

THE EFFECTS OF THE MIXED-MEMBER ELECTORAL SYSTEM

CASE STUDY

Limitation of the Constitutional Right to Elect of the Voters with no Domicile or Residence

According to the State Register of Voters, 155 683 voters with no domicile or residence were registered in the Republic of Moldova as of 1 September 2017[1]. These 155 683 citizens eligible to vote account for 4.78% of the total number of 3 255 361 voters included in the State Register of Voters (as of 1 September 2017)[2]. Promo-LEX Association considers it necessary to explicitly regulate the status of this category of voters in the context of amendments to the electoral legislation and to make sure they are not excluded from the electoral process and not deprived of the right to vote. However, new legislative provisions adopted through Law No 154 of 20 July 2017, unjustifiably limit the constitutional right to elect of the voters with no domicile or residence.

Voting at place of domicile or residence

According to the definitions given in the Electoral Code, domicile refers to a person's permanent place of living, while residence refers to the temporary place of living, both confirmed in the Identity Card.

Article 9 of the Electoral Code, as a general rule, provides in para. (1) that the voting right shall be exercised in the locality where the voter has a domicile, unless otherwise stipulated in this Code. Paragraph (2) of the same article stipulates that in the case when the voter has a domicile and a residence at the same time during the period of the residence's term validity, the voter votes in the locality in which he/she has his /her residence.

Following the amendments to the Electoral Code made on 20 July 2017, Article 87(4) states that the voter shall vote at the polling station situated in the single-member constituency **he/she has domicile in**. The voters who **do not have domicile** in the corresponding constituency **shall not participate** in the parliamentary elections in single-member constituencies.

We should note here that the only limitations of the right to vote permitted by Article 38 of the Constitution are the age limit of 18 years a person shall turn before the voting day inclusively and ban from voting in the manner by the law. Article 13 of the Electoral Code elaborates this thesis, expressly stating that those declared incapable by a final court judgement may not vote. It also reiterates the age limit and interdictions stipulated by law. We think that such an interdiction provided by the law has to be express, direct, clear and aligned to the constitutional provisions. The legislator can not accept wordings and legal provisions that could be arbitrarily interpreted and applied.

Thus, we believe that the Electoral Code provision stipulating that a person has to have a domicile in order to exercise his/her right to vote in a single-member constituency, is unconstitutional, discriminatory and confining.

Voting in the nationwide constituency and single-member constituencies

Note that the **new wording of the Electoral Code does not provide for the voting procedure in the nationwide constituency for persons with no domicile** confirmed in the Identity Card. Article 1 of the Code stipulates that:

- nationwide constituency is a national-level electoral constituency, where election of the Members of Parliament is organised and conducted[3] on the basis of party-list proportional representation voting system;

- single-member constituency is an electoral constituency, where election of the single mandate of a Member of Parliament is organised and conducted on the basis of majority vote.

Further on, Article 4(2) of the Electoral Code provides that during the parliamentary election each voter has the right to vote using two ballot papers – one for the nationwide constituency and the other for the single-member constituency. Thus, given the provisions of Article 87(4), which state that the **voters who do not have domicile** in the corresponding constituency **shall not participate** in the parliamentary elections in single-member constituencies, the following question arises – to what extent does this regulation refer to the voting in the nationwide constituency? In other words, can voters with no domicile vote using one single ballot paper – the one for the nationwide constituency? Theoretically, this can be achieved if the electoral bodies use two voter lists, since, according to Article 53(1) of the Electoral Code, voters shall confirm the receipt of the ballot by signing in the voter list next to his/her name. However, using two lists of voters will hamper the activity of electoral bodies and can lead to various technical and human errors in handling the voter lists and ballot papers.

Promo-LEX Association finds that *amendments regarding the participation voters with no domicile in the election in various types of constituencies, introduced in the Electoral Code, are not explicit and leave room for interpretation. A possible permission to vote only in the nationwide constituency would affect the value of options expressed by the citizens, and thus, the principle of equality of votes enshrined in the Constitution. Besides, this would also violate the Guidelines of the European Commission for Democracy through Law, according to which, each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes*[4].

