

The electoral system change – benefits for whom and for what?

POLICY BRIEF

1. Executive summary

On 20 July 2017, the Moldova Parliament voted to change the proportional system for parliamentary elections with a mixed voting (parallel) system. This modification took place despite the recommendation¹ of the Venice Commission and EU institutions to refrain from changing the electoral system without having a broad national consensus on this issue. The rejection of electoral reform by opposition and large segments of citizens was confirmed by mass protests the polls. In such conditions a solution to assure a minimal level of “respect of effective democratic mechanisms, including a multi-party system”, consisted of at least following punctually a set of Venice Commission recommendations. Complying with these recommendations served as a conditionality for EU’s macro-financial assistance for Moldova.

The changed electoral system continues to raise a range of concerns which were stressed in the latest (March 15, 2018) joined opinion² of Venice Commission and OSCE/ODIHR. Accordingly, the recent opinion refers only to the amendments submitted for review after the adoption of modification to the electoral legislation. The main concerns are as follows:

- Risk of distorted citizens’ electoral will (bribed voters) in the majoritarian constituencies. The electoral reform “could potentially have a negative effect at the constituency level, where independent majoritarian candidates may develop links with or be influenced by businesspeople or other actors who follow their own separate interests”³. That was as well the opposition’s argument against majoritarian system;

¹ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e)

² [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)008-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)008-e)

³ Ibidem

- Arbitrariness in forming the single-mandate constituencies, without taking into account the peculiarities of administrative boundaries, and in the context of unfulfilled territorial administrative reform. Under the proposed changes, administrative and judicial districts would not correspond with electoral single-member constituencies (46 single mandate constituencies established for 32 administrative districts, and covering 14 judicial districts). Consequently, the competences and attributions of the electoral, administrative and judiciary bodies in many cases will not fit exactly, sometime overlapping or, on the contrary, arbitrary interrupted;
- Vague criteria for setting up constituencies for voters from uncontrolled Transnistrian region where are living about 10% of Moldovan citizens with right to vote. The modified electoral law also ignores Constitutional Court's decision, issued on May 2 2017, which stated that Transnistrian region is "a territory occupied by Russia". In the absence of a special law on a special legal regime of the "occupied territories" it remains unclear how candidates would campaign in Transnistrian constituencies and, generally, how the electoral rights of voters from the region could be ensured;
- Vague criteria for establishing the majority of constituencies abroad, where about 1/4 of the Moldovans with voting rights live, led to arbitrarily and unfair formed single-mandate electoral constituencies for voting abroad – two constituencies for about 20 thousands votes in North America and Eurasia vs. one constituency for more than 100 thousands voters in Europe;
- Practical impossibility to assure the respect of legal provisions concerning the equal representation of men and women, foreseen by the law, in the majoritarian constituencies because of the traditionalist electoral behavior of the voters;
- Transferred responsibility for control over campaign financing, as well as other competences, from the Central Election Commission to the District Electoral Councils in single-mandates constituencies, which also involves the role of the district courts. This may complicate the effective control and supervision of the electoral process because of the lack of trust in the independence of regional administration and courts which are entitled to appoint the members of District Electoral Councils.

Apart from the mentioned concerns, the remarks made in the 2017 opinion remain still valid⁴ and the Venice Commission and ODIHR expressed regrets that the fundamental recommendations were not followed. Consequently, the monitoring of the modified electoral legislation implementation remains the strongest instrument for assuring a relatively correct election process.

2. Introduction

In the aftermath of the devaluation of the Moldovan banking system, the Council of EU issued in February 15, 2016 its Conclusions on Moldova aimed to speed up the reforms⁵. In response, the Moldovan authorities launched the Road Map priority actions to boost up reforms, ensure stability and speed up the implementation of Moldova-EU Association Agreement. 90% of the Road Map was reported as implemented, including the provisions related to good governance, rule of law and functioning market economy. Government's efforts led to some appreciable improvements in the financial and economic sectors, which determined the resumption of EU's financial assistance to Moldova, including the macro-financial support.

