. Local Council Election – Plenița (Dolj), 2016

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD-UNPR	1017	45.85	6.47	6	1	7
PNL	489	22.04	3.11	3	1	4
Didu Florin	150	6.76	0.95	0	-	0
Marcov Claudiu	138	6.22	0.87	0	-	0
Șerban Victor	135	6.08	0.85	0	-	0
ALDE	119	5.36	0.75	0	2	2
Guran Eugen	63	2.84				
PNȚCD	53	2.38				
PMP	31	1.39				
Partida Romilor	9	0.40				
PRM	9	0.40				
PPU(SL)	5	0.22				
Total	2218	100	Quota: 157	9	4	13

Data Source: BEC 2016

We have a total of 2218, so a threshold of 110. There are 2048 votes over the threshold and 13 seats to be allocated, so the quota is 2048/13 = 157. In the first stage, according to the quota, six seats are allocated to the first party and three to the second.

There are four left. In the second stage, three are allocated to the three parties that have passed the threshold. For the last seat, the operation is repeated and it is allocated to the smallest party, because it has the most unused votes.

The quota rule is violated, because a competitor who should have had at most one seat has two. This is a rather rare situation. Monotonicity is violated because a competitor has more seats than others who have more votes. This is a fairly common situation. It has happened several times, during the last two decades, that parties that have passed the threshold have obtained seats and independents with more votes than them have not, because the law does not allow independents to enter the second stage. Should they be admitted? At first thought, the answer would be affirmative, but we go to the other end of the country and find an opposite example.

Table 8. Local Council Election – Certeze (Satu Mare), 2016

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PNL	250	16.88	4.81	4	0	4
PSD	204	13.77	3.92	3	1	4
ALDE	145	9.79	2.78	2	0	2
Partidul Verde	110	7.42	2.11	2	0	2
Moiș I. Gh.	81	5.46	1.55	1	-	1
PRM	72	4.86	1.37	-	-	-
PMP	72	4.86	1.37	-	-	-
UNPR	71	4.79	1.36	-	-	-
UDSCR	70	4.72	1.35	-	-	-
Moiș G. Gh.	68	4.59	1.31	1	-	1
Pop Vasile	52	3.51	1.00	1	-	1
PND	49	3.30				
Ferne Dumitru	43	2.90				
PPAC	42	2.83				
Sas Dumitru	41	2.76				
PNȚCD	34	2.29				
Seleveschi Gh.	27	1.82				
Sas Daniel	26	1.75				
Mihoc Vasile	24	1.62				
Total	1481	100	Quota: 52	14	1	15

Data Source: BEC 2016

This large commune (15 seats) had a low turnout, with a total of 1481 votes cast a threshold of 74. A significant number of votes were cast for competitors who did not reach the electoral threshold. The electoral quota was calculated as 790/15 = 52. In the first stage, 14 seats were allocated to parties that passed the electoral threshold, as well as to independent candidates who obtained the electoral quota, according to a new provision of the 2015 law. The violation of monotonicity here comes from the total exclusion of parties that did not reach the threshold and the allocation of seats to independents (two in our case), for which the law only set the quota condition.

When more might be less. The Strange Case of Independent Candidates in Romanian Local Elections

According to the regulations in force between 2004 and 2015, the last two independent candidates would not have obtained seats, and the seats would have been distributed to the parties ranked first and third. This situation is not uncommon, it occurs frequently, especially in large constituencies (with 21 or more councillors), but, as can be seen, it can also occur in smaller ones. A particular aspect of the situation in Certeze is that the last two winning independent candidates obtained the necessary electoral quota, but their votes were not taken into account when determining this quota. In the case of the last candidate, he would not have reached the quota if his votes had been included in the calculation. However, the law provides for the inclusion of independent candidates' votes in the calculation of the quota only if they exceed the electoral threshold.

Without commenting on the fairness of this situation, we ask the following question: is it possible for an independent candidate to win a seat by reaching the quota, but not the electoral threshold, and then lose that same seat if he/she reaches the electoral threshold, but no longer reaches the quota, due to the additional votes received? In other words, is it possible for a candidate to lose a seat precisely because of the additional votes he/she receives?

A Romanian Paradox

It can happen in cases where the quota and the threshold are close and the quota can be both below and above the threshold, therefore in constituencies with 19 councillors or less. The situation depends on the turnout at the elections and, especially, on the number of votes for the competitors who do not reach the threshold (the smaller the magnitude, the larger it must be). There is always an interval where adding a number of votes to the total previously considered and dividing by the number of seats gives a result higher than the number of votes added. If the difference between the threshold and the quota overlaps, totally or partially, with that interval, an independent candidate is at risk of losing the seat by winning a few more votes. It's a kind of hole that he/she can fall into, if he/she doesn't manage to jump over it, obviously. We will not go into arithmetical details – which, by the way, are beyond us – and we will move on to examples, with the mention that we have not identified a clear case where this has happened. We will go on to close cases and hypotheses.

