

The initiative to change the electoral system before the elections is an attempt of self-preservation of the compromised governors

Introduction

Following multiple resonance scandals, caused in particular by USD 1 Billion bank fraud and the attempt to legalize the fraudulent incomes through the so-called "capital liberalization law", the Democratic Party of Moldova (PD) was compromised and lost its credibility, recording in the polls 2-3% of population support. To escape responsibility, the oligarch who leads the DP and captured the three branches of state power, tends to remain in power at all costs. After testing the vote system in Gagauzia (in the local legislature in Gagauzia), managing to "persuade" the bulk of local elected representatives to pass the Democrats' camp through corruption and blackmail, the oligarch tries to apply this experiment on a national scale.

To guarantee success and maintain the power, the DP came with the initiative to change the electoral system before the elections. Although DP apparently insists on a uninominal system of election of MPs in Parliament, the party would be satisfied with the introduction of a mixed system of elections. To this end, it seems that the DP has come to a hidden agreement with the Party of Socialists (PSRM), which is the initiator of the establishment of the mixed electoral system. Both parties have imitated an intense political struggle on the projects, but they are very close in structure and content, except for the name of the electoral system.

*Simulating contradictions, both parties force the population and development partners of Moldova to choose one of two options: either the current corrupt governance headed by a pretended pro-European oligarch, or PSRM headed by a pro-Russian leader. **Neither option satisfies the population with pro-European aspirations.***

In March-April 2017, two draft laws on the modification of the electoral system were passed in the Parliament of the Republic of Moldova: the draft law stipulating the changeover to the system of Parliamentary election based on uninominal constituencies submitted by the parliamentary faction of the Democratic Party (DP) and the draft law on a mixed electoral system (where half of the deputies will be elected according to the existing system from pre-established party lists in a national constituency and the other half - on uninominal constituencies) submitted by the Socialist Party (SPRM).

The SPRM project repeats the structure of the DP project, the wording for the terms being the same, a series of articles and technical modifications being similar, only referring to a mixed system. The new version of Title III of the Electoral Code, proposed by the PSRM, repeats about 70% of the content of the DP project. *In spite of the similarities in these projects, both parties have imitated an intense political battle over the projects.*

At the beginning of May, with no expertise of the Government, parliamentary commissions, assessment of the impact of these laws, anti-corruption expertise of projects (as required by the legislation), Venice Commission opinion, the Speaker of the Parliament proposed including the first draft law on the agenda of the Parliament. On the same day, following a negotiation with PSRM, the inclusion on the agenda and the PSRM project was voted. Both projects were endorsed by the Parliament's Legal Committee in just half an hour and both were voted on in the first reading. Subsequently, with the Parliament's decision, the projects were to be merged into one, based on the joint PSRM project.

Specialized civil society organizations condemned the arrangements between the PD and the PSRM, the manipulation of public opinion, as well as the flagrant violation of the legal norms that have led to this decision, requiring the withdrawal of both initiatives and soliciting the development partners of the Republic of Moldova to condemn the above mentioned actions and to cease support if the Parliament adopts it in final reading¹.

¹<https://anticoruptie.md/ro/stiri/doc-reprezentanti-notorii-ai-societatii-civile-schimbarea-sistemului-electoral-este-olovitura-pentru-statul-de-drept-si-un-regres>

The proposals to modify the election system violate the recommendations of Venice Commission

Having the fact that both projects are identical in defining the principles of election of deputies on constituencies (obviously the PSRM project was part of a common scenario with the DPM), it is clear which will be the provisions of the final draft. Given that, it is quite obvious that the authors and promoters of these projects have no intention to follow the principles, norms and recommended procedures of the Code of Good Practices in Electoral Matters of the Venice Commission².

