

LEGAL REGULATION OF THE PRINCIPLES TOTALIZATION AND VERIFICATION OF VOTING RESULTS

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Abstract

The objectives of the study: to research the electoral process; to establish the stages of this complex system; to highlight its essential characteristics; to determine the category of principles of the final stage of the electoral process; to elucidate the essence of the possible principles of aggregating and verifying the results of voting; present and substantiate the content of each of these principles. The research methods used were analysis and synthesis, abstraction and generalization, classification and concretization, affirmation and denial, deduction and induction, etc. The results of the paper: we determined, characterized and demonstrated the following principles of totalization and verification of voting results: the principle of the integrity of the procedure counting of votes; the principle of accurate recording of election results; the principle of the integrity of the procedure for centralizing election results; the principle of parallel counting of votes; the principle of truthfully calculating the results of electronic voting; the principle of correctly announcing election results; the principle of timely publication of official results; the principle of verifying the election results; the principle of confirmation of election results; the conditions for implementing the electoral principles. The basis for this order and classification of the principles of totalization and verification of voting results was the content and sequence of sub-stages of the final stage of the elections. In this order, we have presented and substantiated the content of each of these principles.

Keywords: vote, voting, legal regulation, principle, totalization, verification, result.

JEL Classification: K16

1. Introduction

In our opinion, the classification of the principles of electoral law proposed by different scientists (S.D. Kneazev and A. A. Yashin, Ion Guceac and Teodor Carnat, Ioan Muraru, Elena Simina Tanasescu, Gherghe Iancu, etc.) is flexible, open and deserves high appreciation. At the same time, we are of the opinion (this being the research hypothesis) that it can be completed with a new category of principles of electoral law: The principles of totalization and verification of election results, which I mentioned for the first time very briefly in 2015³.

This category of principles results from the fact that the electoral process is a complex, real, dynamic, unitary system, which has a certain beginning, and development, but which must inevitably have a certain end. In this sense, the electoral process is (should be) a completed cycle, closed, but transparent and clear. Accordingly, the category of principles that characterize it, must also represent such a system. Thus, just as there are principles of the emergence and evolution of electoral law, of the organization and conduct of mandatory elections, of citizen participation in voting, of electronic voting, so, we believe, there must be *principles of totalization and verification of voting results*. Being the last in the real continuity of the elections, but also among the categories of principles of the electoral system, they should not be the last in their democratic value, but, on the contrary, should crown the end, the work of the election, „imposing the need a thorough examination” and very serious as compared to all other principles⁴. As provided in the Code of Good Practice in Electoral Matters.

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⁴ European Commission for Democracy through Law (Venice Commission). *Code of good practices in electoral matters*. "Guidelines and explanatory report", adopted by the European Commission for Democracy through Law during the 52nd Plenary Meeting (Venice, October 18-19, 2002), p. 13.

Guidelines and explanatory report adopted by the European Commission for Democracy through Law at its 52nd Plenary Session (Venice, 18-19 October 2002), the European Commission for Democracy through Law (Venice Commission) clearly states: „It is important to identify the „core” of these principles, which must be strictly adhered to by all European states.”⁵

2. The problem, the hypothesis, the novelty, the structure and the solutions of the research

Therefore, when addressing the *principles of totalization and verification of election results*, we cannot fail to refer to the *correctness* of these totalizations and verifications, as the risk of electoral fraud at the end of the vote is usually the highest. From the very beginning, the Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly, states that „... the volition of the people is the basis of state power, this must be expressed through *honest elections* (emphasis added - S.T., D.J.) which must take place periodically, by equal universal suffrage and by secret ballot or by an equivalent procedure to ensure freedom of vote.”⁶

In accordance with art. 25 (b) of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly. on December 16, 1966, every citizen has the right and the opportunity, without any discrimination and without unreasonable restrictions, to vote and to be elected (emphasis added - S.T., D.J.), with universal and equal suffrage and by secret ballot, ensuring the free expression of the volition of the voters. As stated in the Universal Declaration of Human Rights (1948) and in the International Covenant on Civil and Political Rights (1966), we would like to reiterate, *but also emphasize*, that elections, from beginning to end, must be *fair, upright, incorruptible*.

Elena Madalina Nica also refers to the correctness or non-falsification of the elections in the publication *Electoral Law*, when she analyses the free, periodic and correct character of the elections⁷. The author mentions that „*At the international level* (emphasis added belongs to the author- S.T., D.J.), although one of the fundamental rules is the right of peoples to dispose of themselves, therefore, to decide sovereignly how to regulate electoral matters, the consecration of free character, the periodic and correct election *is not found under this terminology* (emphasis added - S.T., D.J.), but results from several provisions that guarantee citizen participation in the construction of state power, through a certain type of exercise of rights under certain conditions expressly provided for”⁸. The author refers to the same Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly, to the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on December 16, 1966, as well as other documents, after which he states that „The same absence of the express terminology of „free, regular and fair elections” is to be found in European Union law.”⁹ „The honest nature of the elections, although not expressly provided in the European political clause, was, at first, latent, as it is consubstantial with the notion of free elections and the free expression of the volition of the people.”¹⁰ E.M. Nica explains: „If at the national level the honest nature of the vote presupposes mainly the sincerity of the vote and the absence of electoral fraud, the Commission refers in 1976 exclusively to 'the impossibility of the election and the voter to be unjustly incited to vote with one party or another.’”¹¹ „Just in 1997 the Court made express reference to the fairness of the election, having a finalisation in 2005, but did not reconsider using the term 'honesty' but in an underlying manner, which justifies the conclusion that we are in the presence of an exclusively jurisprudential principle. The Court has not ruled on the sincerity of the vote, which

⁵ Ibid, p. 14.

