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INTEGRITY OF ELECTIONS – A PRINCIPLE EDIFYING THE LEGITIMACY OF THE STATE REPRESENTATIVE POWER

Alexandru ARSENI,
Moldova State University

Poporul suveran își poate exercita dreptul său natural și inalienabil de a legifera, delegându-l unor reprezentanți desemnați după proceduri electorale. Problema care s-a pus și se pune este de a găsi un mecanism juridico-statal cât mai eficace în a realiza acest scop, fără a atenta la suveranitatea națională. Practica contemporană constituțională a dat răspuns la această întrebare prin elaborarea și argumentarea sistemelor electorale capabile să nu rupă această legătură dintre suveranitatea națională și reprezentare. Urmează să elucidăm dacă modificarea sistemului electoral în Republica Moldova se încadrează în această armonie.

Cuvinte-cheie: suveranitate; reprezentare; putere de stat; onestitate; alegeri; vot; concurent electoral; scrutin; sistem majoritar; sistem proporțional; sistem mixt.

The sovereign people can exercise their natural and inalienable right to legislate by delegating them to appointed representatives after electoral procedures. The question has been and is to find a more effective legal-state mechanism to achieve this goal without addressing national sovereignty. Contemporary constitutional practice has responded to this question by elaborating and reasoning electoral systems capable of not breaking the link between national sovereignty and representation. We are going to clarify whether the modification of the electoral system in the Republic of Moldova is in harmony with this.

Keywords: sovereignty; representation; state power; integrity; elections; vote; electoral contestant; elections; majority system; proportional representation; mixed system.

PROBITÉ DES ÉLECTION – PRINCIPE ÉDIFICATEUR DE LA LÉGITIMATION DU POUVOIR D'ÉTAT PAR REPRÉSENTATION

Le peuple souverain peut exercer son droit naturel et inaliénable de légiférer le déléguant aux représentants désignés après les procédures électorales. Le problème qu'on a mis et qu'on met consiste à trouver un mécanisme juridique et de l'État plus efficace de réaliser ce but, sans attenter à la souveraineté nationale. La pratique constitutionnelle contemporaine a donné une réponse à cette question en élaborant et argumentant les systèmes électoraux capables de conserver cette liaison entre la souveraineté nationale et la représentation. Il s'ensuit à tirer au clair si la modification du système électoral en République de Moldova s'inclue dans cette harmonie.

Mots-clefs: souveraineté; représentation; pouvoir d'État; probité; élections; vote; concourant électoral; scrutin; système majoritaire; système proportionnel; système mixte.

Annotation. Both conceptually and legally, the idea is that the will of the people constitutes the basis of state power, will expressed through elections through universal, equal, direct, secret and free expression. In conjunction with the principle of national sovereignty, also exercised through representation, this idea presents a vivid interest in the constitutional doctrine due to practical significance for the whole society.

These social relations are governed by the norms of the constitutional law, as they directly address the complex phenomenon of establishing, maintaining and exercising the state power. Obviously, they become the object of research for the scientific discipline Constitutional Law.

This doctrinal field is the subject of research for all constitutionalists trained either in science or in universities. We will mention the national constitutionalists: I.Guceac, V.Popa, T.Cârnaț, the author of this article; Romanian constitutionalists: I.Deleanu, I.Muraru, E.S. Tanasescu, G.Vrabie; French constitutionalists: P.Pactett, etc.

A special topic in the entire electoral process is the poll or the electoral system for distribution of the mandates of deputies on the basis of votes obtained in the elections. The constitutional doctrine and practice has two types of voting: a) majority; b) proportional representations (list).

By combining elements of both types, the mixed system was born.

The Republic of Moldova has practiced both classic types. Thus, the Parliament of Independence (1990-1994) was elected on the basis of the uninominal majority vote with two types of ballot. Then the Law of October 14, 1993 went to the vote of the representation of proportionality (list). After this type, the subsequent Parliaments, including the present one, were elected.

Recently, the Parliament of the Republic of Moldova, by Law no.154 of 20.07.2017 [1], art.73 paragraph (2) stipulates that Parliament's elections are made on the basis of a mixed (proportional and majority) voting system in a national constituency and in uninominal constituencies.

This new normative regulation obviously has become the object of research for constitutionalists, and all aspects of the problem will be subject to analysis.

