

The presidential elections in Moldova and Ukraine: comparative study

Президентські вибори в Молдові та Україні: порівняльне дослідження

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Ключові слова:

вибори, президент, Республіка Молдова, Україна, закон, Конституція.

▲ Elections – action through which the citizens select and designate by vote, according to certain procedures, the persons that will form the leading bodies of a state, of an administrative-territorial unit or of an organization¹.

Elections have been the usual mechanism by which modern representative democracy has operated since the XVII century. Elections may fill offices in the legislature, sometimes in the executive and judiciary, and for regional and local government. This process is also used in many other private and business organizations, from clubs to voluntary associations and corporations.

The universal use of elections as a tool for selecting representatives in modern representative democracies is in contrast with the practice in the democratic archetype, ancient Athens, where the Elections were considered an oligarchic institution and most political offices were filled using sortition, also known as allotment, by which officeholders were chosen by lot.

Electoral reform describes the process of introducing fair electoral systems where they are not in place, or improving the fairness or effectiveness of existing systems. Psephology is the study of results and other statistics relating to elections (especially with a view to predicting future results).

To *elect* means “to choose or make a decision”, and so sometimes other forms of ballot such as referendums are referred to as elections, especially in the United States.

Elections were used early in history, as ancient Greece and ancient Rome, and throughout the Medieval period, to select rulers such as the Holy Roman Emperor and the Pope.

Ancient Arabs also used elections to choose their caliph, Uthman and Ali, in the early medieval Rashidun Caliphate.

The modern “elections”, which consists of public elections of government officials, didn’t emerge until the beginning of the XVII century, when the idea of representative government took hold in North America and Europe.

Electoral systems are the detailed constitutional arrangements and voting systems that convert the vote into a political decision. The first step is to tally the votes, for which various vote counting systems and ballot types are used. Voting systems then determine the result on the basis of the tally. Most systems can be categorized as either proportional or majoritarian. Among the former are party-list proportional representation and additional member system. Among the latter are First Past the Post (FPP) (relative majority) and absolute majority. Many countries have growing electoral reform movements, which advocate systems such as approval voting, single transferable vote, instant runoff voting or a Condorcet method; these methods are also gaining popularity for lesser elections in some countries where more important elections still use more traditional counting methods.

¹ Кырнац Т., Constitutional Law / Т. Кырнац. – Кишинев, 2005. – Ст. 137.

While openness and accountability are usually considered cornerstones of a democratic system, the act of casting a vote and the content of a voter's ballot are usually an important exception. The secret ballot is a relatively modern development, but it is now considered crucial in most free and fair elections.

The nature of democracy is that elected officials are accountable to the people, and they must return to the voters at prescribed intervals to seek their mandate to continue in office. For that reason most democratic constitutions provide that elections are held at fixed regular intervals².

I. The statute and empowerments of the President of Ukraine, as well as the elections' procedure are stipulated in Constitution of Ukraine, which defines the rights and responsibilities of the President as a Head of State, the elections' procedure, and provides the possibility of his/her dismissal from office and termination of his/her empowerments.

The President of Ukraine is elected by the citizens of Ukraine, on the basis of universal, equal and direct suffrage by, secret ballot for five years, limited to two consecutively terms.

According to the Article 102 of the Constitution of Ukraine, the President of Ukraine is the Head of State and acts in its name, is the guarantor of state sovereignty and territorial integrity of Ukraine, compliance with the Constitution of Ukraine, human and citizens rights and freedoms.

The main empowerments of the President of Ukraine are enshrined in the Article 106 of the Constitution of Ukraine. The President also exercises other empowerments provided by the Constitution of Ukraine.

The President of Ukraine shall not delegate his empowerments to other persons or state bodies.

The President enjoys immunity during the whole mandate. For infringement of honor and dignity of the President of Ukraine, perpetrators shall be brought to justice under the law.

The President of Ukraine performs his duties until the assumption of office of the newly elected President of Ukraine. The empowerments of the President shall be terminated earlier in case of resignation, inability to exercise his empowerments for health reasons, removal from office by impeachment, death.

The title of the President of Ukraine is protected by law and reserved forever, unless the President of Ukraine has been removed from office by impeachment³.

The president's official residence is the Mariyinsky Palace, located in the Pechersk district of the capital Kyiv. Other official residences include the House with Chimaeras and the House of the Weeping Widow, which are used for official visits by foreign representatives. The Presidential Administration of Ukraine, unofficially known as "Bankova", in reference to the street it is located on, serves as the presidential administration, advising the president in the domestic, foreign and legal matters.

