

Legislative Power

1. Introduction

Each of the historical epochs has its own concept on the power's essence, legitimacy, contents and modalities of its exertion. The conceptions on the national and people's sovereignty, as well as the conception of segregation of powers formulated by outstanding Montesquieu and Rousseau enjoyed their recognition as real valuable principles acknowledged in constitutions. The transposition of the people's sovereignty principle at the constitutional level raised the issue of making one's option in favour of one of those two democratic theories on sovereignty. The theory of the national sovereignty became established, though some of the constitutions used the term of *people's sovereignty*. The Constitution of France of September 4th, 1791 stipulated that "the sovereignty is single, indivisible, inalienable and inalienable. The sovereignty belongs to the nation. None of the people's segment and none individual can ascribe its exertion". The principle of the sovereignty exertion by the Nation admitted of its representing by those elected by the voters. The present French Constitution reached a compromise between those two conceptions on sovereignty. Thus, Article 3 stipulates that "the national sovereignty belongs to the people exercising it through their representatives and referendum".

Nowadays, the differences in terms are not so significant as the essence of these two principles, which are interconnected to a certain extent – the political power belongs to the citizens of a state, who can, nevertheless, exercise it either directly, through plebiscites, or indirectly, through a group of officials.

At present, these two principles are reflected in all constitutions of the democratic states. The Constitution of the Republic of Moldova should also be mentioned, Article 2 of which provides for the following: The national sovereignty belongs to the people of the Republic of Moldova exercising it both directly and through their representative bodies.

As for the representative bodies, Montesquieu asserted it is necessary that the people, as the holder of the supreme power, execute themselves what they can better in this regard, while the issues they cannot execute well must be carried out through representatives. The latter cannot exist as such, unless assigned by the people themselves. "The people shall make a successful choice by electing those to whom they shall entrust the

achievement of their will”¹, said Montesquieu. Therefore, the representative character of the people’s power is ensured through voting.

Given this state of things, we shall be mostly interested in the ways of the people’s representative body formation, of its internal organisation, as well as of its functioning.

Out of the total of institutions exercising the national sovereignty on titulary’s behalf and that are representative, we can single out the Parliament, the head of the state and the local public administration bodies.

The Parliament is the supreme representative body of the state. All modern constitutions worldwide define it as the bearer of the legislative power. The representative institutions were founded as early as in feudal states. At that time, they were simple consultative bodies created under the sovereign and had just a few limited financial rights. Therefore, it is considered that the proper parliaments came into being in the bourgeois states. The bourgeois parliaments were characterised in the period of their birth by their bicameral structure. In the unitary states this phenomenon reflected, firstly, a compromise between the old aristocracy and the new bourgeoisie in its ascension. This was the case when the lower chambers were set up by direct elections. The lower representative chambers were opposite to the upper ones, appointed by the head of the state or made up based on the hereditary principle, or by both methods. This principle is also valid nowadays for the House of Lords in Great Britain, consisting of hereditary pairs, archbishops, bishops, elected pairs, judges and pairs appointed for life.

After the World War II a series of European countries (e. g. Denmark and Sweden) gave up the bicameral structure, as well as some Asian and African countries that now have an unitary form of the state structure. This thing is explained by the fact that, initially, the upper chamber, elected on the basis of a limited vote, had the main function to serve as conservative hindrance for the lower chamber elected in a more democratic way. Many analysts have noticed that in case the upper chamber does not play such a role, and, from the point of view of its components, becomes similar to the lower chamber, then it turns out to be an useless duplicate of the latter. At the same time, some countries, like Romania and Poland, certified another tendency, where, due to constitutional reforms, the bicameral structure was re-established following the communism collapse. Arguments were brought in favour of a double-chamber system, justifying it by several reasons:

- 1) double examination of a Bill by those two legislative chambers may contribute to its improvement;

¹ Montesquieu, *On the spirit of laws*, book I, Bucharest, 1964, pgs. 18-20.