The purpose of the paper is to explain the process of applying this mixed voting system as a legal process of the legitimacy of the state power by ensuring the authenticity of national sovereignty exercised through representation.

Constitutional and conceptual definitions. According to Article 2 paragraph (1) of the Constitution of the Republic of Moldova, "National sovereignty belongs to the people of the Republic of Moldova, exercising it directly and through its representative bodies, in the forms established by the Constitution" [2]. And Article 60 paragraph (1) stipulates that "the Parliament is the supreme representative body of the people of the Republic of Moldova ...".

The syllogism ends with the provisions of Article 38 paragraph (1), according to which "The will of the people is the basis of the state power".

This will is expressed through free elections that take place regularly through universal, equal, direct, secret and free expression.

We propose to report these constitutional provisions with similar regulations from the Universal Declaration of Human Rights to which the Republic of Moldova joined in July 1990 [3]. Thus, according to Article 21 paragraph

(1) "The will of the people is the basis of state power, this will must be expressed through honest, universal, equal suffrage, and secret vote ...".

Therefore, we observe the identity of the regulations, except for the absence of the phrase "honest choice" in Article 38 paragraph (1) of the Constitution. But this does not mean that the elections in the Republic of Moldova should not be "honest". Here are the provisions of Article 4 of the Constitution according to which: In the issue of human rights, priority is given to international regulations in relation to national ones.

The scope of the phrase "honest choice" refers to

the entire electoral process as a whole. Against this backdrop, the principles of the right to vote are found, namely: universal, equal, direct, secret and free expression. Due to this cardinal function, we believe that we are in the presence of a fundamental principle of electoral law that we will call *the principle of integrity*.

If the other principles of the right to vote are broadly analyzed and exposed in the literature, then this principle is mentioned only in passing, as a mere provision. For these reasons, we allow to formulate a possible definition of the "principle of integrity."

We consider that *the principle of integrity of elections means the obligation of the state to ensure the respect of the dignity of the human personality by excluding in the electoral process manipulation, pressure on the electorate, and in case of their manifestation, as well as falsification of the results of the voting, undertaking measures to counteract them with sanctioning guilty persons.*

This principle, in conjunction with the principles of the right to vote, fully assures the legitimacy of the state power, a process that falls within the principle of legitimacy of state power.

In this context, "*legitimacy* is a feature, a quality of political and state power, a principle of establishing and justifying the ethical authorities in accordance with legal and moral norms and the recognition by the governors of being led by those who govern. And *the legitimacy of power* is a feature of the state power, which resides in national sovereignty, specific to the state of law and democracy, in which both the Constitution and the state bodies and acts issued by them, are in accordance with the general will and are accepted as such by the entire human society organized in that state "[4]. Respecting this principle makes the will of the people effectively constitute the basis of state power.

The definition proposed for *the principle of integrity* is based on the following considerations:

1. *The principle of dignity of human personality.* The Constitution by means of Article 1 paragraph (3) stipulates among others "the dignity of the person, human rights and freedoms, the free development of human personality are supreme values and they are guaranteed." Or this constitutional stipulation forces all state institutions to guarantee them plenary and unconditionally.

The Constitutionalist Cristian Ionescu mentions that "the authentic character of the democratic exercise is conferred by the material, political and legal guarantees granted by the state for the citizens to exercise freely and fully their sovereign right to participate in the leadership "[5].

During his time, Englishman J.Lock wrote that man delegates certain prerogatives, including state-

sponsorship, which in turn owes him protection and respect.

Among the manifestations with a degree of deception of the voters is the fact, proved by them in the People's Assembly in Comrat. So, at the last election, the Democratic Party did not submit the list of candidates. However, after validating the mandates of independent candidates, many of them, overnight, joined the Democratic Party, a danger to us if Law No. 154 remained in force. Through this manipulation, the voters' will expressed in elections was cynically ignored.

A number of violations of the principle of integrity of elections have been identified by the Constitutional Court at the last presidential election, and addresses also in this respect.

According to the Constitutional Court's decision on the confirmation of the election results and the validation of the mandate of the President of the Republic of Moldova no.34 of December 13, 2016 - pcc-01/139e-34/1-pcc-01/139e-34/6 [6] during the electoral campaign, the competent bodies did not honor their obligations, but were not sanctioned.

