

LEGAL CHARACTERISTICS OF SOME ELECTORAL CRIMES

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Abstract: *This paper analyzes the legal framework applicable to electoral crimes in the Republic of Moldova, with a focus on offenses such as obstructing the electoral process, voter corruption, and falsification of voting results. Using a qualitative doctrinal methodology, the study interprets national legislation—especially Articles 181 and 182 of the Criminal Code - and compares these provisions with international standards and democratic principles. The research identifies gaps in the current legal definitions, inconsistencies in the application of criminal norms, and the need to integrate jurisprudential practice and international recommendations more effectively. The conclusions point to the necessity of refining the legal framework and enhancing institutional capacities in order to safeguard electoral integrity and democratic values.*

Keywords: *Legal framework, electoral cycle, normative violations, perpetrator, criminal liability, sanction.*

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1. Introduction

Article 181 of the Criminal Code of the Republic of Moldova (CP RM) provides for criminal liability for preventing by any means the free exercise of electoral rights or for preventing the activity of electoral bodies: committed by blocking or attacking polling stations by any means and in any form; committed by stealing ballot boxes or electoral documents; committed with endangering the life of a person; accompanied by serious injury to bodily integrity or health; resulting in other serious consequences. In the case of the offense provided for in Article 181 of the CP RM (as well as the offenses provided for in Articles 181 and 182 of the CP RM), the generic legal object is formed by social relations regarding the realization of the constitutional rights of citizens. The special legal object of the offense of preventing the free exercise of electoral rights or the activity of electoral bodies is a complex legal object. Thus, the main legal object is the social relations regarding the realization, in accordance with art.38 of the Constitution of the Republic of Moldova, of the right to vote and the right to be elected. The secondary legal object has an alternative character, depending on the concrete modality of the offense, specified in letters a)-e) of art.181 of the Criminal Code of the Republic of Moldova, and may consist of social relations regarding: public security or the realization, in accordance with art.27 of the Constitution of the Republic of Moldova, of the right to free movement; possession of ballot boxes or electoral documents; the mental freedom of the person; the health of the person; or other social values. The material object of the offense provided for in art. 181 of the Criminal Code of the Republic of Moldova consists, as the case may be, of: the premises of the polling station; ballot boxes; electoral documents; the body of the person. The victim (passive subject of) the offense in question is the person who belongs to the following two categories: voters or members of electoral bodies. This list is exhaustive. Any other persons cannot be considered as victims of the crime specified in art.181 of the Criminal Code of the Republic of Moldova. Most often, the objective side of the crime provided for in art.181 of the Criminal Code of the Republic of Moldova consists of the harmful act consisting of:

- 1) the main action or inaction;
- 2) the adjacent action or inaction.

2. Methodology

This paper applies a qualitative research methodology focused on doctrinal and legal-normative analysis. The study involves a comprehensive examination of the Criminal Code of the Republic of Moldova, in particular Article 181 and 182, the Electoral Code (2022, updated 2024), and other relevant electoral legislation. Doctrinal sources, including academic studies by local and international legal scholars, are also integrated to support legal interpretations.

In addition, the study uses the comparative legal method to contrast the national legal provisions and practices with international standards and recommendations, including those issued by the Organization for Security and Cooperation in Europe (OSCE) and principles outlined in the Universal Declaration of Human Rights. The analytical method supports the extraction of conceptual legal distinctions between various forms of electoral crimes.

This methodology ensures a multidisciplinary legal perspective and aims to identify both theoretical and practical shortcomings in the current legal framework governing electoral integrity in the Republic of Moldova.

3. Results and Discussion

An important aspect of philosophical thinking in this sense is highlighted by Mihai Eminescu, who in his journalism shows that: In vain would anyone try to prove that the state is a result of convention and of contriving through theories; it is and remains a product of nature, an organ of society and, just as man is not free to change his heart or brain or lungs at will, so neither can society, in a given state of economic and cultural affairs, change the form and functions of the state at will, it cannot play with impunity at the hands of parliament and government [1].