⁶ *Universal Declaration of Human Rights: dignity and justice for all*, art. 21. Jubilee edition, 1948-2008. United Nations. Chisinau: S. m., 2008.

⁷ Elena Mădălina Nica. *Drept electoral: curs universitar*, 2nd ed., revised and added, Universul juridic, Bucharest, 2016, p. 84.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid, p. 86.

¹¹ Ibid.

traditionally accompanies honesty.”¹²

In the article „Honesty of elections – the edifying principle of the legitimacy of state power” the specialist in constitutional and parliamentary law Alexandru Arseni, analyses the mixed voting system, established by the Parliament of the Republic of Moldova by Law no.154 of 20.07.2017, art.73 par. (2), concludes that „Elections in the representative bodies shall be held on the basis and in strict compliance with the principles: honesty, universal suffrage, equal, direct, secret and free expression”¹³. Next, the author concludes: „Law no. 154, which introduced „mixed voting” and especially „uninominal voting in constituencies” in the first place, is inappropriate for the Republic of Moldova, as it directly violates the principle of honesty and the principles of universal suffrage, equal, direct, secret and free voting.”¹⁴

As a coordinator of democratic elections, *fairness* states E.M. Nica, „refers to the neutrality and impartiality of the organization and conduct of the electoral process, in all its components, in compliance with the law, to effectively support the most effective freedom of vote and to be voted.”¹⁵ „An essential dimension of the fairness of elections, - she said, - is transparency, based on the same constitutionally guaranteed electoral rights, as well as equality, the right to free speech, the right of pluralism and the right of information, in a cross-cutting manner, the entire electoral legislation, in order to support a genuine transparency.”¹⁶ According to the Venice Commission (2010), states E.M. Nica, transparency has the following coordinates: „elections, to be democratic, must be transparent... The idea behind transparency is the freedom to ask for, receive and disseminate information, which is an integral part of freedom of expression... The practice of states highlights the universal acceptance that voters have the right to be present at polling stations on polling day to observe and verify the integrity of voting, counting procedures and procedures for centralizing results...”¹⁷.

Thus, in the situation created, analysing and generalizing the existing principles of electoral law in the Republic of Moldova and abroad, we found it appropriate and rational to formulate and propose the following principles of totalization and verification of voting results: the principle of the integrity of votes counting procedure; the principle of accurate recording of election results; the principle of the integrity of the procedure for centralizing election results; the principle of parallel counting of votes; the principle of truthfully calculating the results of electronic voting; the principle of correctly announcing election results; the principle of timely publication of official results; the principle of verifying the election results; the principle of confirmation of election results; the conditions for implementing the electoral principles. The basis for this order and classification of the principles of totalization and verification of voting results was the content and sequence of the sub-stages of the final stage of the elections. In this order, we will present and substantiate the content of each of these principles.

3. The principle of the integrity of votes counting procedure

This principle is usually indirectly suggested, of course, by the phrase „It does not matter who votes, it matters who counts the votes”, which shows the need to formulate and respect the principle of the integrity of the votes counting procedure.

European Commission for Democracy through Law (Venice Commission) in the Code of Good Practice in Electoral Matters. Guidelines and explanatory report adopted by the European Commission for Democracy through Law at its 52nd Plenary Session (Venice, 18-19 October 2002) state that „the counting of votes must be carried out at polling stations”, which „excludes the need for transportation of ballot boxes and accompanying documents and reduces the risk of substitution”;

¹² Ibid.

¹³ Alexandru Arseni. *Onestitatea alegerilor – principiu edificator al legitimității puterii de stat*, „Revista națională de drept”, no. 8 (202) 2017, pp. 3-10.

¹⁴ Ibid.

¹⁵ Elena Mădălina Nica, *op. cit.*, 2016, p. 93.

¹⁶ Ibid.

¹⁷ Ibid.

that „the counting of votes must be conducted in a transparent manner; at the counting of votes, the presence of registered voters must be admitted at the polling station; the presence of national and international observers must be authorized and must be allowed in all circumstances; the reports must be available in several copies for distribution to each of the above persons; one copy must be immediately displayed on the information board, another copy must be kept at the polling station and the third copy must be handed over to the committee or the competent higher authority”; that „observers, representatives of candidates and the media must be admitted to the count” and that „these persons must have access to all reports”¹⁸.

The Handbook on Election Observation, published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), states that „Counting votes is an important step in the electoral process, which must be closely and thoroughly monitored”¹⁹ and that all observers must „ensure that the counting of votes and the presentation of results are carried out correctly and that official results are published in a timely manner.”²⁰ Other OSCE documents include additional election commitments. For example, Lisbon Summit Declaration (1996) considers electoral fraud to be a violation of human rights and a regional security issue and commits all participating States to work to resolve this recognized issue²¹. „Voting, counting and centralization of results must be done without fraud or manipulation”, said the OSCE Office for Democratic Institutions and Human Rights (ODIHR)²².

Agreeing with these ODIHR guidelines, we will mention that the correct counting of votes, in our view, is (and should be) not only a stage, but also a *decisive electoral principle*, according to which in the process of totalling the election results, any intentional or unintentional errors in the calculation of votes shall be excluded and no omissions or additions shall be allowed.

Experience has shown, according to the *Handbook on Election Observation*, that „electoral fraud is more likely to occur during the counting of votes... than during the actual voting.”²³. Therefore, the ODIHR warns us, „we must be especially vigilant when counting votes...”²⁴.