In its turn, the Constitutional Court limited itself only to those which were not taken into account in Law no.154.

In our opinion, if the Constitutional Court were to invalidate the elections, then the addresses would force the deputies to take the violations [7].

1. Social destination of elections

In a sociological sense through elections is meant "an action by which citizens select and designate by vote, in accordance with certain procedures, the persons to be members of the governing bodies of a state, a territorial-administrative unit or of an organization or a political party or collegiate body" [8].

In the opinion of the constitutionalist I.Guceac, the election "signifies the procedure of formation of a state body or the investiture of a person with public attributions accomplished by the vote granted by authorized persons in the conditions in which two or more candidates are proposed for obtaining the respective mandate" [9].

In this capacity, the elections, in the view of the doctrinaire I. Guceac, are characterized by the following three specific features: "a) elections legitimize power; b) elections are the barometer of political life; c) elections are a tool for selecting governors" [10].

In his monograph of Electoral Law, the constitutionalist also identifies the following feature, namely: they "represent the means by which political self-confidence of citizens takes place, the political self-organization of civil society, investigating the right of citizens to be active subjects of the governing process".

According to the first feature, the people "select their representatives, and the mandate entrusted transmits powers of attaining sovereignty" [12]. The French constitutional doctrine explains this feature by the following formula: "... there are no legitimate governors, empowered by force of command, than those who are out of free and democratic elections" [13].

We cannot disagree with the opinion of the constitutionalist I. Guceac, according to which, in fact, the elections "... represent the main form of political participation of the citizens, and in the eyes of collective consciousness, they are the main criterion of political democracy" [14].

As a barometer of political life, elections are the arena on which the interests of different visions and programs of government whose experience are political parties and social-political organizations are faced. The election results reflect the influence of these political forces and the aspirations of voters "[15].

As a tool for selecting governors, the elections "create for citizens the opportunity to convey the right to government to persons capable and worthy to rule" [16]. We will add that through the elections, the electoral body determines its national will, which must be the basis of the state power for the realization of the general interest.

In this regard, the principle of national sovereignty was legally formulated in the French Declaration of Human and Citizen Rights of 1789 in accordance with Article 3 "The principle of any sovereignty lies essentially in the nation. No body, no individual, can exercise any authority that expressly does not emanate from it" [17].

In the political and legal circuit of the Republic of Moldova this principle is stipulated in the Declaration of Sovereignty of the Republic of Moldova, according to which "the source and the bearer of sovereignty is the people" [18]. In a broader formula, the essence of the principle is stated in Article 2 paragraph (1) of the Constitution of the Republic of Moldova, according to which the national sovereignty belongs to the people of the Republic of Moldova exercising it directly and through its representatives in the ways established by the Constitution.

In the opinion of the constitutionalist V. Popa, "suffrage" is nothing more than "... an ordinary legal instrument, through which the people exercise their sovereignty" [19]. It is true that the elections have the character of "... designating authorities for the execution of a particular function in person, when it comes to the executive (head of state, etc.) or collegial, when it comes to deliberative assemblies" [20]. So, the people are the "beneficiary" of the suffrage, not the political parties.

In these circumstances, we are in the presence of *competitive elections* in which, the constitutionalist Maurice Duverger, points out that “citizens choose among several candidates, which is the cornerstone of liberal democracy” [21]. And this because it produces an electoral body “an interest that manifests itself through regular participation in the elections, allows it a real option among several possibilities and the realization in this way of its own political vision” [22]. This is precisely the main function of the voting, of elections.

In this context, it is worth mentioning the constitutionalist V. Popa, who believes that the elections, among others:

a) allow the electorate, through the universal, secret and freely expressed vote, to exercise their right to participate in the government ...;

b) confers legitimacy on the political system, the government system ...;

d) being multiple manifestations of will as a whole, constitutes a collective act which approves a team;

f) allow the voters to express their opinion on the activity of the political parties in power and the prospective activity directions;

g) confirms or denies the activity of the elected people, giving them a mandate to act or replacing them with others “[23].

For his part, the constitutionalist T.Cârnaț operates in two statements: “electoral law” and “electoral system”. In the author’s view, electoral law “represents the total legal norms governing the participation of citizens in the process of forming elected central and local state organs, as well as the election of their officials through the rights and freedoms guaranteed by the Constitution of the Republic of Moldova”. And through the electoral system he understands “the procedures used to designate the people’s representation in the bodies of central and local power, while being the way to represent the mandates argued in elections by results” [25].