- 2) requiring two parliamentary chambers hinders the hypothetic tendency to concentrate the legislative power inside one chamber;
- 3) in case the members of the upper chamber (Senate) are elected by indirect vote, expressed by the representatives of local communities, they are more bound to the communities' interests and contribute to supporting them in the parliament. This system was initially established in the USA, and starting with 1913 the senators are elected by direct voting;
- 4) being more elderly than the deputies, the senators are considered to have a greater political "wisdom" and a larger life experience.

The segregation of powers, exposed in theories by Montesquieu, has indeed foreseen the doubling of the representative assemblies, with a view of avoiding the power abuse of a single chamber and offering the possibility of a mutual control exercise between those two well-balanced and collaborating legislative forums.

The bicameral system displays, nevertheless, disadvantages, such as: increased financial needs, long lasting legislative process.

It should be mentioned, however, that such a structure of the legislative forum is not only justified, but even indispensable for the federal states, since in the upper chamber the interests of the federation subjects are represented.

The lower chamber mandate may vary from 2 to 7 years. Thus, in the USA the House of Representatives is elected for two years, the German Bundestag and the Japanese House of Representatives – for a four-year period, the National Assembly of France – for a five-year period, while the House of Representatives of Ireland – for a period of seven years. The second chamber, if not appointed, is usually elected for a longer mandate. At the same time, some countries modify integrally its composition, while other countries do it partially. For instance, a third of the number of senators in the USA is being renewed every two years. The upper chambers are more conservative due to age qualification set for their members. The minimal threshold established for senators is 30-40 years old.

The upper chambers are constituted more frequently by indirect voting (Austria, France, the Netherlands). In some countries they are directly elected by voters (USA, Japan, Italy), while other countries use a joint system of elections, appointments and inheritance (hierarchical system) (Belgium, Ireland). There are, nevertheless, countries having other ways of constituting the upper chambers. For example, the Bundesrat of Germany consists of the members of the lands' governments. Therefore, the non-governing lands' parties cannot get seats in Bundesrat. The ways of electing the upper chamber

members may vary within a single country. This is the case of Switzerland, where the members of the cantonal Council in some cantons are elected directly by people, while in other cantons they are elected by cantonal parliaments.

In countries where the parliament dissolution is possible (these are states with a governing parliamentary system, except Norway, which is a parliamentary state, with no parliament dissolution possible), only the lower chamber may be dissolved.

At the same time, the parliaments with a specific structure should be also mentioned here. The Norwegian Storting fits into this category quite well. First of all, it is elected as a whole, consequently $\frac{1}{4}$ of it is elected in the upper chamber – Lagting, and the rest of deputies remain in the lower chamber – Odelsting. The political forces ratio, however, is the same in both chambers. All issues are being solved by the parliament in its complete composition, except for the laws' adoption. The whole parliament shares the same standing committees. Due to these facts, Storting cannot be considered as a genuine bicameral parliament as such. The Alting of Iceland had so far a structure similar to the Storting's, nowadays, however, it has a classical unicameral structure.

In the Republic of Moldova the problem is to find the best solution that would make compatible the systems constituted on those two riverbanks of Nistru. In the bessarabian part of the Republic of Moldova a pluralistic and multi-party democracy with a parliamentary system of governance has been installed, while in the transnistrian part the political pluralism and the multi-party system are just a fiction, and the system of governance is presidential. It is difficult to make a comparison between these two constitutional systems. Thus, the supreme soviet of Transnistria is a bicameral legislative body, consisting of the chamber of legislators and that of representatives. The age qualification for the candidates in supreme soviet members is 21 years old. The Parliament of the Republic of Moldova is unicameral, with deputies elected in a national constituency within a proportional electionregister ballot. The minimal threshold for the candidates is 18 years old.

The realities of the bessarabian part of the Republic of Moldova should form, however, the basis for the constitutional system of the future federation, given the democratic reforms implemented during the years after gaining independence resulting in a higher level state of law.

2. Election system

A major problem we have to deal with is to find an efficient formula for the parliamentary elections' ballot. The structure of the future federal legislative body is very important and will eventually depend upon the option of one of the electionsystems.

Generally, there are two balloting modalities: the ballot of a majority and the proportional one. Some doctrinaires state that there could be a variant combining those two modalities, namely, the joint ballot.