Since the office's formation on July 5th, 1991, there have been five presidents of Ukraine. Leonid Kravchuk was the inaugural president, serving three years from 1991 until his resignation in 1994. Leonid Kuchma was the only president who served two consecutive terms in office. Both, Viktor Yushchenko and Viktor Yanukovich served one term each, latter being replaced by acting president Oleksandr Turchynov, who also served as Chairman of the Ukrainian Parliament, on February 21th, 2014. Oleksandr Turchynov was the only acting president in Ukraine's modern history. Unlike in the US, where the vice president inherits all powers of the presidency, in Ukraine the powers of an acting president are severely limited. On June 18th, 2015, Viktor Yanukovich was officially deprived of the title of president of Ukraine. The current president is Petro Poroshenko who took the oath of office on June 7th of 2014. The Government of Ukraine uses a Semi-presidential system in which the roles of the head of state and head of government are separate. The prime minister serves as the head of government, a role currently filled by Volodymyr Groysman who was appointed to this position in April 2016.

The president is also the commander-in-chief of the Ukrainian Army and leads the National Security and Defense Council, which advises the President, co-ordinates and controls the activity of bodies of executive power in the sphere of national security and defense. According to the Constitution of Ukraine, the president is the guarantor of the state's sovereignty, territorial indivisibility, the honor of the Constitution of Ukraine and human and citizens' rights and freedoms.

² Election [Electronic resource]. – Access mode : <https://en.wikipedia.org/wiki/Election>.

³ About the President of Ukraine [Electronic resource]. – Access mode : <http://www.president.gov.ua/en/president/about-president>.

As with the separation of powers, the president verifies the authority of parliament and the judicial system. For instance, any law passed by the parliament can be dismissed by the president; however, parliament can override his veto with a 2/3 constitutional majority vote. The president has limited authority to disband the Verkhovna Rada (parliament), and nominates candidates for the Minister of Foreign Affairs and Minister of Defense in the Ukrainian Cabinet of Ministers. Six out of eighteen of the Constitutional Court judges are appointed by the president. Decisions of the president can be reviewed by Ukraine's Constitutional Court, which has the sole authority and power to declare decrees of the president unconstitutional. While in office, the president enjoys immunity.

The modern Ukrainian presidency was established on July 5th, 1991, by Verkhovna Rada of the Ukrainian Soviet Socialist Republic, which formed the office of "President of the Ukrainian SSR" (Ukrainian: Президент Української РСР). During the transitional period, until the presidential elections, the Chairman of the Verkhovna Rada (then held by Leonid Kravchuk) was empowered with presidential authority. With the proclamation of Ukrainian independence from the Soviet Union, the office's official title was changed to "President of Ukraine" on August 24th. In the current Constitution, the Ukrainian presidency is defined in Chapter V, Articles 102–112.

The first Ukrainian President, Leonid Kravchuk, along with other heads of newly formed states, created the Commonwealth of Independent States in 1991.

So far, five presidential elections have been held. The first election in 1991 was held at the same time as Ukrainians voted to support the Declaration of Independence in the independence referendum. Leonid Kravchuk was elected Ukraine's first president on December 1st, 1991. He was elected by a record number of voters with over 19,5 million who wanted to see him as the leader of their state. This record has not been beaten yet. His major opponents were the leader of Rukh, Vyacheslav Chornovil and the author of the Declaration of Independence. President Kravchuk remained in office until he resigned as part of a political compromise. A snap elections was held in 1994, which was won by Ukraine's former Prime Minister Leonid Kuchma. Leonid Kuchma was re-elected for a second term of mandate in 1999.

The 2004 presidential election was marked by controversy with allegations of electoral fraud in the conduct of the second runoff ballot between opposition candidate, Viktor Yushchenko, and the government-backed candidate and former Prime Minister, Viktor Yanukovich. After mass nationwide protests, colloquially known as the "Orange Revolution", a new election was held on December 26th of 2004, in which Viktor Yushchenko was declared the winner with 52% of the votes and was subsequently sworn into office on January 23th, 2005.

The 2010 elections took place on January 17th, with a run-off on February 7th due to a Constitutional Court decision from May 13th, striking down the date of October 25th, that the parliament appointed in April 2009. As a result of this elections, Viktor Yanukovich was elected the fourth modern president of Ukraine.