As far as we are concerned, we consider that “the elections are the free expression of the will of the citizens regarding the designation of the persons with public powers (deputies, senators, heads of state, local councillors, mayors) in the representative bodies of the state based on the realization of the principle of national sovereignty following strictly determined procedures “[26].

The assumptions of the analysis reflect the elections in their procedural designation of representatives. However, in our opinion, the elections are presented primarily as a legal-state mechanism for the delegation of competencies. In this situation, *elections are the legal-state mechanism through which*

the sovereign people delegate their natural and inalienable right to legislate to a body of representatives appointed after electoral procedures

2. Political parties - the main electoral contestant

In the opinion of the constitutionalist V. Popa, in the competition for conquering of the state power “... political parties are the main actors, because this intention of the party actually brought it to the political stage, justifying its appearance” [27].

This truth has been remarked in constitutional studies in the 1930s, as candidates for the position of deputies “are embedded in parties whose programmes have been extensively discussed ... becoming known to everyone in their general value and in their feasibility at the time, and whose previous activity in government and opposition, took place under the eyes of the whole country and could be weighed by all citizens in both its good and bad parts “; the situation it is much easier [28].

The stated concept finds its confirmation in contemporary literature as well. Thus, for example, I.Muraru considers that the candidates for the position of MPs “being proposed by the political parties represent for the electorate more guarantees and clear options” [29].

Article 2 paragraph (1) states that the people in this sense “represents the collectivity of individuals who have the quality of citizenship ... and thereby the ability to participate in the expression of the national will” [30]. So, the expression of national will belongs to the people, not to political parties. The problem is to identify the appropriate forms and methods for a genuine legitimacy of this process.

Political parties, according to the constitutionalist I.Deleanu, have the following functions: “a) By establishing an intermediary body between the people and the power they contribute to the crystallization of the general will and its valorisation as an impulse towards to power; b) They aim to achieve the leadership role of society by conquering power and transforming political programs into government programs; c) The parties contribute to politically informing and educating the citizens and forming their requirements and assessments of power”[31].

As concerning independent candidates, the “elite” and the French constitutional doctrine support the idea that “the people have nothing to do with an elite in which they do not recognize themselves and who, however intelligent they may be, do not understand” 32].

The concept under which we subscribe and, moreover, the decisions in Parliament are adopted with the majority of the votes for which responsibility is as-

sumed, including political responsibility. However, independent candidates “can” form a “majority” on a case-by-case basis, in the absence of responsibility for the adopted decision and its consequences on citizens.

3. Electoral systems

Romanian Constitutionalists I. Muraru and E.S. Tănăsescu are very clear. “Apparently a purely technical problem, the choice of the distribution of mandates is full of political significance with different and nuanced requirements, especially as regards political parties. In explaining these, the notion of voting is particularly useful. By voting (from the latin scrutinium), it is actually understood how the voters designate deputies, senators, counselors, etc.” [33].

Majority voting. In this system are elected deputies, heads of state, councilors, mayors who have obtained the highest valid number of votes. The Constitutionalists, I. Muraru and E.S. Tănăsescu, state that this election has two variants, and namely: “depending on the way of proposing candidates, we distinguish between the *uninominal majority vote* and the *election by list by majority*, and depending on the number of election tours organized to assign the mandates a distinction is made between the majority vote in one or two rounds of voting” [34].

I. The Uninominal vote consists in the voter to vote for a single candidate in an electoral constituency. When the electoral law determines that the mandate is attributed to the candidate who is first after the number of votes obtained, the simple or relative majority is sufficient. This system is practiced in the United States and the United Kingdom, with bipartite systems. The essence consists in the fact that the voter has two alternatives of choice, that is, one of two parties who have submitted their own candidates.

While according to Article 91 paragraph (1) of the Law no. 154, the candidate for the position of deputy in the Parliament in the uninominal constituency is considered elected if he obtained the highest number of validly cast votes.

The long and short of it, we are in the presence of the majority vote with only one ballot.

In the multiparty political system, this system is dangerous, because the “risk” of “getting” for the desired candidate 10 votes more than the other candidates is practically assured, thus falsifying the results of the elections. Under these circumstances, the two-round system (vote), the procedure previously set out, is required.