The ballot of a majority is very widespread, especially in Anglo-Saxon countries. According to this system, **the mandates are assigned to the candidate or candidates from the electionregister that were granted the most votes.**² Meaning there is “the winner takes it all” method – the candidate supported by the largest number of voters wins, while other voters are not represented – this is a perfect reflection of the majority philosophy. More than that, the party winning at the national level shall be over-represented in terms of parliamentary seats.

Unlike the ballot of a majority, the fundamental purpose of the proportional ballot resides in **the representation of both majorities and minorities, as well as in proportional change of votes into seats, instead of a party over-representing or under-representing.** Thus, the main principle consists in the repartition of mandates according to the most precise proportion with the votes of each panel of candidates, this ballot modality implying the submission of the panels of candidates by the political parties.

Both balloting types are achieved through different ways depending on the elections manner, on traditions and interests within a state. Each country, however, creates its own system and becomes attached to it.

Thus, the ballot of a majority can have one or more rounds, depending on the requested majority of votes. The rule of plurality, i.e. of the relative majority – called “the first is the winner” in Great Britain – is remotely the simplest one: the candidate gaining the most votes is elected regardless of the fact whether it is a relative or absolute majority. This rule is used in Great Britain and the USA in the parliamentary elections, as well as in a range of other countries, such as Canada, Botswana, Barbados, India, New Zealand, etc. It

² Cristian Ionescu, Constitutional Law and Political Institutions, Book I.

is also used in the presidential elections of Venezuela, Iceland, Costa Rica. The rule of majority, i.e. of absolute majority, needs conducting the second decisive ballot round between the first two winners, in case none of these candidates gained the majority of votes in the first election round. The mentioned method is often used in the presidential elections in France, Austria, Portugal, starting with 1994 it came into use in Columbia and Finland, too, as well as in Israel for the direct election of the Prime minister, except the legislative election. A method very much alike this one is used in France in the legislative elections. The National Assembly is elected through a joint formula of plurality-majority (relative majority – absolute majority) in uninominal constituencies: the first round requires an absolute majority, but if none of the candidates gains a (absolute) majority, in the second round a plurality (relative majority) gained is enough; the candidates not succeeding in obtaining a minimum votes rate during the first round (starting with 1976, it accounts for 12,5% votes of the registered electorate) are not allowed to participate in the second round.

It is worth while mentioning that in the parliamentary elections, the ballot of a majority goes better with the countries having a bipartite political system.

It should be mentioned that there are more types of proportional ballot as well. The most widespread form is the system of proportional representation in the panels of candidates. It implies that the parties submit their panels of candidates in plurinominal constituencies, the electors vote in favour of one panel or the other (though they are sometimes allowed to divide their votes between more panels) and that the seats are allotted to the party panels according to the number of votes gained. The proportional panel representation can be classified in the following way: open panels, partially opened and closed. Referring to closed systems, the electors can vote in favour of only one panel, without being able to express their preference for a certain candidate on the panel; the candidates are elected exactly in the order they are nominated by the party in the panel of candidates, e.g. Costa Rica, Israel, Spain, etc. In a system with completely open panels of candidates, as the case of Finland is, the voters elect an individual candidate from the panel, while the succession in which the candidates are elected is determined by the number of votes received by the candidates individually. In Belgium, the Netherlands and many other countries the panels are partially open: though the electors can vote in favour of one of the individual candidates, the sequence of candidates in the panel presented by parties is decisive.

And, finally, a combined variant of those two ballot modalities, used in the constitutional practice of some countries is the so-called joint ballot. Thus, nearly half of legislators from Germany, New Zealand, Venezuela and other countries, as well as almost three quarters of legislators from Italy are elected by a ballot of a majority in uninominal constituencies, while the rest of them are elected by panels of candidates through a proportional ballot. Each of the electors has two votes to offer: one for the constituency candidate and the other one for the party's panel of candidates. The seats acquired from uninominal constituencies will not be proportional from the political point of view, on the other hand, the legislators elected via this method are more attached to the geographic area represented by them. The rest of the seats resulting from proportional representation of panels shall compensate for the seats' disproportionality generated by the results arrived from constituencies. The precise degree of the general results' proportionality depends on how many seats are saved for the party's panels for compensation; the results of Italy showed a less proportional representation as compared to other countries. Therefore, the larger the share of seats saved for constituencies, the less proportional the results of the elections are.