The proposals violate the fundamental principles of the European electoral heritage, namely the principle of universal and equal suffrage

The principle of **universal suffrage** is violated by limiting the right to vote only to those citizens, who have a legal domicile within the electoral constituency. This limitation will limit the right to vote for over one million citizens living abroad, because they have a legal domicile in Moldova. It will affect as well the hundreds of thousands of citizens living in other localities than those in which they are domiciled, and also those who do not have a legal domicile. Overall, it will be impossible to participate in elections to almost half of all citizens entitled to vote according to the Constitution. The cause of this unprecedented situation is the provision regarding the voter lists creation. They are not formed as recommended by the Venice Commission - according to the place of residence, but on the basis of the State Register of Identity Documents.

The **principle of equal suffrage** is violated mainly by the admissibility, in the draft law no. 123, of the possibility that an elector can vote only for candidates in the national constituency, not in the uninominal one. This is a clear violation of equal suffrage, contrary to recommendations of the Venice Commission. The proposed regulation cancels the principle of equal voting by the way of creating uninominal constituencies. The authors propose that the constituencies will be formed only on the basis of the number of voters in the basic electoral lists. Moreover, the proposal of the authors (it is identical in both projects) leaves room for abusive delimitation. In a constituency may enter localities that are not even neighbours, even from multiple districts of the country. But most importantly, the real number of citizens with the right to vote within each constituency differs greatly from the number of those on electoral lists. Thus, in Chisinau there are more citizens living than they are domiciled, and in the predominantly rural districts up to 50% of the citizens with voting rights are abroad or live in Chisinau. We must mention that the recommendations of the Venice Commission are seriously violated on the provision regarding the review of the boundaries of a constituency, the fundamental criteria for delimitation.

We will also present a small part of the **recommendations of the Venice Commission that are violated** by the draft amendment to the Electoral Code.

1. The specific provisions for the formation of uninominal constituencies and their limits shall be decided on the basis of a regulation approved by the Central Electoral Commission (CEC), while the Venice Commission recommends to include them at a higher legislative level, even constitutional on some aspects.
2. Revision of the boundaries of constituencies may be made by the CEC less than one year before the election, while the recommendation is that such decisions can be taken no later than one year before the election, based on the expertise of a special independent commission. Moreover, the draft law compels CEC to delimit each constituency within 6 months from the date of entry into force of the new law. It means that even the first delimitation will be done less than a year before the 2018 parliamentary elections. The Venice Commission considers the boundaries of electoral constituencies a fundamental element of electoral law, and they cannot be amended on the eve of elections.
3. The authors of both projects insist on the application of the new system for the next elections already in 2018, although the recommendation is to apply any substantial change after one electoral cycle, i.e. for elections in 2022.

²[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

4. The system for examining appeals and judging electoral cases must be very clear and the jurisdiction of each court must be precise, with conflicts of jurisdiction being inadmissible. On the other hand, the authors propose that the district courts should examine the electoral causes. Given the map of judicial organization³ and the proposed way of forming constituencies, it is clear that in some constituencies will enter localities from the jurisdiction of different courts, thus creating an inadmissible conflict of jurisdiction. We can add that the district courts have neither the level of knowledge, nor the integrity or trust of the citizens in order to become an important actor in the electoral process. Generally it would be advisable for the Republic of Moldova to exclude common law courts from the electoral process. The examination of appeals and their judgement must be carried out by the election councils, CEC and the Constitutional Court.
5. The Venice Commission explicitly requests the access for all electoral contestants to the public and private press. Instead, the authors propose to exclude all media obligations, keeping only the obligation of the local press to organize debates, in the case of constituency candidates.
6. The boundaries of electoral constituencies will be formed according to some totally vague criteria. Moreover, from the recommendations of the Venice Commission and worldwide practices, we clearly understand that a constituency cannot include localities from different administrative regions. In the case of the Republic of Moldova, it is not possible to comply with this criterion until the implementation of the territorial-administrative reform.

It should be mentioned that the public opinion is excessively manipulated by speculating that the recommendations of the Venice Commission are not relevant and every state is free to choose its electoral system. That is why we will quote clearly the provision of the Code of Good Practices in Electoral Matters of the Venice Commission: **"Within the respect of the above-mentioned principles, any electoral system may be chosen."** Given that, the authors of the mentioned law drafts are obliged to adjust any modification of the Electoral Code to the recommendations of the Venice Commission, following the international obligations of the Republic of Moldova. We would like to remind you that the violations described above represent only a small part of the inconsistencies which do not comply with the recommendations of the Venice Commission.