The counting of votes takes place at the polling station. There is a detailed standard procedure for closing the polling station and counting the votes. This procedure is described in detail and concretely in the Electoral Code of the Republic of Moldova. Let us refer to it, as it will complete and concretize the essence of this principle, which is fundamental and decisive right from the start in the subsequent suite of the *Principles of totalization and verification of voting results*²⁵:

„After the expiration of the time reserved for voting, the president of the polling station's electoral bureau announces the end of the voting and orders the closure of the polling station. The polling station begins counting.

Before the ballot boxes are opened, all unused ballot papers are counted and cancelled by the station, with the stamp „Cancelled” affixed to them, then tied separately and sealed.

Before counting the votes obtained by the electoral contestants, the polling station's electoral bureau shall determine the number of voters to whom ballots have been issued, based on the number of voters on the electoral rolls and on the additional lists next to whose names are signed.

After verifying the seals on the ballot boxes, the chairman of the polling station's electoral bureau, in the presence of the members of the polling station and of the persons authorized to attend the electoral operations, opens the ballot boxes. First, the mobile ballot boxes are opened, the ballots

¹⁸ European Commission for Democracy through Law (Venice Commission). Code of good practices in electoral matters. "Guidelines and explanatory report", adopted by the European Commission for Democracy through Law during the 52nd Plenary Meeting (Venice, October 18-19, 2002), pp. 10, 24.

¹⁹ *Election observation manual*. Fifth Ed. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Printed in Poland by "Poligrafus Andrzej Adamiak", 2006, p. 61.

²⁰ *Ibid*, p. 16.

²¹ *Ibid*, p. 17.

²² *Ibid*.

²³ *Ibid*, p. 61.

²⁴ *Ibid*.

²⁵ *Electoral Code of the Republic of Moldova*, no. 1381-XIII of November 21, 1997, "Official Gazette of the Republic of Moldova", 1997, no. 81/667, art. 61.

are counted, and then the other ballot boxes are opened.

The polling station shall be provided with sufficient tables for all ballot papers drawn from the ballot boxes to be counted in one place, in view of all members of the polling station and those present. The ballot papers with the name or names of the electoral contestants are arranged on the counting tables.

Ballot papers in mobile ballot boxes are counted separately, face the number of ballots that have been issued for this purpose, and then are added to the other ballots to count the votes.

According to a procedure established by the polling station or ordered by the Central Electoral Commission or the constituency electoral council, the members of the polling station open the ballot papers and determine to whom was given the vote. The ballots with the votes for each electoral contestant are counted and linked separately, and the counting results, once established, are recorded in a special form for counting the votes and are sent to the hierarchically superior electoral body.

Before writing the protocol, the representatives of the electoral competitors and the persons authorized to attend the electoral operations shall be given the opportunity to verify the data.

The polling station does not include invalid ballots in the total number of valid votes.”²⁶

„From the moment the polling station closes, the electoral bureau shall remain in session during the counting of votes and writing the protocol. Members of the electoral bureau shall remain at the polling station and shall participate in election operations, except in cases of physical incapacity or other extraordinary circumstances.”²⁷

With reference to the invalid ballot papers, in art. 62 of the Electoral Code of the Republic of Moldova stipulates the following²⁸:

The ballots shall be declared invalid: a) in which the identification number of the constituency and the identification number of the polling station does not correspond to that of the constituency and of the respective polling station; b) of a different model than the established one; c) in which the stamp with the inscription „Voted” was applied in several quadrilaterals; d) in which the stamp with the inscription „Voted” was not applied in any circle of any quadrilateral; e) in which the voters entered additional names or names of the electoral contestants; f) which have been deformed or scribbled in such a way that the voter's choice is not clear.

The ballot paper cannot be declared invalid only because the voter has affixed the stamp „Voted” several times in a single quadrilateral or because the stamp has been affixed outside the quadrilateral circle or on the sign or symbol of the electoral contestant if the voter's choice is clear.

The chairperson of the polling station shall give all members of the polling station and persons authorized to attend the polls the opportunity to examine the ballot paper which is to be declared invalid.

If the members of the electoral bureau of the polling station have doubts regarding the validity of the ballot paper, the issue shall be resolved by a vote and the result of the voting shall be recorded in the minutes of the bureau meeting.”.

In art. 63 of the Electoral Code are described in detail the structure and content of the Minutes and of the Report of the electoral bureau of the polling station²⁹:

„The result of the counting of the votes is examined in the meeting of the electoral bureau of the polling station and is recorded in a report signed by the president, vice-president, secretary and the other members of the bureau. The absence of the signature of some members of the electoral bureau of the polling station does not influence the validity of the report. The reasons for the absence of signatures shall be stated in the official report.

The report of the voting results shall be written in several copies, in the presence of the members of the electoral bureau of the polling station, the representatives of the electoral contestants

²⁶ Ibid, cap.10.

²⁷ Regulation regarding the activity of the electoral offices of the polling stations, approved by CEC decision no. 1734 of July 3, 2018, amended by CEC decision no. 4123 of August 19, 2020, no. 4843 of May 19, 2021, point 75.

²⁸ Electoral Code of the Republic of Moldova, no. 1381-XIII of November 21, 1997, "Official Gazette of the Republic of Moldova", 1997, no. 81/667, art. 62.

²⁹ Ibid, art. 63.

and other authorized persons. A copy of the report shall be kept at the polling station, a copy shall be presented to the constituency electoral council, a copy shall be displayed immediately upon entering the polling station, and the others shall be handed over to the representatives of the constituents, observers.

The chairperson of the polling station shall prepare and sign the report of the polling station based on a written record of the office's activities during the election period. The report shall contain a brief statement of the requests and appeals concerning the actions of the polling station electoral bureau and of the decisions adopted by the bureau on the basis thereof. Requests and appeals will be attached to the report.