After Viktor Yanukovich was removed from power in 2014, as a result of the 2014 Ukrainian revolution, the chairman of parliament, Oleksandr Turchynov, was appointed to the role of acting president by the Verkhovna Rada in accordance with article 112 of the Constitution of Ukraine. Oleksandr Turchynov served as the acting president from February 23th until June 7th, 2014, and was the only person in Ukrainian history to serve in the role. The acting president of Ukraine lacks many of the executive powers of a president and is only meant to serve for a short time before a new election can take place. During his mandate, Oleksandr Turchynov was addressed as "acting president" by other Ukrainian politicians and the media.

The 2014 election took place on May 25th, when businessman Petro Poroshenko won over 54 percent of the votes; Yulia Tymoshenko gained around 13 percent. Petro Poroshenko was sworn in as president on June 7th, 2014.

On June 18th 2015 Viktor Yanukovich was officially deprived of the title of President of Ukraine.

Ukraine's electoral law provides for a two-round electoral system to elect the President; a candidate must win an absolute majority of all votes cast. If no candidate obtains an absolute majority in the first round of voting then the two highest polling candidates contest a run-off ballot.

According to Chapter V, Article 103 of the Constitution, a candidate in the presidential election should have Ukrainian citizenship, has attained the age of 35, has the right to vote, has resided in the country for the last 10 years and speaks Ukrainian state language. According to the Constitution, regular presidential elections are scheduled to be held on the last Sunday of the last month of the fifth year of the incumbent President's term. If

the President's authority has ended pre-term, then the elections must be held within 90 days of the incumbent President's end of term.

Candidates in elections are required to pay a nomination deposit of 500,000 hryvnias (approx. 80,000 US Dollars) which is refunded only to those candidates that progress to the second round of voting.

The last presidential elections took place on May 25th of 2014.

The President is obliged by Constitution to prevent any actions of the executive, legislative and judicial branches from taking effect and interfering with the powers of the Constitution. In addition, the President is barred by the Constitution from heading a political party.

The President has the power to submit a proposal for the nomination of the Prime Minister, the Verkhovna Rada, through a constitutional majority, has to support the candidacy. Laws passed by the Verkhovna Rada have to be signed by the President to become officially promulgated. The President also has the authority to create consultative, advisory and other subordinate government bodies for their authority using state budget. The President may address the nation and the Verkhovna Rada with his annual and special addresses on domestic and foreign issues of Ukraine. They may also call for the conduction of national referendums. The President appoints the heads of local state administrations nominated by the Prime Minister for the period of his presidency.

According to the control and balances system of Ukrainian government, the President can veto laws adopted by the Verkhovna Rada (except the constitutional amendments). The President wields high power in the legislative branch of government, compared to other European state heads. They may disband the parliament and call for early elections. This power has only been used twice, both times by incumbent President Viktor Yushchenko (in 2007 and 2008). The legislative branches' check on the President includes the right to overturn a presidential veto with a two-thirds majority vote of the parliament.

The President can suspend acts passed by the Cabinet of Ministers if they contradict the intent of the Constitution and challenge such acts with the Constitutional Court, one-third of which can be appointed (and dismissed) by the President.

The President of Ukraine appoints heads of regional state administrations, presidential representatives to the Autonomous Republic of Crimea, Verkhovna Rada, and others. The President does not act as an ex officio head of state of Crimea. The President can revoke any laws passed by the Council of Ministers of Crimea that are deemed to contradict the Ukrainian Constitution and can provide their presidential consent on a nominee for Prime Minister of Crimea.

List of Presidents of Ukraine:

- 1st, Leonid Kravchuk (1991–1994);
- 2nd, Leonid Kuchma (1994–2005);
- 3rd, Viktor Yushchenko (2005–2010);
- 4th, Viktor Yanukovich (2010–2014);
- Oleksandr Turchynov Acting, (2014);
- 5th, Petro Poroshenko (2014–present)⁴.

Analyzing the status of the Ukrainian President, we conclude that this status is dictated by an atypical form of government of the state, which combines elements of a presidential republic, parliamentary and soviet one⁵.

II. The President of the Republic of Moldova, in his/her position as a state head, represents the state and is the guarantor of the national sovereignty and independence, as well as of the unity and territorial integrity of the state (*Article 77 of the Constitution of Republic of Moldova*).

The President of the Republic of Moldova is elected through a universal, equal, direct, secret and freely expressed vote. The candidate is declared elected only if he is voted by at least half of electors, who participated in elections. If none of the candidates acquires the majority, the second round of election shall be organized, between the top two candidates, who obtained the majority of votes in the first round. The candidate who

⁴ President_of_Ukraine [Electronic resource]. – Access mode : https://en.wikipedia.org/wiki/President_of_Ukraine.