First, a situation from 2012, when the current system did not apply!

Table 9. Local Council Election – Șimleu Silvaniei (Sălaj), 2012

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PDL	2428	33.67	6.63	6	1	7
PSD	1304	18.08	3.56	3	1	4
UDMR	1115	15.46	3.04	3	0	3
PNL	623	8.63	1.70	1	1	2
PPDD	432	5.99	1.18	1	0	1
Jurcau Victor	361	5.01	0.98	0	-	0
< threshold	948	13.15	-			
Total	7211	100	Quota: 366	14	13	17

Data Source: BEC 2012

According to the law of 2004, independent candidates were required to reach the threshold, in our case, 360, exceeded by Jurcau Victor, who however was below the quota (366). He still needed five votes, if they came from parties above the threshold or six from below the threshold or from outside because, in this case, the quota would have risen to 367. If the current law had been applied, in which independents are awarded seats if they have met the quota, without the threshold condition, he could have won with any number of votes from 345 to 359. He would have lost with 360-366 and would have won again from 367. We can therefore say that he lost because he had too much rather than too little.

To work with larger numbers, we go to the 2016 elections in Sinaia.

Table 10. Local Council Election – Sinaia (Prahova), 2016

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PNL	2653	46.68	9.57	9	1	10
PSD	1435	25.25	5.18	5	0	5
ALDE	328	5.77	1.18	1	0	1
UNPR	299	5.26	1.08	1	0	1
Dan Septimiu	257	4.52	0.93	0	-	0
< threshold	711	12.51				
Total	5683	100	Quota: 277	16	1	17

Data Source: BEC 2016

Based on the total of 5683 valid votes cast, the threshold is 284. With a total of 5715 votes above the threshold, the quota is 277. The independent candidate was both below the threshold and below the quota. It is easy to see that he would have won with 20-26 votes (for simplicity we assume that they would have come from below the threshold), exceeding the quota without his votes having yet been taken into account. From 27 onwards, exceeding the threshold and his votes being added, the quota would have increased. The independent with 284 votes would have given a quota of 293. He would have missed the seat with 284-294 votes and would have won it again from 294 onwards.

But let's get back home!

Table 11. Local Council Election – Calafat (Dolj), 2016

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD	2792	37.70	7.65	7	1	8
PNL	2216	29.92	6.07	6	0	6
ALDE	1198	16.17	3.28	3	0	3
Roșu R.M.	305	4.11	0.84	0	-	-
< threshold	894	12.07				
Total	7405	100	Quota: 365	16	1	17

Data Source: BEC 2016

In Calafat, the electoral threshold was 370 and the quota was 365. This means that the independent candidate would have won the seat with 60-64 additional votes (assuming they came from below the threshold). If he had reached 370, his votes would have been added to the calculation of the quota, which would have become 386. He would have won the seat with 365-369 votes, missed it with 370-386, and won it again from 387 onwards.

For one last example, we come in 2020 to meet the luckiest man or the best jumper in Beiuș.

Table 12. Local Council Election – Beiuș (Bihor), 2020

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PNL	2343	45.39	8.97	8	1	9
PSD	880	17.05	3.37	3	1	4
USR PLUS	616	11.93	2.36	2	0	2
Degău Al.	350	6.78	1.34	1	-	1
Maior Călin	261	5.05	1.00	1	-	1
< threshold	711	13.77				
Total	5161	100	Quota: 261	15	2	17

Data Source: BEC 2020

The threshold in Beiuș, in 2020, was 258 and the quota was 261. The second independent candidate barely passed the threshold, so his votes were used to calculate the quota, which he also hit exactly. What if he had not reached the threshold, so if he had had at most 257 votes? The quota would have dropped to 246, so he would have afforded to lose even more votes. He would have won with 4-15 fewer votes (246-257) and would have missed with 1-3 fewer (258-260). So he narrowly avoided danger.

Final thoughts

In Romanian local elections after 2015, it has become much more common for independent candidates to be eliminated from the allocation of seats, even if they have met the threshold, than to receive seats, even if they have not met it. We know from the Constitutional Court that the first situation is not unjust. The second situation has not been noticed until now. Statistically, the electoral system is rather unfavourable to independents.

In both cases, we are dealing with arithmetic anomalies in the "determination of election results". They affect not only independents, but also parties, favouring some and disfavouring others in the most diverse, surprising ways (unrelated to the will of the electorate). We presume *bona fide*. However, we cannot help but think how competitors can play with the votes. The scenarios would be countless. We will present only two.

First, we return to Plenița in 2016.

