

# **THE EFFECTS OF THE MIXED-MEMBER ELECTORAL SYSTEM. CASE STUDY: Situation of the candidate from the national list of the party, who is, at the same time, an independent candidate in the single-member districts**

## *New legal provisions*

According to the new wording of the Electoral Code, the Parliamentary elections shall be held on the basis of a mixed voting system, in national and single-member districts. The candidates to the position of Member in the nationwide district shall be registered with the Central Electoral Commission, whereas the candidates to the position of Member in the single-member districts, including independent candidates, shall be registered with the constituency councils.

At the same time, Article 79(6) of the Electoral Code stipulates the following: **the person included in the list of candidates**, on behalf of an election candidate for elections based on the nationwide district, **may also run for elections in single-member district on behalf of the same election candidate or as an independent candidate.**

*Opportunities to indirectly fund election campaigns of the parties that put up candidates on the national list, who also are independent candidates in the single-member districts*

As a general norm, Article 41(2) of the Electoral Code clearly provides the existence of three separate categories of subjects holding the right to assign candidates:

- political parties;
- electoral blocks;
- citizens, through initiative groups.

When the provisions for the Parliamentary elections were adopted, the legislator established in Article 79 of the Code, as a special rule, that a person may be simultaneously assigned by both political parties or electoral blocks in the nationwide district, and by the citizens of the Republic of Moldova as an independent candidate in the single-member district.

*The permission, granted by the law to the candidates on the national list of the political parties, to be at the same time independent candidates in the single-member districts, creates opportunities for indirect and masked funding of the election campaigns of the parties/electoral blocks admitting such situations.*

Thus, the rules for funding election candidates in mixed voting system create a favorable legal background for avoiding the reporting of the funds spent for the indirect promotion of the party. This becomes possible when a person candidates both on the list of a party in a nationwide district, and in single-member district, as an independent candidate. In this case, the funds used to promote the candidate, who is seemingly independent, also adds value to the promotion of the party, on the list of which the candidate runs in elections simultaneously and with which the voters can associate the candidate.

Promo-LEX Association believes that **the new legal provisions** allowing the person, as a candidate on the national list, to participate as an independent candidate in single-member

districts, may affect a number of fundamental principles of electoral democracy stated in the Code of Good Practice in Electoral Matters[1]. Point 18 of the Code states that, **equality of opportunity should be ensured between parties and candidates** and should prompt the state to be impartial towards them and to equally apply to everyone the same legislation. Otherwise, the parties, that will take advantage of the new legal provisions, may be favored as against the rest of election candidates. These legal provisions also created favorable conditions for **breaching the principle of freedom of voters to form an opinion**, in the context of a cognitive dissonance caused by the fact that citizens are encouraged to cast their votes for a candidate who is in the national list of a party/election block, on the one hand, and runs concurrently as an independent candidate, on the other hand.

***Possibility of double funding the election campaign of the election candidate from the nationwide district and his/her representatives from the single-member districts***

*When we analyze this situation from the perspective of observing equal opportunities while financing election campaigns, Promo-LEX Association warns that if a potential candidate, included in the list of a party/electoral block for elections based on the nationwide district, runs also for elections **in single-member district as an independent candidate**, then he/she has the right and possibility to use **simultaneously two election funds**.*

Article 38 of the Code stipulates that the general ceiling for the transfer of funds on the "Electoral Fund" account of the election candidate shall be established by the Central Electoral Commission, using as a basis a coefficient multiplied by the number of **voters from the constituency, where the elections are held**.

This means that the party that submits a list of candidates for the nationwide district, has a general ceiling calculated

on the basis of the total number of voters (in the nationwide district) and, at the same time, the candidate from the single-member district, who is also included in the list of candidates for the nationwide district, has an election fund calculated on the basis of the number of voters from the single-member district, where he/she runs in elections. Providing that a list of candidates for the nationwide district may include 55 candidates, then to promote one candidate from the list, an amount of money, more or less equal to the entire electoral fund for the nationwide district, would be needed, calculated for a single-member district (55 candidates on the list/51 single-member districts). Otherwise, the total number of voters from the nationwide district constitutes the amount of voters from the single-member districts.

Starting from 0.5% coefficient from the average salary per economy used by CEC in the elections of 2015 and 2016, a potential ceiling for nationwide district, in 2017, would be of MDL 86 267 066. When dividing the amount for the promotion of 55 candidates included on the list, the party could spend about MDL 1 568 492. At the same time, given the number of 60 000 voters admitted for a single-member district, the ceiling of candidate's electoral fund in this type of district would be of MDL 1 590 000.