The chairperson of the polling station shall submit to the constituency electoral council as soon as possible, but no later than 18 hours after the announcement of the closure of the polling stations: the ballot papers validly cast for each individual constituent, the report, the invalid ballot papers, cancelled or contested, applications and appeals, all being sealed in a box (package). The transport of the sealed box (package) will be accompanied by the police guard, the president and at least two members of the polling station's electoral bureau. The polling stations set up outside the Republic of Moldova, in addition to the listed documents, they need to present the additional lists of voters.

The polling station stamps are enclosed in a sealed box (package), which is kept at the polling station. After the elections, the stamps are sent to the constituency electoral councils.”

The Code of Good Practice on Electoral Practice states that „Counting of votes must be conducted in a transparent manner”³⁰. The presence of voters, registered at the polling station, must be allowed when counting the votes. The presence of national and international observers must be authorized and must be allowed in all circumstances. The reports must be available in several copies for distribution to each of the above persons. One copy must be immediately displayed on the information board, another copy must be kept at the polling station and the third copy must be handed over to the committee or the competent higher authority.³¹

However, given that up to 3,000 voters are registered at a polling station, we consider it virtually impossible to ensure their presence on the count. Likewise, logistically it would not be feasible.

Thus, we believe that the presence of observers, including electoral contestants is sufficient.

3.1. The principle of accurate recording of election results

This principle comes to complete and ensures the realization of the first principle of totalling the voting results - that of correct counting of votes. The essence of the second principle, *the principle of accurate recording of election results*, lies, in our view, in the inadmissibility of making errors in writing the results of the correct counting of votes. The secretaries of the electoral commissions, who fix in the report the results of the correct counting of the votes, do not have the right to make mistakes in any form: wilful, imposed, or unintentional. Such violations are classified as electoral fraud, which has serious consequences. The ODIHR states, „those responsible for violating the law must be held accountable without delay.”³²

Certain practical precautions for equipment should be laid down in the Regulation. For example, the reports should be completed with a pen and not a pencil, as text written in pencil may be erased.³³

³⁰ European Commission for Democracy through Law (Venice Commission). Code of good practices in electoral matters. "Guidelines and explanatory report", adopted by the European Commission for Democracy through Law during the 52nd Plenary Meeting (Venice, October 18-19, 2002), p. 24.

³¹ Ibid.

³² *Election observation manual*. Fifth Ed. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Printed in Poland by "Poligrafus Andrzej Adamiak", 2006, p. 18.

³³ European Commission for Democracy through Law (Venice Commission). Code of good practices in electoral matters. "Guidelines and explanatory report", adopted by the European Commission for Democracy through Law during the 52nd Plenary Meeting (Venice, October 18-19, 2002), p. 24.

3.2. The principle of integrity of the procedure for centralizing election results

In the Code of Good Practice in Electoral Matters. Guidelines and explanatory report adopted by the European Commission for Democracy through Law at the 52nd Plenary Session (Venice, 18-19 October 2002) The European Commission for Democracy through Law (Venice Commission) states that „the results obtained must be transmitted to the higher courts in a transparent manner”³⁴. Also, in the *Code of Good Practice*, it is clearly explained that „There are two kinds of results: provisional and final (before exhausting all possibilities of appeal). The media and of course the whole nation are always eager to know the initial provisional results. The speed with which these results will be transmitted depends on the communications system. The results obtained at the polling stations may be submitted to the constituency by the polling station chairman, accompanied by two other members of the polling station staff who are competing parties, in some cases under the supervision of security forces who will carry the reports, ballot boxes and so on.”³⁵

As the OSCE Office for Democratic Institutions and Human Rights (ODIHR) points out in the Election Observation Manual, „Centralization of results must be transparent and verifiable from the polling station level to the intermediate levels of the electoral administration, ending with the national electoral authority.”³⁶ At the same time, it is mentioned that the experience also proves that electoral fraud is more likely to occur during the centralization (concentration towards the centre) of the voting results than during the actual voting.³⁷ That is why observers need to be especially vigilant not only when counting votes, and recording them accurately, but also when concentrating on voting results. In connection with this, I have formulated the principle of the integrity of the procedure for centralising the election results, according to which the sending of information on the results of the voting of the polling stations to the Central Electoral Commission should be protected, transparent and correct. The *Handbook* says that the process of centralizing voting results is another important stage in the electoral process that must be followed.³⁸ Highly appreciating the significance of this stage, we consider, at the same time, that this principle must be proclaimed imperatively.

In accordance with this principle, observers must accompany election materials which are transported from the polling stations to the headquarters where the results are centralized, and then follow the correct inclusion of the results from the polling station to the centralized results.

In some cases, election authorities use computer networks to transmit preliminary results³⁹. To ensure the transparency of the centralization of results, observers should be familiar with the technical procedures to be followed. If the election, observation mission has the necessary capacity, it may request access to the software for its evaluation and receive copies signed and stamped by the relevant authorities as the information is transmitted.

The centralization of results must be verifiable and transparent at every level of the electoral administration⁴⁰. In the interests of transparency and the promotion of confidence in the electoral process, the results for each level of centralization should be published immediately at each stage of centralization. The results from the individual polling stations are a sample of verified results that can be compared with the results at the regional level and then each, with the published general results.

If they are made available to observers, the official reports or copies of the documents containing the results shall be forwarded to the central team without delay, together with the form completed by the observers when counting the votes.

³⁴ Ibid, p. 10.

³⁵ Ibid, p. 25.

³⁶ *Election observation manual*. Fifth Ed. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Printed in Poland by "Poligrafus Andrzej Adamiak", 2006, p. 18.