In the real situation (see Table 7), we had three independents who passed the threshold, but did not receive seats because they did not meet the quota. Instead, the party behind them obtained two seats, violating the quota rule. In the scenario, we keep

the overall total, and therefore the threshold, but we take all the votes above the threshold of the independents, thus eliminating them completely from the calculation of the quota, and we give them to the smallest party above the threshold.

Table 13. Electoral Simulation – Plenița (Dolj), 2016

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PSD-UNPR	1017	45.85	7.7045	7	1	8
PNL	489	22.04	3.7045	3	1	4
ALDE	215	9.69	1.63	1	0	1
Didu Florin	109	4.91				
Marcov Claudiu	109	4.91				
Șerban Victor	109	4.91				
Guran Eugen	63					
PNȚCD	53					
PMP	31					
Partida Romilor	9					
PRM	9					
PPU(SL)	5					
Total	2218	100	Quota: 132	11	2	13

In this way, the quota decreases from 157 to 132. The three independent candidates do not meet it, so they are eliminated. In the first stage, 11 seats are allocated, one of which goes to the third-place party. The remaining two seats are allocated in the second stage to the top two parties, which have more unused votes. The third-place party remains with a single seat (instead of two), although it is the only competitor with more votes (all the others decreasing or remaining the same), and the first-place party gains a seat, although it has the same number of votes (which we can even slightly decrease). Again, we are faced with an apparent population paradox, but, in fact, the real situation is paradoxical.

And finally, let's go back to Certeze to play dangerously!

In reality (see Table 8), we had three independent candidates who received seats, of which only one passed the threshold, and five who did not receive seats, not meeting the quota. In the scenario, we keep the overall total, the threshold, and the votes of all parties above and immediately below the threshold; we put the only candidate who had passed it below the threshold, decreasing the quota from 52 to 47, and we distribute his surplus votes and those of the parties located well below the threshold to the independent candidates, so that they all meet the quota.

Tabelul 14. Electoral Simulation – Certeze (Satu Mare), 2016

Candidate	Votes	%	Seats/Quota	Seats I	Seats II	Total
PNL	250	16.88	5.31	5	0	5
PSD	204	13.77	4.34	4	0	4
ALDE	145	9.79	3.08	3	0	3
Partidul Verde	110	7.42	2.34	2	0	2
PRM	72	4.86	1.53	-	-	-
PMP	72	4.86	1.53	-	-	-
UNPR	71	4.79	1.52	-	-	-
UDSCR	70	4.72	1.48	-	-	-
Moiș I. Gh.	51	3.44	1.09	1	-	1
Moiș G. Gh.	50	3.37	1.06	1	-	1
Pop Vasile	49	3.31	1.04	1	-	1
Ferne Dumitru	48	3.24	1.02	1	-	1
Sas Dumitru	47	3.17	1.00	1	-	1
Seleveschi Gh.	47	3.17	1.00	1	-	1
Sas Daniel	47	3.17	1.00	1	-	1
Mihoc Vasile	47	3.17	1.00	1	-	1
PND	38	2.57				
PPAC	36	2.43				
PNȚCD	27	1.82				
Total	1481	100	Quota: 47	22	0	22

We have maintained the violation of monotonicity, but it no longer seems spectacular, compared to the fact that no less than 22 seats should be allocated from the first stage (14 to the parties that passed the threshold and eight to the independent candidates who met the quota). The 2015 law does not provide for overhang seats and, although it seems to have solutions for any situation, it does not have a method of elimination. It simply states that: "in the first stage, the electoral bureau of the constituency establishes *the number of seats allocated to each list of candidates*, as well as to the *independent candidates*, *based on the electoral quota*, which is the whole number, without decimals, unrounded, resulting from the division of the total number of valid votes cast for all lists of candidates and for independent candidates who have met the electoral threshold by the total number of councillors in the respective electoral constituency; the electoral bureau of the constituency allocates *to each list as many seats as the electoral quota is included in the total number* of valid votes cast for the respective list; also, *the independent candidate who obtained a number of votes at least equal to the electoral quota is declared elected*". Most likely, the electoral bureau of the constituency would declare only the first independent candidate elected, but, just as

likely, the others would challenge the decision in court and, since the same law states that "there is no appeal against the final decisions pronounced by the courts according to this law", it could once again reach the CCR, which ruled, decades ago (Decisions 103/2001, 332/2002, 325/2004, 150/2005, 1128/2008) that the lack of appeal is not unconstitutional.

As I have already said, the risk of paradoxes can only be avoided by completely changing the system. For example, we could adopt the d'Hondt method, which is known to favour the top-ranked parties and is not immune to violating the quota rule. The risk can be mitigated and all other oddities can be eliminated by amending the law to: (1) Establish a threshold (the current 5%, lower and possibly differentiated, as in 2000, or even no threshold, as in 1991) from which all votes are added up to calculate the quota and completely eliminate all those whose votes are not added up to calculate the quota; (2) Allow all competitors whose votes are added up to calculate the quota to enter the second stage.

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