The main action or inaction is expressed in preventing by any means the free exercise of the electoral right or preventing the activity of electoral bodies. Preventing the free exercise of the electoral right is materialized in: unjustified failure to hand over the ballot to the voter registered in the electoral list; destroying, soiling, damaging electoral lists, displayed programs and platforms, or any other posters (appeals, statements, photographs and other materials used by electoral competitors for the purpose of electoral agitation) or electoral agitation announcements; preventing the observer from accessing the polling station premises; unfounded limitation of the participation of electoral competitors in meetings with voters, etc. In turn, preventing the activity of electoral bodies is materialized in the failure of official persons to provide the data and materials necessary to electoral bodies or in the failure to comply with their decisions; in refusing to fulfill the instructions of the president of the electoral bureau of the polling station regarding ensuring order in the premises of the polling station and on the related territory, etc. In order to incur criminal liability under art.181 of the Criminal Code of the Republic of Moldova, the main action or inaction must be accompanied by the adjacent action or inaction. The adjacent action or inaction is presented in any of the ways specified in letters a)-d) of art.181 of the Criminal Code of the Republic of Moldova. Referring to the ways of the adjacent action or inaction, we mention that, within the meaning of letter a) of art.181 of the Criminal Code of the Republic of Moldova, „blocking the premises of the polling stations” means isolating the respective premises, by preventing the movement of persons leaving or entering the respective premises [2].

Within the meaning of letter a) of Article 181 of the Criminal Code of the Republic of Moldova, „attacking polling stations” means an aggressive action that surprises the victims

who are inside the polling stations, an action that is accompanied by violence or the threat of violence.

Within the meaning of letter b) of art.181 of the Criminal Code of the Republic of Moldova, „stealing ballot boxes or electoral documents” means the illegal (and gratuitous) taking of ballot boxes or electoral documents from the possession of another person, an act that caused actual patrimonial damage to this person, committed for greedy purposes [3].

In letter c) of Article 181 of the Criminal Code of the Republic of Moldova, „endangering the life of a person” cannot be considered attempted murder, only the threat of murder can be considered in the absence of more acceptable alternatives.

Also, in letter d) of art.181 of the Criminal Code of the Republic of Moldova, intentional serious harm to bodily integrity or health is not taken into account. Consequently, it can only be a matter of serious harm to bodily integrity or health caused by imprudence.

Article 181, letter e) of the Criminal Code of the Republic of Moldova provides for liability for obstructing by any means the free exercise of electoral rights or for obstructing the activity of electoral bodies, resulting in other serious consequences.

By other serious consequences” we mean: the death of the person (due to imprudence); declaring the elections invalid; annulling the elections; destabilizing the socio-political situation in the country, etc. We consider that in order to complete the objective side, it is necessary to also establish the time of the commission of the crime: the time of the electoral period, that is, the period of time between the day the election date is made public and the day the final election results are confirmed by the competent bodies.

The electoral period includes the electoral campaign, i.e. the period of activity that is carried out with the aim of determining voters to cast their votes for the election of one or another electoral competitor and that begins, for each electoral competitor, on the date of his/her registration by the Central Electoral Commission of the Republic of Moldova or by the constituency electoral council and ends on the date of the exclusion of the electoral competitor from the elections or on voting day.

The offense provided for in art.181 of the Criminal Code of the Republic of Moldova is considered to have been committed from the moment of: blocking or attacking the premises of the polling stations (lit. a)); the emergence of a real danger of carrying out the threat of murder (lit. c)); the perpetrator obtaining the real possibility of using or disposing of the ballot boxes or electoral documents at his own discretion (lit. b)); the occurrence of serious bodily injury or health injury (lit. d)); the occurrence of other serious consequences (lit. e)).

The subjective side of the crime of preventing the free exercise of electoral rights or the activity of electoral bodies is characterized by intention, which is, as the case may be, direct or indirect. The motives for the crime may be: the desire to promote an electoral competitor other than the victim; social, national, racial or religious hatred; secessionist motives, etc.