In countries with multi-partite systems, the two-ballot majority vote is applied. Under the electoral law, it applies when in the first round no candidate has obtained at least 50% plus one vote (absolute majority) on that constituency. As a result, the second ballot

takes place and the first two candidates with the highest number of votes in the ballot are included in the ballot. In this case, the candidate who has obtained the relative majority will be declared deputy.

Advantages and disadvantages of uninominal vote

Advantages. The constitutional doctrine identifies, among other things, the following advantages: a) the fact that each electoral district designates a single representative, is characterized by simplicity. At the same time, it “increases the voter’s understanding of the electoral process, as well as the possibility of social control of elections, all operations beginning and ending at the level of the constituency” [35].

It also creates “at least apparently the possibility of a close connection between the elected and the electorate” [36], questionable, at the same time, on the basis of a representative mandate.

An important aspect of the uninominal majority system is that it leads to “a stable parliamentary majority, a profitable situation for governance techniques” [37].

Disadvantages. At the same time, the doctrine and the practice highlight also disadvantages of the uninominal majority system. This is how we can ascertain the following: “Due to the large number of electoral constituencies, the election involves large expenditures on electoral operations and the structures that organize and conduct these operations.

The resultant parliament “is” more of an elite body, obviously diminishing its political character. It is not the optimal precedent for expressing political pluralism. They can generate a highly dangerous conflict state by ensuring that the party with a relative majority of options holds an absolute majority of mandates. Finally, this system supports the tendency of centralization” [38].

A. The Majority electoral system

The majority electoral system, in the opinion of the constitutionalist I. Guceac, is “based on the principle of majority (form fr. majorité), according to which the candidates who have obtained the largest number of votes are declared elected” [39].

The doctrinaire constitutionalist believes that this system leads to:

- “- diminishing the fragmentation of the political spectrum;
- Parliamentary underrepresentation of extremist parties;
- a comfortable majority, so a possibility for government action;
- a stronger link between the MP and its constituency, becoming more attentive to specific local interests” [40].

But even more serious is the assertion that this system is “better suited to states with a younger, less conscious democracy with a less developed political culture ...” [41].

Uninominal vote requires state division into “uninominal constituencies in order to use uninominal vote” [42].

In the constitutional practice, is met the concept “panachage” that “represents the voter’s ability to compose the ballot as he thinks” [43], that is, to vote for candidates selected by himself. We, therefore, notice the voter’s priority rather than the electoral candidate to vote for his representatives in ways that are free from political influence.

Great interest is also given to the “alternative or preferential vote” according to which the voter has the “possibility to change the order of the candidate in the list” [44].

Again, the prerogative belongs to the holder of national sovereignty and not to the political party that presented the list of candidates for the position of deputy.

Advantages and disadvantages of majority electoral system

As far as the advantages of this system, the French constitutionalist Cadart prefers the majority electoral system because they are “more capable of giving the people the power to decide, of designating governors and of choosing their political programs, they allow a democracy with a particularly vigorous viability, giving men and women the maximum power to act as concerning their own fate in the present and the future. This election allows the same voters to exercise maximum control over the chosen people, always and everywhere dangerous, because they have the power to be tempted to abuse them, and the examples of such abuses are frequent” [45].

As far as the form of the electoral system is concerned, T.Cârnaț argues that these are two main categories, namely: “the majority system and the electoral system of proportional representation. All other types are considered to be combinations of different proportions of the mentioned above; being called mixed electoral systems” [46].

The author states the fact according to which “the majority electoral system is considered to be elected on the electoral constituency the candidate or the list of candidates who have accumulated the majority of votes” [47]. In this context, we must mention that the constitutional practice has two main forms of the majority system: “the absolute majority and the relative majority” [48].

The relative majority system, in the opinion of the constitutionalist T.Cârnaț, gives a point to the candi-

date who “has the highest number of votes against any opponent” [49]. It should be noted that this system is used through a single round of voting in bipartite political systems (e.g. the USA, the UK, Germany, etc.).

The absolute majority system, which usually takes place in two rounds, because “the absolute majority of votes” (50% + 1) [50] is required to obtain the mandate. If this result is not accumulated in the first round, it is called the second round of voting, only two candidates from the first round of voting that have accumulated the largest number of votes cast in decreasing numbers are included in the ballot. After the second round, the candidate who has obtained the highest number of votes validly declared will be elected deputy.