Unlike the financial and economic sectors, the situation lacked improvements or even worsened in politically sensitive areas under the Roadmap, such as the corruption fighting, independence of Justice, media independence, parties' financing and equal opportunities for electoral contestants, etc. The contrasting progress in economic and financial sectors and the regress in justice, media and other political rights could be explained from the perspective of the upcoming parliamentary elections, most probably organized in December 2018, according to constitutional provisions.

The upcoming parliamentary elections deepen the division of the Moldovan society, including because of the decision to change the electoral system. The declared scope of the electoral system change was "the modernization of political class through new rules of Parliament election"⁶. Such a motivation was perceived with doubt by the large part of the public opinion⁷ because the initiator of the electoral system change – the ruling Democratic Party of Moldova (DPM), itself lacks citizens' trust. And according to the polls realized just before the Parliament passed the new electoral system, only 24% of citizens favored the mixed system; about 30% opted for a majoritarian one; and about 35% preferred the proportional system⁸.

Opposition parties reasonably suspected the ruling Democratic Party of Moldova (DPM) that by introducing the mixed electoral system it just creates favorable conditions for using its enormous media, financial and administrative resources for influencing the final election results. Arguments invoked by the opposition were based as well on the widely spread "floor-crossing" phenomena generated by the DPM, when the so-called independent candidates elected as mayors, or in the National Assembly of Gagauzia, were joining exclusively the ruling DPM, despite its relatively low rating. Consequently, due to the "floor crossing" phenomena DPM got 1/3 of MPs, 1/3 of mayors and more than a half of deputies of the National Assembly of Gagauzia. At the same time DPM repeatedly refused to condemn, by a special declaration of the Parliament, such acts, qualified by opposition as the political corruption

Previously, DPM also attempted to change the electoral system with a mixed one, invoking other arguments. A clear example is the attempt of 2013 that almost succeeded, if not the intervention of the Parliament, which established a special commission for assessing the eventual impact of the changed electoral system. Based on that assessment, Parliament concluded that the proposed electoral system would be dangerous for Moldova, underlining several risks: 1) unsolved Transnistrian conflict and impossibility to set up single-mandate constituencies and organize elections there; 2) more than 1/4 of voters are abroad; and 3) uncompleted

⁶ <https://www.europalibera.org/a/28490986.html> (min. 7:15 - 7:30)

⁷ http://imas.md/pic/archives/2/Prezentare%20%5bbsp%5d%20lulie%202017_English.pdf (page 16)

⁸ http://imas.md/pic/archives/3/Public%20perceptions%20in%20Republic%20of%20Moldova_May%202017_English.pdf (page 23)

territorial-administrative reform, which distorted the meaning of setting up majoritarian constituencies according to the formula - “each rayon should have its member of Parliament”.

In the mentioned circumstances, the Venice Commission recommended to Moldovan authorities refraining from modifying the electoral system in the absence of a large national consensus. Consequently, EU decided to synchronize its macro-financial support to the implementation of certain conditions. According to the Memorandum of Understanding on Macro-Financial Assistance the Moldova authorities “shall respect effective democratic mechanisms, including a multi-party system and rule of law and respect for human rights, and will make satisfactory progress towards improving governance, ensuring a free, independent and pluralistic media, strengthening the independence of the judiciary and implementation of the Association Agreement”. This also refers to the Joint Statement of the Parliament, the Council of the European Union and the Commission that requires the fulfillment of the political pre-condition throughout the life cycle (three stages) of EU’s macro-financial assistance, which is to be closely monitored.

3. Analysis

After the adoption by the Parliament, in July 2017, of the mixed electoral system the concerns mentioned by the Venice Commission started to turn into reality. *Firstly*, the main Venice Commission’s recommendation to Moldovan authorities – refrain from changing the electoral system, was rejected on the bases that sovereign states can select the electoral systems on their own. *Secondly*, many recommendations were considered but the found solutions for them were insufficient or palliative. These refer to: setting up an independent commission on constituency delimitation; criteria for the delimitation of constituencies; delimitation of constituencies and voting in Transnistria and abroad; representation of women, etc. *Thirdly*, some previous recommendations concerning the revision of norms and procedures were ignored at all: thresholds for parties and blocs in the national constituency; remainder’s allocation seats formula in the national constituency; provisions concerning the integrity certificates for candidates; examining complains and appeals, etc.