The subject (active subject) of the crime under consideration is the responsible natural person who, at the time of the commission of the crime, has reached the age of 16. It is not essential that the subject of the crime has a special quality.

Voter corruption. Paragraph (1) of Article 181¹ of the Criminal Code of the Republic of Moldova establishes liability for the crime of voter corruption, i.e. for offering or giving money, goods, services or other benefits in order to induce a voter to exercise his electoral rights in a certain way in parliamentary, local elections or in a referendum. According to paragraph (2) of Article 181¹ of the Criminal Code of the Republic of Moldova, the category of goods provided for in paragraph (1) also includes alcoholic beverages, tobacco products and food products. Finally, according to paragraph (3) of article 181¹ of the Criminal Code of the

Republic of Moldova, the category of goods provided for in paragraph (1) does not include electoral campaign materials and objects, paid for from the electoral fund, that bear the name and surname of the candidate, respectively the name of the political party, signs or symbols of electoral competitors, such as: posters, leaflets, postcards, calendars, notebooks, illustrated books, pens, lighters, matchboxes, badges, badges, CDs, DVDs, USB storage media, pennants, flags, books, bags, T-shirts, caps, scarves, headscarves, the value of which for one unit does not exceed two conventional units.

The special legal object of the crime of corruption of voters is the social relations regarding the realization, in accordance with art.38 of the Constitution of the Republic of Moldova, of the right to vote and the right to be elected, in terms of the freedom of voters to form an opinion without influences of the nature of offering or giving money, goods, services or other benefits for the purpose of determining the voter to exercise his electoral rights in a certain way in the framework of parliamentary, local elections or in the framework of the referendum.

In the provision of paragraph (1) of article 181¹ of the Criminal Code of the Republic of Moldova, the material or immaterial object of the crime of corruption of voters is designated by the phrase „money, goods, services or other benefits”. From the analysis of paragraph (3) of article 181¹ of the Criminal Code of the Republic of Moldova, it follows that the material or immaterial object of the crime of corruption of voters is not those goods that cumulatively meet the following conditions:

- 1) represent materials or objects of electoral agitation;
- 2) bear the name and surname of the candidate, respectively the name of the political party, signs or symbols of the electoral competitors;
- 3) are embodied in: posters; leaflets; postcards; calendars; notebooks; illustrated books; pens; lighters; matchboxes; badges; badges; CDs; DVDs; USB storage media; pennants; flags; books; bags; T-shirts; caps; scarves; scarves;
- 4) are paid from the electoral fund;
- 5) their value per unit does not exceed two conventional units.

If at least one of the five conditions listed above is missing, the respective goods will constitute the material or immaterial object of the offense specified in art.181¹ of the Criminal Code of the Republic of Moldova.

In the case of parliamentary or local elections, the victim (passive subject) of the offense provided for in art.181¹ of the Criminal Code of the Republic of Moldova is the electoral competitor within the meaning of art.1 of the Electoral Code of the Law of the Republic of Moldova, who, through the corruption of voters, has had his right to be represented in an elective authority violated, by reducing the votes cast. At the same time, in the case of a referendum, the victim of the analyzed offense is the initiator of the referendum within the meaning of art.144 and 180 of the Electoral Code of the Law of the Republic of Moldova, who, through the corruption of voters, has had his right to resolve the issue subject to the referendum violated, by reducing the votes cast [4].

The objective side of the crime specified in art.181¹ of the Criminal Code of the Republic of Moldova consists of the harmful act expressed in the action of offering or giving money, goods, services or other benefits. It can be seen that the two alternative normative modalities of the harmful action examined are:

- 1) offering money, goods, services or other benefits;
- 2) giving money, goods, services or other benefits. The first of the modalities named above – offering – is expressed in the presentation, display, appearance, in relation to the voter, of money, goods, services or other benefits.