B. The electoral system of proportional representation or the election by list by majority

The essence of this system lies in the fact that “the representation of national sovereignty has to represent the true image of all opinions within the nation, opinions which must be represented and valorized in Parliament in the proportion to which they are shared by citizens”.

This system is used in some African countries, with the voter being able to vote for more than one candidate on an electoral roll/ballot. In this case, the practice also knows that the voter has the possibility to modify the list based on two options: a) panachage and b) the preferential vote.

Panachage is in itself the ability of the voter to draw up the list of candidates by selecting candidates from the lists submitted for voting.

The preferential vote gives the voter the right to change the order on the list of candidates submitted to the constituency.

II. The Proportional representation voting system. Proportional representation implies “a list ballot and a single round of voting that allows the assignment of both the majority and minority mandates” [52].

The electoral system of proportional representation is founded on equity, and therefore aims “in the theory of determining the arithmetic relationship between numerical force and political power, in restoring the proportion between representatives and represented” [53].

The system of proportional representation consists essentially of the fact that the citizens attribute to this system a “political character, because the candidates who presented themselves to him/her are grouped according to the opinions, each group presents with his program, consequently the ideas of the program, the political opinions presented to the voters are more important than choosing a person” [54].

The constitutional doctrine considers this system fair, because it allows parties to obtain a number of mandates proportional to their numerical force in proportion to the number of votes they have obtained. And here is an allegorical explanation of the difference between the majority system and the proportional representation: “if five children receive a cake and three of them claim to eat it entirely is a majority system; where each of the five children takes one piece of the cake is a proportional system” [55].

In legal terms, according to the opinion of the French doctrine of Georges Burdeau, “proportional representation is capable of engaging in a genuine manifestation of national will” [56].

Synthesizing the effects of the majority system and of the proportional representation system, the constitutionalist V. Popa mentions that “... their application is made by constitutional regulations and by law, choosing the system that best corresponds to the social-political situation, to the general level of culture of the society, the national temperament and the interests of the ruling political forces” [57].

As far as we are concerned, we believe that the application of one or the other system must be based on how and how effectively the “national sovereignty” is achieved through representation rather than “the interests of the ruling political forces.”

T.Cârnaț considers that the electoral system of proportional representation is “the most democratic method of determining the results of elections” [58]. The reasoning behind this conclusion is that “the mandates in each constituency are redistributed between the parties in accordance with the number of votes accumulated by each party” [59]. This, on the one hand, and, on the other hand, the most important, in our opinion, lies in the fact that the voter finds his choice in the election results. A situation characteristic for pluripartidism. Ex.: the Republic of Moldova.

Advantages and disadvantages of the election of proportional representation

Among the advantages of a proportional representation vote, the constitutional legal doctrine identifies: a) it emphasizes the usefulness of the votes, because in the end all the votes cast are taken into consideration; b) all the opinions, even minority, are represented; c) favors multipartidism, regardless of the size of the parties, and ensures their independence; d) develops a corresponding “photography” of reality, however diverse it may be, expressing different tendencies and currents of opinion, which in fact represents even one of the functions of the poll.

At the same time, the election of proportional representation suffers from some disadvantages, such as:

a) being a list voting, the voter does not express his / her choice for a particular candidate, but for a certain party, regardless of the quality of the people from the list b) the suffrage does not mark the manifestation of the “national will”; c) the parliamentary majority constituted is also conjectural.

However, the election of proportional representation after the expression of a metaphorical doctrinal saying can be the “right key,” but it is not, however, sufficiently “polished”.

C. Mixed electoral systems

The constitutional doctrine determines the essence of mixed electoral systems both in legal and allegorical terms. According to an opinion these systems are based on “... a variable dosage of proportional representation and majority vote and various ingenuity, ensuring more or less homogeneity of the mixture” [60].

And in an allegorical or suggestive sense, when referring to mixed systems, “the legislator acts as a barometer for a cocktail: a proportional representation finger and two of the majority voting or vice versa. In both cases, the inventor is often more satisfied with his mix than the consumer - the voter” [61]. We point out to favour this concept, correct in the end, benefits have political parties and not the voters, which is detrimental to the rule of law and democracy, to national sovereignty.