Changing the electoral system under the current conditions will have disastrous effects on the Republic of Moldova

Moving to any form of election of deputies on uninominal constituencies will have many negative effects. The Republic of Moldova simply is not ready for such a system. Below we will refer to just three of the most important negative effects: **weakening Parliament's legitimacy, increasing discrimination and corruption in the management of public funds and the disproportionate role of justice in the electoral process.**

In the case of the election of the deputies according to the proposed constituency formation system, the actual number of voters in each of them will vary a lot. In view of the election of deputies by the system *First Past The Post (FPTP)*, in some constituencies will win the candidates with 3-4 thousand votes, in others – with 15-20 thousand. This will create an inadmissible discrepancy of representativeness. Moreover, the deputies will generally represent a maximum of 25-30% of those who participate in the vote. For comparison, so far, the parties that came to Parliament were representing the vote of over 85% of the electorate. Due to FPTP system, the presence in elections will not count so much and it will decrease, especially in diaspora. If the domicile restriction is applied (and until the next election is impossible to change the way election lists are made), then about half of voters will not be able to exercise their right to vote. Finally, the members of the future Parliament will represent a maximum of 15% of the voters with the right to vote. And these are just some aspects of the decline in the legitimacy of Parliament.

Under the existing legal framework, the Parliament approves the investment and development budgets of localities. In the case of deputies who will come to the government being elected on constituencies, they will direct all funds only to their constituencies. Thus the localities from the constituencies represented by opposition deputies will be discriminated. Moreover, the deputies elected on constituencies will not be able to remain in opposition, as they will affect the financing of local budgets. Besides that, the constituency deputies will provide financing directly, or through

³<http://www.instante.justice.md/>

the Government elected by them, to the local economic clientele who supported them in the elections (contracts, subsidies, grants). Election campaigns on constituencies are very expensive, which will catalyse the formation of local political and economic groups, preoccupied on the management of public money flow, just as it happened in Ukraine. Until the finalization of financial decentralization, so that each community would receive funding without the major influence of Parliament or the Government, we cannot admit a change in the electoral system. Another obvious precondition is the territorial-administrative reform and the decentralization of political life by forming political parties' nuclei in each future constituency.

Under conditions when the Moldovan justice is corrupt, politically controlled, suffer from a quasi-total mistrust on the part of the citizens, the authors of the law projects propose to increase its role in the electoral process. Without going into detail, we must emphasize the danger of excluding candidates who are uncomfortable to the government by discretionary decisions of district courts. The Moldovan justice has repeatedly been involved in electoral processes in the interest of government. It decided abusively to exclude an important party just three days before the election date, banned the organization of national and local referendums, maintained in the electoral race the parties that misused the symbols of other parties. Given the situation when the press has neither access, nor capabilities to monitor the actions of district judges, the exclusion of some candidates uncomfortable to the power shortly before the elections on invented or irrelevant grounds is absolutely possible. Until the justice in the Republic of Moldova is not fully reformed and its independence and integrity is assured, we cannot discuss about its admissibility in the electoral process, particularly in the case of constituencies.

The attempt to modify the electoral system is a biased manipulation

The Venice Commission clearly refers to any change in the electoral system- *"care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation"*. From the analysis of both bills, we can deduce with no doubt that the project of modification of the electoral system aims to favour two parties to a different extent at the next elections.

The most favoured party is the Democratic Party that controls the judiciary, the executive, the enforcement institutions, the majority of local administration, media and unlimited financial resources. All these leverages were obtained abusively, through blackmail and corruption. Under these conditions, the DPM will be able to benefit from full control over the electoral process, will be able to eliminate competitors through controlled justice. In another train of thoughts, under the current electoral system, most opinion polls do not give the DPMs a chance to pass the electoral threshold of 6%.