The aforementioned facts represent the common features raised at the level of general rules of the election systems, but we have to add here that each state exercise its own system, taking into account its own historical, political, etc. peculiarities. Consequently, when it comes to the Republic of Moldova, we have to bear in mind the far-reaching interests of its population's majority. This is the milestone we have to go on from, since the future of this state depends much on the manner of electing the supreme representative body of the nation and the way the powers are going to settle down.

The election systems of some European countries appear to be interesting by the fact that, according to their political system, they are, to a certain extent, similar to the Republic of Moldova.

Thus, the National Council, which is the lower chamber of the Austrian Parliament is elected according to the principle of proportional representation. The federation's territory is divided into election constituencies that, from the geographic point of view, coincide with the lands. The number of constituency deputies must be proportional to the number of voters in the given constituency. The election procedures imply a correction of the mandates' repartition with a proportional redistribution of unused mandates.

In Belgium, the House of Representatives is made up of 150 deputies elected on the basis of a proportional ballot within plurinominal constituencies. The election formula

applied within this country consists in the following: the total number of the kingdom inhabitants divided by 150 is equal to the electoral quotient, i.e. the number of representation; the number of inhabitants from each constituency is divided to this figure, thus obtaining the number of mandates incumbent upon one constituency, while the remaining mandates are assigned to constituencies with the highest rest resulting from division.

The Italian election system is based on the same rules as the Belgian one, with the only difference that the chamber of deputies accounts for 630 members.

In Spain, the Congress of Deputies consists of 300-400 members elected in plurinomial election constituencies based on the same principle of proportional representation. The electoral constituency coincides with the province, i.e. with the administrative unit of second level. The Law provides for a minimum number of mandates for each constituency, the rest of the mandates being distributed proportionally to the number of population from the respective province.

The German Bundestag is constituted based on a joint ballot: half of mandates are being disputed in uninominal constituencies by the vote of majority, while the other half of mandates is based on the party's panels, within lands, by proportional vote. The German system is a little more complex, but in the reference literature it is frequently described as an unbalanced blend, which, as far as it concerns the distribution of the seats in the parliament, is nearly proportional.

Thus, the commonest form is the panel system used in the most of the democratic regimes. There are minor variations, but they imply that the party nominates the panels of candidates in plurinomial constituencies, the electors vote in favour of one panel or the other and the seats in the parliament are allotted to the party's panels proportionally to the number of votes gained.

An important aspect of proportionality is related to the constituency magnitude. This dimension points out the number of deputies to be elected within the given constituency. The magnitude of the constituency influences a great deal the degree of the results' proportionality that can be reached by proportional representation systems. For instance, it is unlikely that a party representing a minority of 10% of population win a seat in a penta-nominal constituency, but it is clear that it has real chances in a constituency with magnitude 10. Therefore, the bigger is the magnitude, the more precise is the representation proportionality.

A constituency at the national scale is optimal for a proportional transposition of votes into seats. At the same time, the national constituencies display a tendency of maximising the proportionality and facilitating the representation of the very small parties. In order not to give ground to the small parties' easy winning, all countries with national constituencies have set up a threshold of representation, defined in terms of a number of minimum votes gained within the constituency and/or in terms of the minimum share of the total national voting. These ratios can be relatively small, and, subsequently, harmless, as is the threshold of 1% in Israel and that of 0,67% in the Netherlands. But in cases when the threshold amounts to 4 or 5 percent, in Sweden and Germany, accordingly, it constitutes a serious obstacle for the small political parties.

A well-known statement in the comparative political literature asserts that the systems of a majority with uninominal constituencies promote the bipartite systems and, on the contrary, the multi-party system is encouraged by the proportional representation. Rae has contributed to the analysis of relation between the election systems and the party systems with a series of significant explanatory notes. Various election systems exercise a different influence on the party systems, but they have important common elements, said Rae³. In particular, all systems tend to over-represent the bigger parties and to under-represent the smaller ones. Three aspects of this tendency can be distinguished, as follows:

1. All election systems tend to present disproportional results;
2. All election systems tend to reduce the effective number of parliamentary parties as against as of the effective number of election parties;
3. All electionsystems can "produce" a parliamentary majority for the parties that were not supported by the majority of voters.