The previous practice of participation of voters with no domicile or residence in the Parliamentary elections, held on the basis of proportional representation voting system

During the previous elections held on the basis of proportional representation voting system in a single nationwide constituency, the provisions of the Electoral Code allowed the voters with no domicile or residence to vote in a variety of ways.

The first one implied voting on the basis of additional lists. Article 53(2) expressly provides that voters who do not have a registration at a domicile or residence can vote on the basis of additional lists which will include voter's name, surname, date and place of birth, *the last domicile in the Republic of Moldova*, personal identification number (IDPN).

These provisions are in contradiction with those of Article 87(4) of the Code, thus, according to the new regulations, if the voter does not reside in the corresponding single-member constituency, he/she cannot vote.

The second way – is to vote on the basis of the main lists. In this respect, Article 39(8) of the Code provides that persons holding the right to vote who have changed their place of residence after the last elections, have the right 30 days before the next elections at the latest to declare their new place of residence to the local public administration authority so as to be included in the lists of voters of the polling station of the place of stay. The appropriate local public administration authorities will deliver without delay the respective information to the Central Election Commission (CEC).

According to the definition in the Electoral Code, the statement on the whereabouts is a procedure through which citizens with the right to vote declare their location on the day of election. However, giving the statement on the whereabouts does not mean declaring the domicile or residence. Respectively, statement on the whereabouts on the day of election can not be regarded as equivalent to the domicile. Nonetheless, when extensively interpreting the cited regulation in the context of the previously used proportional representation voting system, we can conclude that in the absence of the need to expressly indicate the domicile and in the conditions of a single nationwide constituency, this mechanism could be

used by persons, who, for some reason, are not registered at a permanent place of residence on the election day, to exercise their constitutional right to vote. Thus, according to the current provisions, introduced in the context of changing the electoral system from the proportional to the mixed-member one, the voters can not use the mechanism provided in Article 39(8) anymore.

Correspondingly, in case of the rules provided in Article 87(4) of the amended Electoral Code, the absence of a valid domicile on the election day makes it impossible to apply the provisions of Article 39(8).

Limitation of the right of the voters with no domicile or residence to sign in support of the candidates

It is worth noting, that by virtue of the new provisions of Article 80 of the Electoral Code, the citizens eligible to vote, who have no residence or domicile, would not be able to sign in support of a candidate during parliamentary elections, since para. (1) stipulates that in order to be registered by an electoral constituency council, a candidate for a single-member constituency should submit (on the basis of Articles 42 and 43) signature sheets containing signatures of the supporters eligible to vote, who reside in the single-member constituency where the candidate intends to run for election.

In conclusion, we believe that the Electoral Code provision stipulating that a person has to have a domicile in order to exercise his/her right to vote in a single-member constituency is unconstitutional, discriminatory and confining, thus limiting the right to vote for about 155 683 of voters with no domicile or residence, accounting for 4.78% of the total number of 3 255 361 voters included in the State Register of Voters.

Recommendations

- amend Article 87(4) of the Electoral Code in order to exclude the provision stipulating that a person has to have a domicile, within the meaning of the Code, in order to exercise his/her right to vote;
- legislator should treat the mechanism of exercising the right to vote in nationwide or single-member constituency during parliamentary elections accurately and in compliance with the constitutional norms;
- amend Article 80 of the Electoral Code in order to exclude the conditions limiting the right of the voters with no domicile or residence to sign in support of the candidates.

[1] Some of them could be permanently residing abroad, however the available public data do not allow identifying their exact number. Besides, Promo-LEX Association reiterates its request for the voters who are permanently residing abroad to be included in the basic lists of voters drawn up for voting in the polling stations opened outside the country.

[2] <http://cec.md/index.php?pag=news&id=1042&rid=20576&l=ro>

[3] We think that the reference made to the parliamentary elections only is restrictive, since both elections of the President of the Republic of Moldova and national referendums are held in the national administrative electoral unit.

[4] [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)

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