In the case of PSRM, the election of MPs by the FPTP system is a guarantee of the victory of the candidates of this party in most of the constituencies, even if at national level they would accumulate only 30%. Given the proposed election system, the PSRM score in each constituency will allow its candidates to rank first.

There is a visible backward understanding between the two parties, namely they would benefit to the detriment of its opponents - the right-wing pro-European parties. By manipulating the electoral system and using obscure financial resources and controlled and justice, these two parties have the opportunity to share their seats in the next Parliament. Even the categories of citizens who will be deprived of the right to vote (the Diaspora and the citizens of Chisinau) are those who vote in the majority proportion for pro-European parties.

Recommendations

Given the conclusions of the presented evaluation, the recommendations vis-à-vis the above mentioned initiative to modify the election system in Moldova are as follows:

- To withdraw the bill voted in first hearing in the Parliament;
- To resume any discussion on the modification of electoral system only after restoring the legitimacy of the Parliament, that is, after parliamentary elections.
- To conduct a broad and transparent discussion between the representatives of political forces until a genuine compromise is reached (representing the parties that have at least 2/3 of the voting options of the citizens) on the opportunity, format and general principles of an eventual new electoral system. The only realistic option to prove such a consensus is to conduct the respective discussion after the parliamentary elections. Only the results of elections can prove the degree of representative ness of each party.

- If such a consensus would be reached – it is necessary to create a genuine framework for discussions and public debates, for assessing the problems and best options to modify the electoral system.
- Regardless of the modification of electoral system, it is imperative to return to the formation of voting lists by local administration, offering citizens the right to vote in the locality where they actually live, applying this principle for local elections as well. This is in accordance with the recommendations of Venice Commission.
- Any modification of the electoral system must be applicable only after the next electoral cycle, in order to avoid any attempt of manipulating the new electoral legislation in the interest of one or more political parties.

In case if a large consensus is reached concerning the opportunity to switch to any form of election of deputies on plurinominal or uninominal constituencies, the new legislation may be implemented only after the following preconditions have been met and with the following provisions:

- Finalization of the territorial-administrative reform, so that each territorial unit should comprise a constituency or more, balanced in terms of the number of voters that actually live there; i.e., each constituency must have the same number of voters, allowing a deviation less than 10%.
- The implementation of a new system concerning the election of deputies on territorial constituencies must be preceded by providing a broad financial autonomy for local communities (localities and rayons), so that the MPs cannot act as lobbyists of the financial interests of their constituencies or localities from these constituencies.
- Switching to a new electoral system must be preceded by the application of the same model to at least one local voting for the election of counsellors and, preferably, the heads of the territorial-administrative units. Without such a step it is not possible to consolidate local political groups and leaders, covering proportionately the whole territory of the constituency.
- In the case of the election of the deputies according to the majority system, the winner can be nominated only by an absolute majority, otherwise the legitimacy of the elected deputy and of the entire Parliament will suffer much. If necessary, two tours must take place.
- In order to validate the elections at national level and in each constituency, a minimum threshold of at least 1/3 of voters is mandatory. For possible districts from abroad, a numerical threshold can be set, in proportion to the total number of voters and constituencies (e.g. 10 thousand voters).
- The number of constituencies for the citizens living abroad must correspond to the maximum number of voters who live permanently there. Elections in these constituencies should be validated only in case of pre-established minimum attendance.
- Taking into account the experience of other Eastern Partnership countries, it is necessary to identify a solution for the Transnistrian region. Given the anti-constitutional character of regimes that control the region, the opportunity of participation in parliamentary elections of people living in regions under temporary occupation is questionable and need to be re-considered. Otherwise, there will be a high risk that the anti-constitutional authorities will promote MPs who opt against the territorial integrity of the Republic of Moldova.
- Any process of the registration of candidates, examination of appeals, in particular regarding the legality of funding and the exclusion of competitors from the electoral race, should be the sole responsibility of the Central Electoral Commission.
- The role of courts and law enforcement bodies in the electoral process must be minimal.