On the other hand, all these tendencies are much stronger with the systems of a majority than with those of proportional representation.

Findings and recommendations

Taking into account the aforementioned, there are some conclusions and recommendations to be made with regard to the Republic of Moldova. The present election system of the Republic of Moldova is perfectly compatible with its political system. The problem is to reconcile the election systems from both riverbanks of Nistru. In Transnistria the deputies of the supreme soviet are elected based on the ballot of a majority within uninominal constituencies. A solution to this could be to delegate the regulation of the local

³ Rae, *The Political Consequences of Election Laws*, pp.67-129

election system to the federation's subjects, while at the federal level to implement a regulation via constitutional provisions of a system with proportional representation that would be able to stimulate the national multi-party system, i.e. the activity of parties with national covering.

As we have seen, there are more possibilities of mandates distribution: within more constituencies or in one constituency. The example of Italy and Belgium, with plurinomial constituencies, where the number of disputed mandates is proportional to the number of voters, is quite adequate; in this context, the regions (federation's subjects, accordingly) could turn into election constituencies. But this may stimulate the regional parties' evolution, and keep up the centrifugal forces. Therefore, in case of the Republic of Moldova, it is advisable to have a sole constituency, since this could serve as an impetus for the pluralistic democracy development at the national level. In order to be more attractive, the political parties would be more concerned about the entire society's problems and would carry out their activity in the entire territory of the state and not just in particular areas. Thus, eventual cleavages would disappear by themselves. The deputies represent the entire nation and not certain segments of it or the parties they are part of, that is why, their election within a national constituency is more convenient.

At the same time, a representation threshold of more than 4% would be inadvisable, since it tends to over-represent the larger parties on the account of the smaller ones, while the parliamentary majorities will not be effectively representative.

3. Parliament Structure: Double-chamber System

Regardless of the adopted formula, either federal or regional, the double-chamber system is indispensable, due to the Moldovan society's variety. One of the important aspects of the problem is the manner of constituting the upper chamber of the legislative forum, as well as of the underlying principle.

In order to find an adequate formula of the upper chamber's organisation form, we have to bear in mind the following discrepancies between those two chambers from within the international practice.

1. According to the number of its members, the upper chamber is considerably smaller as compared to the lower chamber.

2. The mandates for the upper chamber are longer. The lower chamber's duration of the mandate vary from two to five years, whereas in the upper chamber it amounts from four to nine years (in Great Britain – appointed for life, while in Canada – up to withdrawal). Switzerland represents a relatively minor exception: some of the members of the upper chamber are elected for the term of the lower chamber mandate, which is less than the four year-term. In general, the members of the upper chamber of all bicameral legislative bodies have longer mandates or equal to those of the lower chamber members. As an exception, the upper chamber mandate in the USA is three times longer than that of the lower chamber.
3. The election in stages is a common feature of the upper chambers. Half of the upper chambers' composition of Australia, the Netherlands and Japan is being renewed every three years; the same rule was applied in the Fourth Republic of France. One third of the upper chambers members of the USA and the Fifth Republic of France is being renewed every two and three years, accordingly. The members of the federal chambers of Austria, Germany and Switzerland are also selected by irregular interval stages.
4. The upper chambers tend to be subordinate to the lower chambers in terms of official authorisation. The negative voting of the proposed legislation can be frequently circumvented by the lower chambers, while in the parliamentary systems the cabinet is exclusively responsible before the lower chamber. Only some of the parliaments may boast with formally equal chambers, such as in the USA, Belgium, Switzerland, Italy.
5. The real political importance of the upper chambers depends not only on their formal constitutional mandates, but also on the selection modality. All lower chambers are elected directly by voters, whereas in case of the upper chambers by indirect voting (usually by the legislative bodies, at a lower level than that of the national government) or the appointment (like the Canadian senators, some of the Irish senators and the pairs appointed for life in the House of Lords). The upper chambers that are not directly elected lack democratic legitimacy and, consequently, real political influence granted by the popular ballot. The direct elections of an upper chamber, on the contrary, could compensate to a certain extent its limited power.
6. The last discrepancy between those two chambers of the bicameral legislative bodies is that the upper chambers can be constituted in such a manner, so as to over-represent some minorities. One of the federalism's features is that the smaller component units are over-represented in the federal chamber: their share of the seats in the legislative body exceeds their share of the population. The maximum extension of