The criteria established for setting up the single-mandates constituencies were simply impossible to address adequately while others were ignored by the special commission created for this purpose. That is because the borders of the majoritarian constituencies did not coincide with the borders of the territorial-administrative unites pointing out at the unfulfilled territorial-administrative reform. Only in 5 cases out of 32, the boundaries of the established electoral districts were included within the existing administrative units. The absolute majority of created constituencies comprise localities from two, three or even four counties. These counties have different law enforcement and administration subordination bodies which are responsible for appointing the members of electoral commissions and assure security and legality (police, prosecutor office, courts, post, etc.). The absolute majority of single-mandate constituencies are lacking common infrastructure (roads) for their localities that belong to different administrative districts. These will create as well problems to citizens who generally are accustomed to solve many of their problems in regional centers while the eventual electoral issues they’ll have to solve in different, unknown for them regional

centers. That would create inconveniences both for voters and candidates, and for the electoral bodies. The latter are normally appointed according to territorial administrative units, which have borders not coinciding with the constituencies' borders.

It remained unclear what were the criteria for setting up constituencies in the uncontrolled breakaway region of Transnistria. The new electoral legislation provides that a constituency can be set up for 60 thousands voters. The criterion was overlooked while setting up constituencies for voters from Transnistrian region, which in the opinion of the Constitutional Court is an “occupied territory”. This issue is very important regionally as, for example, Georgia and Ukraine have special law concerning “legal regime of occupied territories” impacting the elections in those territories. From this view point there are no consistent explanations why the for Transnistria were allocated two seats in the future Parliament. The previous electoral cycles showed that Transnistrian authorities never cooperate with Moldovan authorities in the process of compilation of voters' rolls. In their turn, Transnistrian voters never manifested the initiative for registering themselves in advance in polling station, preferring ad hoc registration. Consequently, the reliable criteria for setting up constituencies in Transnistria could be only the average number of voters who participated in previous elections. The available statistics show that between 10-15 thousands of voters from Transnistrian region casted their votes in parliamentary elections of 2014. Meaning one constituency for about 5-7 thousands voters, in comparison with about 30-35 thousand voters in ordinary constituencies (if we assume a usual participation of 50-55% participation). Consequently, two majoritarian constituencies set up arbitrary for voters from Transnistria are too much if one takes into account the confirmed participation rate over the last 20 years. Another criterion would be based on number of citizens with the right to vote. In this case, only two constituencies for the breakaway region, where are living more that 250 thousands Moldovan citizens eligible to vote, which is too little.

In addition, it is not solved the issue of campaign financing in Transnistrian constituencies and the status of the incomes of Moldovan citizens living in region that can be used for financing political parties during the elections campaigns. The electoral law doesn't clarify if the individuals and legal entities from Transnistria can contribute at financing the electoral campaigns of candidates from the region. In this regard, special legal provisions are required to bring more legality into the elections in the Transnistrian constituencies.

The setting up of single-mandate constituencies abroad was also impacted by the arbitrariness. During the last national elections (presidential of 2016) about 10% of votes were from abroad, meaning that at least five constituencies were to be set up for this category of voters. Nevertheless, only three constituencies were set up, one per each of the three regions - Europe, Eurasia and North America. This approach is disproportional because in Eurasia and North America about 10,000 of Moldovan citizens casted their votes, while in Europe there were over 100,000 votes.

The solution for assuring equal representation for men and women is a palliative one in the modified electoral law. In the national constituency it is very easy to assure the representativeness of women in proportion of at least 40% as law requests it. But in single-mandate constituencies it is difficult to guarantee adequate representation of women, mainly because of traditionalist behavior of the voters. This is partially diluted

by softer conditions signatures collected by women candidates for being registered as electoral contestants, which are two times less than for men candidates. Another palliative approach was the substitution in the electoral law of the request of equal representation of women in single-mandate constituency with the financial stimulation from state budget of parties which promotes women as candidates.