This means that a person, who is on the list of candidates for both nationwide district and single-member district, **contrary to the principle of equal opportunities, could benefit from a double funding, namely of financial resources from the party's electoral fund as well as financial resources from the electoral fund of the independent candidate. These financial resources can represent almost twice the ceiling for one single-member district.** We believe this is not fair to independent candidates from the single-member districts, who are **not** included simultaneously in the lists of candidates for the nationwide district.

To develop this idea, note that even when a party puts up its candidates in the single-member districts, other than those included in the list of candidates for nationwide district, it could have a national general fund/ceiling plus a maximum of 51 funds aimed for single-member districts.

We highlight that according to Article 109 of the Code of Good Practice in Electoral Matters, **in the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election must be annulled.** However, we found that the legal norm itself provides the possibility to exceed the funds.

Moreover, since the law allows it, **the parties may also support / put up in the same single-member districts two candidates** from the nationwide list, one as a representative of the party, and the other one as a pretended independent candidate. This also underlines the principle of equal opportunities and can confuse the voter, compromising in this way their free and conscious choice.

*As a conclusion, we are of the opinion that the practice of candidates participating in Parliamentary elections as an independent candidate in the single-member districts, being at the same time included in the list of candidates for the nationwide district, is vicious. First, it creates indirect and unequal opportunities of election campaigns funding for the parties/electoral blocks that will admit such situations, second, it creates preconditions for gaining the right and opportunity to use simultaneously two electoral funds.*

**Basically,** the new legal provisions create conditions to promote practices that affect such fundamental components of electoral democracy as participants' equal opportunities in the electoral process and freedom of voters to form an opinion, which are stipulated in the Code of Good Practice in Electoral Matters.

*In this context, we want to underline that Law No 154 provides for a three-month term, a period in which the Government should come with proposals to adjust the law in force to the new wording of the Electoral Code, as well as with proposals to improve the latter, if any shortcomings are found in this respect. We would like to mention that this term expires on 21 October 2017 and falls within the minimum one-year term before the elections recommended by the Venice Commission, a term after which it is not recommended to amend the electoral law.*

*We hope that the authorities will solve this situation and will make the required amendments, so that to hold the next Parliamentary elections without any conflictual, uncertain and interpretable situations. In this way, we reiterate the need to ensure the implementation of the recommendations of the Venice Commission, national and international observers, as well as to consider the formal letters of the Constitutional Court, which were formulated after the analysis of the circumstances in which the 2016 Presidential elections were held.*

**Recommendations:**

- amend Article 79 of the Electoral Code in order to exclude the possibility for a person, included on the list of candidates of a party/electoral block for elections based in the nationwide district, to run in the single-member district as an independent candidate, but only as a representative of the party or exclusively as an independent candidate;
- amend and supplement the electoral legislation and the electoral normative framework in order to exclude the possibility of double and unfair funding of election campaigns, exclude the provisions that can generate inequalities between the electoral candidates, especially towards the independent candidates from the single-member districts who are not at the same time in the nationwide lists provided by the parties/electoral

blocks, respectively;

- the Parliament and Government should intensify their efforts to adjust the legal framework, following the recommendations developed by Promo-LEX<sup>[2]</sup>, official addresses of the Constitutional Court, recommendations of national and international observers, etc.

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

[2]

[https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/?lang=en;](https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/?lang=en)

[https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitutional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en;](https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitutional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en)

[https://promolex.md/10213-efectele-sistemului-mixt-studiu-de-caz-votul-studentilor-si-elevilor-poate-decide-soarta-alegerilor-din-unele-circumsriptii-uninomiale/?lang=en;](https://promolex.md/10213-efectele-sistemului-mixt-studiu-de-caz-votul-studentilor-si-elevilor-poate-decide-soarta-alegerilor-din-unele-circumsriptii-uninomiale/?lang=en)

[https://promolex.md/10543-apel-public-privind-transparenta-activitatii-comisiei-nationale-pentru-constituirea-circumsriptiilor-uninomiale-permanente/.](https://promolex.md/10543-apel-public-privind-transparenta-activitatii-comisiei-nationale-pentru-constituirea-circumsriptiilor-uninomiale-permanente/)

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