In the same context, the constitutionalist I.Guceac mentions: “It is precisely these considerations that this” cocktail “, regardless of the efforts made, will not lead to absolutely uncritical results” [62].

An exemplification of the mixed electoral systems is met with the constitutionalist I.Guceac. From the analysis of this exposure, we determine two major categories, namely, historical, that have been applied in various countries and systems applied today.

The first category includes: “The Hare system practiced in Denmark; Cumulative voting system, practiced in Shri Lanka between 1946 and 1947; The “single non-transferable vote” system practiced in Japan between 1902 and 1993” [63].

Mixed systems

A. The system of alliances which in French means “des apparentements”, expresses the alliance “of political parties that appear with related lists.” This system was practiced in France between 1951-1958, that is, until the adoption of the last Constitution. The effect of the system is that if the related lists obtained the absolute majority of votes, they would win all the seats, the mandates in Parliament. And if not, the places were then, spread between the lists according to the principle of proportional representation.

This mode of voting is of interest only for parties as electoral contestants who are involved in the distribution of mandates and not the electorate.

B. German double ballot system. The essence of this system is that each voter has two ballots. With the former he appoints, by the uninominal majority vote, a deputy for his constituency, with the second he pronounces himself for the list of a party, through the proportional representation system. It should be noted that in both cases candidates are proposed by the political parties that are responsible for the government. In this case, the majority vote and proportional representation are cumulated through double voting.

In the case of the double ballot, the will of the electorate is in the interest. But it is practiced in the European Federative States and with the bilateral Parliament.

Currently, in the constitutional practice and the electoral law, the “German system of the double ballot” is practiced as an institution of constitutional law. This system in the literature is also known as the “compensation system” [64]; “Mixed balanced system” [65]; “Proportional personalized representation” [66].

Although the German system of the double ballot was taken over by several states (South Korea, Italy, Japan, Russia, Hungary, Bulgaria etc.) it demonstrated the following disadvantages, summarized by the constitutionalist I. Guceac, and namely:

“- although it is possible to submit lists of candidates who are not affiliated to any electoral association, it is practically impossible to speak about the elections of independent candidates;

- the proportional representation method has priority over the majority one, situation followed by a weak link between the MPs and the electorate;

- “the useful vote” distorts the will of the voter, forcing him to express his / her choice by casting the vote of another electoral association rather than the one he / she prefers in reality. “[67]

By synthesizing the study of matter as a whole, the doctrinaire concludes that “the acceptance of one or other electoral system must be achieved only by taking into account the advantages and disadvantages of each and taking into account the political realities of that state” [68]. It is also necessary to point out the general interest of society in building the rule of law and democracy, the legitimacy of state power.

4. The mixed system in the Republic of Moldova

Until July 21, 2017, during the parliamentary elections in the Republic of Moldova the proportional representation vote (on political party lists) was applied.

By Law No. 154 it passed to the mixed voting sys-

tem (proportional and majority). According to art. 73 paragraph (3) of the Law “In the national constituency, 50 deputies are elected based on the vote of proportional representation. In the uninominal constituencies, 51 deputies are elected on the basis of the majority vote, one from each constituency. “

What concerns the national constituency and the proportional representation vote, then questions do not arise, because the process is known to us. We are going to clarify ourselves with the uninominal constituencies. Article 74, entitled “Electoral Districts”, establishes that parliamentary elections are organized on the basis of 51 uninominal constituencies, including those constituted for the localities on the left bank of the River Nistru (Transdnistria) and abroad.

Paragraph 4, letter (a) of this Article establishes that electoral constituencies will be based on a relatively equal number of voters and will include between 55,000 and 60,000 voters with the right to vote.

This stipulation corresponds to the territorial principle of organizing the elections and to the principle of equality of votes, which implies, besides the fact that each voter has one vote for the election of the same state body and the approximately equal number of voters per constituency.

But, within this article, there are two provisions that put the ethnic criterion in the forefront. Therefore, letter f) establishes that the uninominal constituencies in which the national minorities live shall be constituted taking into account their interests and taking into account the boundaries of the respective administrative-territorial units. These are provisions that cause more chaos than order. We admit that in three neighboring villages there are 15 thousand voters. It is therefore to create an uninominal constituency. Where is the principle of equality stipulated in Article 16 of the Constitution, according to which: all citizens of the Republic of Moldova are equal before the law and the public authorities, including without distinction of ethnic origin?