³⁷ Ibid, p. 61.

³⁸ Ibid, p. 62.

³⁹ Ibid.

⁴⁰ Ibid.

3.3. The principle of parallel counting of votes

The formulation and observance of this principle are conditioned by the fact that the human factor, the psychological, psychophysiological, physical, moral, political, etc. characteristics leave a strong mark on the voting process, such as stress, attention, interests, attitude, overwork, purpose, intentions, temperament, character, skills, beliefs, etc. In such a situation, which is an extreme one, when everyone is waiting for the results of the vote, in order to avoid subjectivism, errors, and fraud in counting the votes, it is good that this counting is done in parallel, both by the competent bodies (by the Central Electoral Commission) and by other organizations (by NGOs, parties), starting with the direct counting of votes at each polling station in the country. In this case, the standard procedure for closing the polling station and counting the votes must be followed exactly. Moreover, as Pavel Postica, head of the Promo-LEX Observation Mission, states, „it is necessary to verify the correctness and quality of the reports, because each of them has verification formulas”⁴¹. According to the head of the Promo-LEX Observation Mission, who has some experience in this field, „with regret, people come, vote, go home and wait for the results”⁴². At every election, Pavel Postica continues, „we have 10-12% of the flawed reports that contain certain technical errors, which do not affect the score obtained by the candidates, but for certain reasons, officials either did not understand or did not have been trained correctly or out of fatigue, for example, count unused ballots as invalid and this affects the quality of the entire report”⁴³.

Therefore, the principle of parallel counting of votes implies the simultaneous counting of votes in each polling station by the CEC and other organizations (by NGOs, independent social organizations, and parties), starting with the direct counting of votes in each polling station from the country.

3.4. The principle of truthfully calculating the results of electronic voting

The electronic voting method and the calculation of its results have their own specific features. Accordingly, the procedure for accurately calculating the results of electronic voting will differ from the traditional, non-electronic one.

According to the principle of truthfully calculating the results of electronic voting, the procedure of automated calculation of the results of electronic voting must be carried out in accordance with the truth, the representation, and the common vision of reality, so that, in the end, it corresponds to it.

The feasibility study on Internet voting for the Central Electoral Commission of the Republic of Moldova describes step by step the sequence of decryption and accounting of ballot⁴⁴. Thus, „The decryption and accounting process must be performed in an isolated environment; The decryption and accounting process can only be started by CEC members; The decryption and accounting process must ensure that all ballots included in the ballot boxes were cast by eligible voters; The decryption and accounting process must prevent the decryption of multiple votes by the same voter; The decryption and accounting process must ensure that it is not possible to correlate the order of decryption of votes with the order of their expression and, therefore, prevent the identification of any link between decrypted votes and voters (e.g., using a mixing process); The Central Electoral Commission must certify the list of decrypted votes (e.g., sign them electronically); The decryption and accounting process must ensure that it is impossible to correlate voter verification information

⁴¹ Video interview with Pavel Postică. The risks of election fraud, parallel counting of votes and (non)involvement of citizens. "The document is available online at: https://www.realitatea.md/interviu-video-cu-pavel-postica--riscurile-fraudarii-alegerilor--numararea-paralela-a-voturilor-si--ne-implicarea-cetatenilor--cu-regret--oamenii-vin--isi-dau-votul--merg-acasa-si-asteapta-rezultatele_47162.html" (consulted on 20.05.2022).

⁴² Ibid.

⁴³ Ibid.

⁴⁴ *Feasibility study on Internet voting for the Central Electoral Commission of the Republic of Moldova*. Report and preliminary roadmap. Chisinau, 2016. Version of 06/28/2016, p. 62.

(e.g., ballot receipts) with the voting options selected in the ballot paper; The decryption and accounting process must provide cryptographic evidence that the votes were not manipulated during these processes. Cryptographic evidence should be universally verifiable by any authorized third party, without compromising sensitive information (such as private cryptographic keys), which allows correlation between decrypted votes and voters; The decryption process must provide cryptographic evidence that does not allow the content of the decrypted votes to be manipulated in the decryption process, without revealing any association/link between the decrypted votes and the voter.”⁴⁵

3.5. The principle of correctly announcing election results

According to this principle, in announcing the results of the voting, in any form, no mistakes should be admitted, whether intentional or unintentional. Not coincidentally, the ODIHR states that „Announcing the results is clearly an important part of the electoral process, which must be followed by the election observation mission as far as possible.”⁴⁶

The election results, as required by the ODIHR, must be published at the polling station level⁴⁷. It is recommended that the results be displayed in front of each polling station.

All party representatives and candidates shall receive official copies of the documents containing the results or the reports from the polling station and have the opportunity to sign these documents or appeals.⁴⁸ Politically unaffiliated local observers and international observers should also be able to receive a copy of the ballot paper containing the results of the polling station. If they are unable to obtain the official reports of the results from the polling station, short-term observers must, however, carefully note the complete results from the polling station where they were to count the votes.

Before obtaining the results of the voting in all hierarchically inferior electoral councils and bureaus, the electoral body responsible for aggregating the election results shall periodically make public the preliminary results as soon as possible after their receipt.⁴⁹

After obtaining the results of the voting in all the hierarchically inferior councils and bureaus, the electoral body responsible for aggregating the election results shall make public the general results of the elections as soon as possible.⁵⁰

TV stations can be used to broadcast these preliminary results, but again, too much transparency can be dangerous if the public is not yet ready to receive partial information. The idea is that the initial results usually come from small and large cities, which do not normally vote similarly to rural areas.⁵¹ It is therefore important to warn the public that the final results may be different or even completely opposite to the provisional results. „If the results are to be published a few days after the election, part of the central team must remain in the host country”, said the ODIHR about the election observation mission.⁵²

3.6. The principle of timely publication of official results

The content of this principle lies in the need and obligation of the appropriate state electoral bodies to publish the official results of the elections in a timely manner.