Mass-media and advertising market remains quasi monopolized. The Moldovan authorities have ignored the previous recommendations of the Venice Commission, although they are very important in terms of: access to media, electoral litigation, political party funding and electoral campaigns. In particular, the media is controlled by a quasi-monopole; about 70-80% of the content is controlled by DPM (4 TV channels with national coverage), while the Party of Socialists of the Republic of Moldova (PSRM), supported by President Igor Dodon, is linked to 3 TV channels.

The Venice Commission recommendations concerning the party and election campaign financing were taken into account only partially.

The legal provisions on parties financing is based on the compensatory remuneration from state budget. The legislation was adopted a year before the returning to the direct election of the country's president in 2016. Thus, political parties are receiving financial recompenses proportionally to the number of votes obtained during the parliamentary elections of 2014 and municipal elections of 2015. The authorities display reluctance to expend the compensatory financial mechanism on presidential elections too, during which one of the emerging opposition parties managed to obtain a very high result (about 40% of votes in the first round). Consequently, several political parties (Liberal Democratic Party of Moldova and Liberal Party) with high results in elections of 2014 and 2015, and small approval of less than 1% in 2016, access support from state budget, while other emerging political parties are deprived from such support. Concerning the private donations, the Parliament reduced four times the ceiling for individuals in election campaign to about 3 years average income per economy. However, between elections individuals have the right to donate annually to parties about 12 years average incomes per economy and parties have not restrictions to wire such donations on their electoral accounts. Consequently, issues related to the funding of political parties remained practically unresolved, giving the ruling party the possibility to avoid transparent public control and impose harsh limitations on opposition parties.

The justice in Moldova continues to be selective in favor of ruling party and will play a crucial role during the elections in single-mandate constituencies, including in the adjudication of electoral litigations. The last issue was especially mentioned in the Constitutional Court decision concerning the presidential elections⁹ of 2016. Apart from that, the opposition parties are permanently reporting the actions of intimidation applied by DPM which are ignored by legal bodies. The opposition activists, MPs, mayors and local councilors are threatened with opening penal cases and forced to leave their parties and join DPM. The opposition parties faces problems caused by certain local administration bodies when there are preparations for meetings with citizens. There are cases when local hooligans are instigated to "spoil" such meetings with allegedly tacit acceptance from the local police. Such cases are frequently reported by the leaders of opposition parties which are inviting representatives of the embassies of EU member countries to join them as witnesses when meeting citizens in territories.

⁹ <http://lex.justice.md/md/368347/>
(Adresa 3)

The risk of using charity foundations affiliated to political parties for bribing voters is very high. Not only the financial, but also media and administrative resources favor the ruling DPM and pro-Presidential PSRM. The leaders of mentioned parties have affiliated charity foundations that are accompanying their political initiatives. In fact, this represent implicit acts of electoral corruption¹⁰, though applied in advance.

4. Conclusions and recommendations

In the mentioned circumstances, significant efforts for improving the electoral legislation and assure the integrity of the electoral process are necessary, such as follows:

- ④ **Revise the criteria for setting up the special governmental commission for setting up single-mandate constituencies;**
- ④ **Establish very clear criteria for setting up constituencies in Transnistrian region and abroad**
- ④ **Stress the importance of demonopolization of media and advertising market, and guaranteeing to fair access to public television to the opposition parties;**
- ④ **Halt the intimidation of the opposition and ensuring equal conditions for the electoral campaigns for all electoral contenders;**
- ④ **Prohibit the use of charity organizations by political parties as instruments for bribing voters;**
- ④ **Revise the legislation related to the financing of the political parties: disclose the sources of incomes of private donors; limit the ceilings for private donation to parties from 200 average monthly wages to 5-10 monthly wages and for legal entities to 20-40; permit small private donation (2 monthly wages at the national level) for citizens from abroad; reconsider the principles for awarding public funds additionally incentivizing the political parties to search private donations.**
- ④ **Ensure equal representation of women according to the legal provision. Reject the substitution of equal representation of men and women with financial bonus for parties.**

¹⁰ <http://lex.justice.md/md/368347/>
(Adresa 3)