We are on the same opinion with the provisions of letter g) according to which “the uninominal constituencies on the territory of autonomous territorial unit Gagauzia will be constituted in such a way that they will not exceed the administrative boundaries of the autonomy, at the same time, these constituencies cannot be completed with localities outside the autonomy, taking into account the risk of dilution of the national minority. It was not enough chaos, and there it has been appealed to discrimination against ethnicity.

The stipulations of Article 74 paragraph (5) of Law no. 154 on the constitution of uninominal constituencies abroad the Republic of Moldova are still unclear.

How many uninominal constituencies will be set up and what will be their border? For example, in the uninominal “X” constituency there are 20,000 citizens of the Republic of Moldova with voting rights. Will it be an uninominal constituency, or will it be merged with another smaller country? Or in another country live 80,000 citizens. How would the constituency be constituted?

A trapping provision is stipulated in Article 79 paragraph (6) according to which the person included in the list of candidates from an electoral contestant for elections based on the national constituency may also apply in a single uninominal constituency of the same electoral contestant or as an independent candidate. Good job! The same person is at the same time on the party list, and “independent”.

The trap is opened by Article 93 paragraph (3) according to which “If the elected candidate in the uninominal constituency has also been elected on the party list in the national constituency, it is considered to have been elected only in the uninominal constituency and will not be taken into account when assigning mandates on the basis of the party list. “From two rabbits shot: one on the constituency and the next on the party list. So, the party will get two mandates, and the party that has not advanced on the nominal constituency will remain with a mandate.

We are again in the presence of violation of the principle of equality between electoral contestants. And that’s not all, it’s something that gets rid of the actual text of the law. Both theoretically and practically, it may happen that on the national constituency “y” electoral contestant does not pass the electoral threshold, that is to say, he does not acquire any deputy mandate.

However, after the validation of the mandates of deputy, the so-called “independent candidates” become overnight members of this contestant. We are, therefore, in the presence of the obvious and cynical deception of the voter, the will of which was misused, and the legitimacy of the mandate of the deputy injured.

The consequences of this criticism to Law no.154 denote that the principle of integrity is obviously violated, which makes us consider this law contrary to the spirit of constitutionality, the state of law and democratic.

CONCLUSIONS AND RECOMMENDATIONS

As a result of the research of doctrinal opinions and constitutional regulations, we find that national sovereignty belongs to the people exercising it directly and through representatives in the way established by the constitution. The mechanism for exercising national sovereignty through representation is achieved

through elections as the process of delegating the law-making process.

Therefore, we conclude:

1. Elections in the representative bodies shall be carried out on the basis of and strictly observing the principles of integrity, universal suffrage, equal, direct, strict and free expression.

2. There are two classic types of voting: a) majority; b) proportional representation and a combination of elements of both types, taking the existence; c) Mixed voting

3. The majority vote on uninominal constituencies with one round is appropriate to the bi-party political system. That is, from two candidates, only one will be a deputy.

4. The majority voting on uninominal constituencies in pluripartidist political systems is applied with two rounds of voting, in the first round being necessary to obtain for victory at least 50% plus a vote of the total number of votes cast. If it applies only in one round, it is dangerous to falsify election results, as it is very easy for a party candidate to “get” only 10 votes more than the rest of the competitors and will be elected a deputy.

5. The most appropriate voting for exercising national sovereignty is the election of proportional representation in the multi-party political system, as is the case in the Republic of Moldova.

6. The Law no.154 which introduced the “mixed vote” and especially the “uninominal vote on constituencies” is inappropriate for the Republic of Moldova, because it directly violates the principle of integrity, firstly, as well as the principles of universality of vote, equal, direct, secretly and freely expressed.

Under these circumstances, it is impossible to establish a state of law and democracy in which human rights, the free development of human personality as supreme and guaranteed values by adopting laws which contravene to this requirement and undermine the legitimacy of state power.

In this context, we propose that an entity with a right of referral should address the Constitutional Court requesting the declaration of Law 154 of July 20, 2017 as unconstitutional, keeping the election of proportional representation that citizens perceive, and political parties will work on increasing accountability and responsibility for the general interest*.

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