⁴⁵ Ibid

⁴⁶ *Election observation manual*. Fifth Ed. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Printed in Poland by "Poligrafus Andrzej Adamiak", p. 69.

⁴⁷ Ibid, p. 62.

⁴⁸ Ibid.

⁴⁹ *Electoral Code of the Republic of Moldova*, no. 1381-XIII of November 21, 1997, "Official Gazette of the Republic of Moldova", 1997, no. 81/667, art. 61, para. (1).

⁵⁰ Ibid, art. 61, para. (2).

⁵¹ Ibid.

⁵² *Election observation manual*. Fifth Ed. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Printed in Poland by "Poligrafus Andrzej Adamiak", p. 69.

According to art. 66 of the Constitution of the Republic of Moldova „*Announcement of preliminary results*”⁵³: „Before obtaining the results of voting from all hierarchically inferior electoral councils and bureaus, the electoral body responsible for aggregating the election results shall periodically announce the preliminary results as soon as possible after their receipt. In the case of parliamentary, presidential, and local general elections, the preliminary results, detailed by polling stations, will be posted on the website of the Central Electoral Commission immediately after their processing.

After obtaining the results of the voting in all hierarchically inferior councils and bureaus, the electoral body responsible for aggregating the election results shall make public the results of the general election as soon as possible if the appeals submitted to it or the court do not affect the election results. Responsible for summing up the final results of elections are: a) the Central Electoral Commission – in case of parliamentary, presidential, general local elections and republican referendums; b) the respective district electoral council – in case of local elections and referendums.”

In the case of electronic voting, according to the Feasibility Study on Internet Voting for the Central Electoral Commission of the Republic of Moldova, the certification and publication of the results stipulates that „The system must generate the results from the certified lists of decrypted votes”; that „The system must publish the results with the information that will allow the voter to verify that his vote has been taken into account, without disclosing the content of the vote”; and that „The system must be able to generate various election reports (e.g. turnout reports, preliminary results, constituency results).”⁵⁴

3.7. The principle of verifying the election results

According to this principle, any voter, but also the CEC, parties, NGOs, etc., must have the opportunity to monitor the voting results to see if they correspond to the truth, requirements, quality, certain data, etc. This principle also applies to the control of electronic voting results. According to *the Feasibility Study on Internet Voting* for the Central Electoral Commission of the Republic of Moldova, „The system must generate a voting receipt that will allow voters to ensure that their vote has reached the Central Electoral Commission and was present in the decryption process and accounting. This ballot must allow voters to lodge a complaint if they have detected that their vote has not been processed.”⁵⁵ In addition, as shown in this Feasibility Study on Internet Voting for the Central Electoral Commission of the Republic of Moldova, voters must have access to independent control of the system. The system, „should facilitate a thorough inspection of the system by trusted third-party inspectors based on stored and journaled election information, which would allow for the analysis and investigation of possible incidents; to allow full control without compromising the integrity of elections and voter confidentiality; inspectors must be able to verify the integrity and authenticity of election and journalized information in order to detect any attempt to manipulate with the information; the system must allow inspectors to ensure that the decryption process proceeded normally without using private cryptographic keys in the process (e.g. through Zero Knowledge Proofs)”⁵⁶.

Therefore, in accordance with the analysed principle, any participant in the elections must have access to the objective verification of the election results.

3.8. The principle of confirmation of election results

Given that the end crowns the work (*finis coronat opus*), we believe it is necessary to accept

⁵³ *The Constitution of the Republic of Moldova* adopted on July 29, 1994, in force since August 27, 1994, "Official Gazette of the Republic of Moldova", 1994, no. 1, art. 66.

⁵⁴ *Feasibility study on Internet voting for the Central Electoral Commission of the Republic of Moldova*. Report and preliminary roadmap. Chisinau, 2016. Version of 06/28/2016, p. 62.

⁵⁵ *Ibid*, p. 63.

⁵⁶ *Ibid*.

and respect the principle of confirmation of election results, according to which the courts must confirm the legality of election results within the scope of electoral bodies and/or by an opinion by the Constitutional Court of the Republic of Moldova (CC). Thus, during the exercise of its competence, the CC of the Republic of Moldova identified some inaccuracies in the regulation of the category of the act to be adopted by the Court.⁵⁷ In this sense, regarding the confirmation/denial of the election results for the position of President of the Republic of Moldova, art.122 of the Electoral Code establishes that „the Constitutional Court confirms or denies, *through an opinion*, the legality of the elections”, and art. 123 (1) establishes that it confirms the election results and validates the election of a candidate, *adopting a decision*, which is published immediately, and regarding the confirmation/denial of the election results and the validation of the MP mandates, art. 97 (2) of the Electoral Code establishes that „the Constitutional Court confirms or denies the legality of the elections *through an opinion*. At the same time, it validates, *by a decision*, the mandates of the elected MPs and confirms the lists of alternate candidates.”⁵⁸ At the same time, art. 62 d) of the Code of Constitutional Jurisdiction establishes that „*by decision*, the Constitutional Court confirms the results of the election of the Parliament and the President of the Republic of Moldova”⁵⁹. The Court finds that constitutional jurisdiction is exercised based on the Constitution, the Law on the CC and the Code of Constitutional Jurisdiction (art. 1 of the Code of Constitutional Jurisdiction).⁶⁰ Therefore, according to Articles 62, 79 paragraph. (1) and 135 paragraph (1) letter e) of the Constitution, Article 4 paragraph (1) letter e) of the Law on CC, art. 4 paragraph. (1) letter. e) and art. 38 paragraph (3) of the Code of Constitutional Jurisdiction, the CC confirms both the results of the elections for the office of President of the Republic of Moldova and validates its mandate, as well as the results of the parliamentary elections and validates the MPs mandates. Therefore, by its Decisions, the CC stated that „both upon the confirmation of the results of the election of the President of the Republic of Moldova and the validation of the mandate”, and upon the „confirmation of the results of the parliamentary elections and the validation of the mandates of MPs”, „*The Court adopts a decision as an act of constitutional jurisdiction*”⁶¹.