⁵ Денчук Е. Конституционный строй Республики Молдова и Украины (сравнительно- правовой анализ) / Е. Денчук. – Кишинев, 2005. – С. 212.

acquires the highest number of votes is declared elected, upon the condition that the number of votes in his/her favor is higher than the number of votes against him/her. The procedure for electing the President of the Republic of Moldova is stipulated in the organic law (*Article 78 of the Constitution*).

Presidential elections will be held in Moldova on October 30th 2016. They will be the first direct presidential elections since 1996 and follows the declaration of the Constitutional Court from March 4th 2016, which declares that the 2000 constitutional revision, which led to the president being indirectly elected by Parliament, was unconstitutional.

The candidate for the position of President of the Republic of Moldova

Any citizen with the right to vote and over 40 years age, who has been living on the territory of the Republic of Moldova for no less than 10 years and speaks the official language may run for the position of President of the Republic of Moldova (*Article 78 (2) of the Constitution*).

Mandate validation and oath procedures.

The outcome of elections for the position of President of the Republic of Moldova is validated by the Constitutional Court, and the candidate whose election is validated shall take the following oath in front of the Parliament and the Constitutional Court, within 45 days after elections: "I solemnly swear to devote all my personal strength and abilities to the prosperity of the Republic of Moldova, to respect the Constitution and the laws of the country, to defend democracy, fundamental human rights and freedoms, the sovereignty, independence, unity and territorial integrity of Moldova" (*Article 79 of the Constitution*).

The term of office for the President of the Republic of Moldova.

The Presidential term lasts four years and starts on the oath-taking day. The head of state exercises his/her mandate until the submittal of oath by the newly elected President. The Presidential term may be extended, through an organic law, in case of war or catastrophe, but no person can hold the position of President of the Republic of Moldova for more than two consecutive terms (*Article 80 of the Constitution*).

Incompatibilities and immunities of the President of the Republic of Moldova.

The position of President of the Republic of Moldova is incompatible with holding any other remunerated position. The head of state enjoys immunity and shall not be held legally liable for the opinions expressed during his/her mandate. The Parliament may decide to indict the President of the Republic of Moldova for a criminal offence committed, with the vote of at least two thirds of its members, the adjudication competence belonging to the Supreme Court of Justice within the terms of the law. The President is legally dismissed from his position on the date when the final conviction verdict enters into effect (*Article 81 of the Constitution*)⁶.

List of Presidents of Republic of Moldova:

- 1st, Mircea Snegur (1990–1997);
- 2nd, Petru Lucinschi (1997–2001);
- 3rd, Vladimir Voronin (2001–2009);
- 4th, Mihai Ghimpu (2009–2010);
- Vlad Filat, acting (2010);
- Marian Lupu, acting (2010–2012);
- 5th, Nicolae Timofti (2012–present).

We concluded that this two neighbor republics are very similar in the procedure of the presidential elections. This is evident because they have a common history, a common past.

And now we are expecting the presidential elections in Republic of Moldova, which will be held on October 30th, 2016. They will be the first direct presidential elections since 1996.

⁶ The status and powers of the President of the Republic of Moldova [Electronic resource]. – Access mode : <http://www.presedin-te.md/eng/statutul-si-atributiile>.

Summary

The purpose of the publication is the investigation of the presidential elections in Ukraine and Republic of Moldova. Also, we want to explore the presidency as a power and as a state institution. The actuality of the scientific research consists in the fact that in Republic of Moldova on October 30th, 2016 is going to be held the first direct presidential elections since 1996. On March 4th, 2016 the Constitutional Court of Republic of Moldova stated that the indirect elections of the president, by Parliament, are unconstitutional. In Ukraine, the political situation is also interesting. We are expecting that this state will stay integer and peaceful. We can see that these two countries are so similar and we wish a bright future for both of them.

Анотація

Метою публікації є дослідження президентських виборів в Україні і Республіці Молдова. Крім того, ми хочемо досліджувати президентство як владу і як державний інститут. Актуальність наукового дослідження полягає в тому, що в Республіці Молдова 30 жовтня 2016 року плануються провести перші прямі президентські вибори з 1996 року. 4 березня 2016 року Конституційний суд Республіки Молдова заявив, що непрямі вибори президента, парламентом, є неконституційними. В Україні політична ситуація також цікава. Ми очікуємо, що цей стан буде залишатися цілим і мирним. Ми можемо бачити, що ці дві країни дуже схожі, і ми бажаємо світле майбутнє для них обох.

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