As for the second of the normative modalities of the prejudicial action specified in the provision of art.181¹ of the Criminal Code of the Republic of Moldova, giving constitutes the actual handing over, remittance, or delivery of money, goods, services, or other benefits by the perpetrator to the voter. The offering or giving of money, goods, services, or other benefits can be done personally or through an intermediary. In the latter case, the intermediary acts on behalf of the perpetrator and with the intention of helping him, having the quality of an accomplice in the crime of voter corruption. In another context, it is not excluded that the commission of the crime of voter corruption is accompanied by the application of vote control methods. In this way, the perpetrator tries to ensure the efficiency of offering or giving money, goods, services, or other benefits to the voter. However, in the absence of vote control, voter corruption „risks” being useless, because voters can no longer be persuaded to vote as they promised. The doctrine mentions the following methods of vote control:

- 1) **photo**, which involves entering the voting booths with cameras or mobile phones with cameras to photograph the vote. Such a method is used by those who want to follow the vote of voters who have been promised certain benefits;
- 2) **ballot box**. It is used when those who buy votes use a ballot fraudulently removed from the polling station and a counterfeit ballot stamp. The „bought” voter enters the polling station with a ballot already stamped outside the station hidden in his pocket and takes the ballot handed out at the polling station. In the voting booth, the voter no longer applies a stamp, but only takes the stamped ballot out of his pocket, which he will insert into the ballot box, and puts the blank ballot in his pocket, with which he leaves the polling station. This ballot is used further, to continue the ballot box;
- 3) **the blue shirt**, which implies that a person, recognized by an element of clothing, is hired to accompany the voter to the voting booth in order to supervise him during the exercise of the vote;
- 4) **the mobile ballot box**. It is applied when the mobile ballot box, which is used with the approval of the precinct president, is used excessively, as a result of repeated written requests. When voting with the mobile ballot box, the secrecy of the vote is not as well ensured [5].

If the crime of voter corruption is accompanied by the application of vote control methods, it is not excluded that this crime may be concurrent with the crime specified in paragraph (1) of Article 182 of the Criminal Code of the Republic of Moldova (for example, when vote control involves voting using a fake ballot). The crime provided for in Article 181¹ of the Criminal Code of the Republic of Moldova is considered to be committed from the moment of offering or giving in full the money, goods, services or other benefits.

The subjective side of the analyzed crime is characterized by direct intent.

The motives of the crime in question are most often expressed in: the perpetrator's desire to be elected to a certain position (namely, that of deputy, councilor in the local council or mayor) as a result of parliamentary or local elections; the desire for other persons (other than the perpetrator) to be elected to certain positions (namely, that of deputy, councilor in the local council or mayor) as a result of parliamentary or local elections; the perpetrator's desire to obtain certain material or non-material advantages as a result of submitting an issue to a referendum, etc.

The purpose of the crime of corruption of voters is a special purpose. It is intended to determine the voter to exercise his electoral rights in a certain way in the parliamentary, local elections or in the referendum. In the presence of any other purpose, the act cannot be qualified under art.181¹ of the Criminal Code of the Republic of Moldova.

Subject (active) of the offense provided for in art.181¹ of the Criminal Code of the Republic of Moldova is a responsible natural person who at the time of committing the offense has reached the age of 16. Also, the subject of this offense may be a legal entity (except for a public authority). No special capacity is required to be a subject of the offense provided for in art.181¹ of the Criminal Code of the Republic of Moldova. Practically, any person who meets the general conditions of the subject of the offense, and who, in one way or another, is directly or indirectly involved in the electoral campaign or in the conduct of a referendum, may be the subject of the offense under consideration.

Falsification of voting results. In Article 182 of the Criminal Code of the Republic of Moldova, the legislator provides for liability not for a single offense, but for one that can be committed in two ways. The two paragraphs of Article 182 of the Criminal Code of the Republic of Moldova include two standard variants of offenses that are united by the same marginal name of falsification of voting results. Thus, in paragraph (1) of Article 182 of the Criminal Code of the Republic of Moldova, liability is established for the offense of voting by a person: without having this right, either twice or more times, or by inserting more ballot papers into the ballot box than he is entitled to, or by using a false identity document or a false ballot paper. In turn, in paragraph (2) of Article 182 of the Criminal Code of the Republic of Moldova, liability is provided for the offense of falsification, by any means, of voting results.