Subsequently, we mention that the Central Electoral Commission – in case of parliamentary, general local elections and republican referendums; the respective district electoral council – in case of local elections and referendums are responsible for summing up the final results of elections.

In this regard, the European Commission for Democracy through Law (Venice Commission) in the *Code of Good Practices in Electoral Matters* expressly states that „the state must sanction any kind of electoral fraud”⁶². Professor Alexandru Arseni is right, when he finds that „the specialized literature in the chapter Constitutional responsibility for the violation of electoral legislation addresses the problem differently, even diametrically opposed”⁶³. The author proposes: „We consider it opportune to investigate the constitutional responsibility for the violation of electoral legislation in

⁵⁷ Decision of the Constitutional Court of the Republic of Moldova no. 30 of 10.12.2020 regarding the confirmation of the election results and the validation of the mandate of the President of the Republic of Moldova, at Notification no. 189e/2020, Chisinau, December 10, 2020, "Official Gazette of the Republic of Moldova" No. 360-371 of 25.12.2020, art. 196; Decision of the Constitutional Court of the Republic of Moldova no. 20 of 23.07.2021 regarding the confirmation of the results of the early parliamentary elections of 11 July 2021 and the validation of the mandates of the elected deputies, upon notification no. 168e/2021, Chisinau, July 23, 2021, "Official Gazette of the Republic of Moldova" No. 186-189 of 06.08.2021, art. 144.

⁵⁸ Ibid.

⁵⁹ *The Code of Constitutional Jurisdiction*, no. 502-XIII of 16.06.1995, "Official Gazette of the Republic of Moldova" no. 53-54/597 of 28.09.1995.

⁶⁰ Decision of the Constitutional Court of the Republic of Moldova no. 30 of 10.12.2020 regarding the confirmation of the election results and the validation of the mandate of the President of the Republic of Moldova, at Notification no. 189e/2020, Chisinau, December 10, 2020, "Official Gazette of the Republic of Moldova" No. 360-371 of 25.12.2020, art. 196; Decision of the Constitutional Court of the Republic of Moldova no. 20 of 23.07.2021 regarding the confirmation of the results of the early parliamentary elections of 11 July 2021 and the validation of the mandates of the elected deputies, upon notification no. 168e/2021, Chisinau, July 23, 2021, "Official Gazette of the Republic of Moldova" No. 186-189 of 06.08.2021, art. 144.

⁶¹ Ibid.

⁶² European Commission for Democracy through Law (Venice Commission). *Code of good practices in electoral matters*. "Guidelines and explanatory report", adopted by the European Commission for Democracy through Law during the 52nd Plenary Meeting (Venice, October 18-19, 2002), p. 10.

⁶³ Alexandru Arseni. *Proces electoral fraudat – consecințe juridice*, „Revista națională de drept”, no. 4-6 (210-212) 2018, pp. 13-19.

its entire extent, because the electoral process is the only legal and state mechanism for delegating the exercise of national sovereignty by representing eligible bodies: MPs and Head of State". If no electoral violations were detected, the Constitutional Court shall validate the mandates of the elected MPs and confirm the lists of alternate candidates. However, we would like to point out that electoral violations are always attested, but it is necessary to examine whether they influence the results of voting. In this regard, the CC „noted that during the electoral campaign for the office of President of the Republic of Moldova in 2020, 20 appeals were submitted to the Central Electoral Commission [...]”⁶⁴, as well as in the case of the electoral campaign and on the day of the early parliamentary elections of July 11, 2021, several appeals were filed. Thus, in both cases described above, the CC stated that „from the perspective of the control performed by the CC, the observations, the deficiencies mentioned and the circumstances [...] identified do not lead to the annulment of the elections, because no violations have been found that are likely to influence the results of the voting and the award of mandates". Therefore, the CC confirmed the results of the presidential elections of November 15, 2020, and regarding the early parliamentary elections of July 11, 2021, decided that they were organized and conducted correctly, by universal, equal, direct, secret and free suffrage⁶⁵.

3.9. Conditions for the implementation of electoral principles

Regarding the European electoral system, *the Code of Good Practices in Electoral Matters*. The guidelines and explanatory report adopted by the European Commission for Democracy through Law at the 52nd Plenary Meeting (Venice, 18-19 October 2002, p. 26) provide that „The fundamental principles of the European electoral system can be guaranteed only if certain general conditions are respected:

- The first general condition is respect for fundamental human rights and for freedom of expression, without which there can be no true democracy.
- Secondly, the electoral law must enjoy certain stability, which would protect it from manipulation by political parties.
- Lastly, several procedural guarantees must be laid down, in particular with regard to the organisation of voting”.

Here, in *the Code of Good Practices in Electoral Matters* (p. 26), it is stated: „Moreover, the elections are held not in a vacuum, but in the context of a specific electoral system and a given system of parties”. Therefore, if we were to resort to the implementation of the Principles of totalization and verification of voting results, which we have grounded and described and which should be included in the electoral legislation of the Republic of Moldova, we believe, we should consider, first of all, the general conditions regarding the European electoral system, indicated in the Code of Good Practices in Electoral Matters. *Guidelines and explanatory report adopted by the European Commission for Democracy through Law at its 52nd Plenary Meeting*⁶⁶. This, however, would be the subject of further discussion, research and sustained scientific work.

4. Conclusions

Analysing and generalizing the emergence, development and legal regulation of the principles of electoral law in the Republic of Moldova and abroad, based on the integrity of the electoral process

⁶⁴ Decision of the Constitutional Court of the Republic of Moldova no. 30 of 10.12.2020 regarding the confirmation of the election results and the validation of the mandate of the President of the Republic of Moldova, at Notification no. 189e/2020, Chisinau, December 10, 2020, "Official Gazette of the Republic of Moldova" No. 360-371 of 25.12.2020, art. 196; Decision of the Constitutional Court of the Republic of Moldova no. 20 of 23.07.2021 regarding the confirmation of the results of the early parliamentary elections of 11 July 2021 and the validation of the mandates of the elected deputies, upon notification no. 168e/2021, Chisinau, July 23, 2021, "Official Gazette of the Republic of Moldova" No. 186-189 of 06.08.2021, art. 144.

⁶⁵ Ibid.

⁶⁶ European Commission for Democracy through Law (Venice Commission). Code of good practices in electoral matters. "Guidelines and explanatory report", adopted by the European Commission for Democracy through Law during the 52nd Plenary Meeting (Venice, October 18-19, 2002), p. 26.

as a unitary system, which has a certain beginning, development and end, at the moment, we believe, it is necessary to highlight a new category of principles of electoral law, namely, *the Principles of totalization and verification of voting results* (the concept belongs to us), which we have developed, grounded, entitled and described and which must be included in the electoral legislation of the Republic of Moldova.

Based on their classification and order, the content and sequence of the sub-stages of the actual conduct of the final stage of the elections, we have concluded that it is reasonable to formulate and propose the following principles of totalization and verification of voting results: a subsystem of the general system of electoral principles: the principle of the integrity of the procedure counting of votes, the principle of accurate recording of election results, the principle of the integrity of the procedure for centralizing election results, the principle of parallel counting of votes, the principle of truthfully calculating the results of electronic voting, the principle of correctly announcing election results, the principle of timely publication of official results, the principle of verifying the election results, the principle of confirmation of election results.

Highly appreciating the significance of this, we consider that the principles of totalization and verification of voting results are defining and that they must be imperative.

The core of the first of these principles, namely *the principle of the integrity of the procedure counting of votes*, is that in the process of aggregating the voting results, must be excluded and not allowed, no omissions or additions of any errors, intentional or unintentional.

The principle of accurate recording of election results requires the inadmissibility of errors in the electronic writing/recording of the results of counting votes. No one, not even the secretaries of the electoral commissions, who set live the results in the reports, nor the artificial electronic system have the right to make a mistake in any way: deliberate, imposed or unintentional.

According to *the principle of the integrity of the procedure for centralizing election results*, the sending of information on voting results from the polling stations to the Central Electoral Commission must have an unrestricted, open, unclouded, transparent, protected and fair character.

The principle of parallel counting of votes requires the simultaneous counting of votes in each polling station by the Central Electoral Commission as well as by other organizations (NGOs, social independent organisations, parties, etc.), starting with the direct counting of votes at each polling station in the country and abroad.

The essence of *the principle of truthfully calculating the results of electronic voting* requires that the procedure of automatic calculation of the results be carried out in accordance *with the truth*, with the representation and with the common vision of reality, so that in the end, it corresponds to it.

In accordance with *the principle of correctly announcing election results*, no errors, whether intentional or unintentional, shall be admitted in any form and at any stage of the aggregation, as, in the end, the electoral body responsible for summing up the election results shall announce the general election results to the public as soon as possible, if the submitted appeals to it or to the court do not affect the election results.

The basic content of *the principle of timely publication of official results* implies the necessity and obligation of the appropriate electoral bodies (the Central Electoral Commission and/or the respective district electoral council) to publish the official results of the voting in a timely manner, if, of course, the appeals submitted to the electoral bodies responsible for summing up the results of the voting and/or the court do not affect the results of the voting.

According to the principle of verifying the election results, any voter, as well as the Central Electoral Commission, parties, NGOs, etc., must have the possibility to control the results of the voting, directly or electronically, in order to determine whether they correspond to the truth, requirements, quality, certain data, etc.

Given that the ending crowns the work (the opposite corroborated finish), *the principle of confirmation of election results* has as imperative the approval by the courts in the field of activity of the electoral bodies and/or by the adoption of a *decision by the Constitutional Court* of the legality of the voting results.

In case of necessity, "persons responsible for the violation of the law must be held liable

without delay”⁶⁷.

The conditions of implementation of the electoral principles in the Republic of Moldova, in particular, of the implementation of the Principles of totalization and verification of voting results, depend, firstly, on the general conditions of their implementation in the European Union, and secondly, as shown in the *Code of Good Practice in Electoral Matters* (p. 26), on the context of the specific electoral system and the system given by parties in the Republic of Moldova.

In perspective, if the necessary measures are taken, the legislation and the system of principles of electoral law may be completed and extended.

The opinion according to which the legislation and the system of principles of electoral law can be supplemented, completed with a new category of principles, namely with *the principles of totalization and verification of voting results*, has been confirmed. Thus, the hypothesis formulated in this chapter was confirmed.

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⁶⁷ ODIHR, 2006, p.18.