The special legal object of the offense provided for in paragraph (1) of article 182 of the Criminal Code of the Republic of Moldova is formed by social relations regarding the realization, in accordance with article 38 of the Constitution, of the right to vote and the right to be elected, in terms of equality in electoral law.

The material object of the offense in question is represented, as the case may be: the ballot paper inserted without right into the ballot box; the fake ballot paper; the fake identity document.

The objective side of the offense specified in paragraph (1) of article 182 of the Criminal Code of the Republic of Moldova consists of the prejudicial act expressed in the action. This action has the following four alternative modalities:

- 1) voting without the right, i.e. voting by someone who does not have the right to vote (in accordance with Articles 11, 13 and 123 of the Electoral Code of the Republic of Moldova, adopted by the Parliament of the Republic of Moldova on 21.11.1997): is not a citizen of the Republic of Moldova; has not reached the age of 18, including on election day; is recognized, by a final court decision, as incompetent (in the sense that this does not exclude his responsibility within the meaning of Article 22 of the Criminal Code of the Republic of Moldova); has been deprived of the right to vote by a final court decision; is a military man who is fulfilling his military service within the term (in the case of local elections); does not reside in the respective administrative-territorial unit (in the case of the election of the local council or mayor);
- 2) voting twice or more, i.e. violating the rule according to which, in any election, each voter has the right to only one vote (rule established by art. 4 of the Electoral Code of the Law of the Republic of Moldova and by paragraph (3) art. 8 of the Law of the Republic of Moldova on the procedure for electing the President of the Republic of Moldova, adopted by the Parliament of the Republic of Moldova on 22.09.2000);
- 3) voting by inserting more ballot papers into the ballot box than the voter has the right to. In any election, each vote has equal legal force. Therefore, it is not allowed for the voter to insert more ballot papers into the ballot box than he has the right to. This

right does not always imply the insertion of a single ballot paper. However, in the case of simultaneous holding of several types of elections, there may be more ballot papers;

- 4) voting by using a false identity document or a false ballot paper The falsity of the identity document or ballot paper implies the lack of authenticity in terms of the preparation of the respective documents by subjects not authorized by law or in terms of the alteration of authenticity as a result of the introduction of false elements of form or content into the authentic identity document or ballot paper. The offense specified in paragraph (1) of article 182 of the Criminal Code of the Republic of Moldova is considered consummated from the moment the perpetrator votes without having this right, either twice or more times, or by inserting more ballot papers into the ballot box than he is entitled to, or by using a false identity document or a false ballot paper [6].

The subjective side of the examined crime is characterized by direct intent.

The motives of the crime may be the following: the desire to promote a certain electoral competitor; material interest (when the crime is committed in exchange for material remuneration), etc.

The subject (active subject) of the crime is the responsible natural person who, at the time of committing the crime, has reached the age of 16. In addition, the subject of the crime must have the special quality of a person who performs the vote. Such a person does not always have the legal quality of a voter. In other words, the special legal object of the crime provided for in paragraph (2) of article 182 of the Criminal Code of the Republic of Moldova is formed by social relations regarding the realization, in accordance with article 38 of the Constitution of the Republic of Moldova, of the right to vote and the right to be elected, in terms of the authenticity of the voting results.

The immaterial object of the crime in question is the voting results.

The objective side of the crime provided for in paragraph (2) of Article 182 of the Criminal Code of the Republic of Moldova includes the prejudicial act consisting in the action of falsifying, by any means, the voting results. The phrase „by any means” indicates the variety of factual modalities by which the action of falsifying the voting results can be manifested. These modalities are the following: signing the minutes of totaling the voting results before these results are established; knowingly completing the minutes of totaling the voting results incorrectly (which do not correspond to the real voting results); introducing unfounded changes into the minutes of totaling the voting results after its completion, etc. Since the voting results represent documentary information, falsifying the voting results involves influencing the document by the following methods:

- 1) scraping, i.e. mechanical removal of some details of the document, in order to modify its initial content;
- 2) treating the document with chemicals, i.e. removing the text of the document by discoloring the dye of the text line using chemical reagents;
- 3) removing by washing, i.e. removing the text from the surface of the document using solvents;
- 4) inserting, i.e. inserting by gluing parts of the text, gluing another photo in place of the one removed from the document, etc. The offense provided for in paragraph (2) of Article 182 of the Criminal Code of the Republic of Moldova is considered to have been committed from the moment of falsifying the voting results. The extent of the falsification does not influence the qualification of the act according to paragraph (2) of Article 182 of the Criminal Code of the

Republic of Moldova, but it may be taken into account when individualizing the punishment [7].

The subjective side of the crime in question is characterized by direct intent. The motives of the analyzed crime are: revenge; the desire to promote a certain electoral competitor; careerism, etc.

The subject (active subject of) the crime specified in paragraph (2) of article 182 of the Criminal Code of the Republic of Moldova is a responsible natural person who, at the time of committing the crime, has reached the age of 16. In addition, the subject of the crime must have the special status of a member of the electoral body, i.e. a member of the Central Electoral Commission, of the constituency electoral council or of the electoral bureau of the polling station.

4. Conclusions

As a result of the investigation of these electoral offenses provided for in art.181, 181¹ and 182 of the Criminal Code of the Republic of Moldova, we consider it necessary to formulate the following conclusions:

- 1) art.181, 181¹ and 182 of the Criminal Code of the Republic of Moldova have similarities with art.385-387 and par.(1) art.391 of the Criminal Code of Romania of 17.07.2009;
- 2) the purpose of art.181, 181¹ and 182 of the Criminal Code of the Republic of Moldova is to defend – par excellence or mainly – social relations regarding the realization, in accordance with art.38 of the Constitution of the Republic of Moldova, of the right to vote and the right to be elected;
- 3) the offense provided for in art.181 of the Criminal Code of the Republic of Moldova can be committed by action or inaction. In contrast, the offenses provided for in art.181¹ and 182 of the Criminal Code of the Republic of Moldova can be committed only by action;
- 4) the offenses provided for in art.181, 181¹ and 182 of the Criminal Code of the Republic of Moldova are committed with intent, which is, as the case may be, direct or indirect;
- 5) no special quality is required in the case of the subjects of the offenses provided for in art.181 and 181¹ of the Criminal Code of the Republic of Moldova. On the contrary, the subjects of the two offenses provided for in art.182 of the Criminal Code of the Republic of Moldova are special subjects.

Electoral crimes pose a constant threat to the democratic process in the Republic of Moldova, affecting the integrity of elections and undermining citizens' trust in democratic institutions. Analyzing the existing legislation and institutional practices in combating these crimes, the following conclusions and recommendations can be drawn:

1. Moldovan legislation should provide clear and concise definitions for the various electoral crimes, so that there is a solid legal framework for their investigation and sanctioning;
2. Judicial authorities and law enforcement bodies should benefit from adequate resources and specialized training to effectively investigate and sanction electoral crimes. Improving cooperation between the different institutions involved in the electoral process is essential for a coordinated approach to these problems;
3. Rigorous and independent supervision of the electoral process is necessary, with the active participation of domestic and international observers. Transparent and detailed reporting of incidents of electoral fraud and other irregularities is crucial for ensuring accountability and implementing appropriate reforms;

4. Electoral education and raising citizens' awareness of the importance of the integrity of the electoral process can help reduce vulnerability to fraudulent practices and strengthen democratic participation;
5. It is essential that institutions responsible for monitoring and managing the electoral process operate independently and are protected from political or partisan influence.

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