this principle is the representation equality regardless of the weight of population in the component units. Such a parity can be noticed in the federal chambers of the United States and Switzerland (two representatives from each state or canton) and in those of Australia (ten representatives from each state). The German Bundesrat and the Canadian Senate are examples of federal chambers where the component units are not equally represented, whereas the smaller units are over-represented and the bigger ones – under-represented. The Austrian Bundesrat is an exception: each land is represented approximately proportional to its population, with no special representation for the smaller lands.

Depending on the degree of the legislative power concentration or division, the parliaments can be classified into: 1) legislative parliaments with strong double-chamber system, such as of: Australia, Germany, Switzerland and the United States; 2) parliaments with a weak double-chamber system, such as in: Belgium, Italy, Japan, the Netherlands, Canada, France, Great Britain; 3) parliaments with an insignificant double-chamber system, as those of Austria and Ireland, that are very much close to the single-chamber system.

They often say that there is a fundamental incompatibility between the strong double-chamber system and the parliamentary form of government. The parliamentary government implies that the executive power is responsible before the parliament, and in case this is combined with a strong double-chamber system, it would mean that both chambers could claim this responsibility. Since the strong double-chamber system results in two chambers constituted in different ways, the chambers can have different political majorities, while the cabinet could find itself in the situation of keeping the confidence of these majorities that may show divergences. Within his classical study on legislative bodies, K. C. Wheare motivates that the double-chamber system does not raise problems, if both chambers are “really elected based on identical methods”, otherwise, the parliamentary government “encourages or even claims at least the superiority of one chamber over the other, if not the supremacy. It is likely that the cabinet must be responsible before a single chamber; it cannot be responsible before two chambers”⁴, states K. C. Wheare. To put it differently, the parliamentary form of government requires for the double-chamber system be congruent (i.e. the composition of chambers should not differ), or lop-sided (i.e. a chamber has more prerogatives than the other one), or they could be both at the same time. It should be also specified that the parliamentary government is not

⁴ K.C.Wheare, *Legislatures*, New York, Oxford University Press, 1963, pp.201-203.

compatible with the strong double-chamber system unless there is the tendency of the governments being formed on the basis of some relative majorities of the lower chamber. In cases when cabinets represent big coalitions, they will not face difficulties in trying to maintain the support of overwhelming majorities in both parliament chambers. On the other hand, a strong federalism assumes a strong federal chamber and, therefore, a strong double-chamber system.

Findings and recommendations

With regard to the upper chamber of the future federal Parliament of the Republic of Moldova, we have to bear in mind that, at present, the country has a parliamentary form of government, which needs to be maintained, for it is the manifestation of an increased democracy and rule within the European community as well. The parliamentary form of government is indispensable in the context of European integration expectation. Accordingly, I believe that a weaker double-chamber system would better fit the Republic of Moldova, because, as showed above, it is more compatible with the parliamentary government. The future constitution should lay the stress on the national sovereignty principle, meaning the assignment of political power to the people exercising it via the lower chamber – chamber of representatives. Thus, the first chamber shall have the most important role in the legislative process. This can be achieved by restricting the democratic legitimacy of the upper chamber, and its indirect constitution, being elected by the regional legislative bodies. This kind of assignment must bear the proportional representation features, that is, the elected senators must represent as close as possible the political composition of the legislative body they were voted by.

In order to render the senate's composition more equitable following the instance of the Austrian federal Council, the federation's subjects should be represented in the federal chamber in the dissimilar way, proportionally to the number of citizens from the given region. The seats' distribution, however, may acquire various forms, depending on the way of organisation of the federation itself. Thus, if an option is made in favour of a symmetrical federation, where the subjects are equal as to the number of population and geographical extension, then the equal seats' distribution would be the most advisable. But, if the subjects are not equal as to one of those two dimensions (human and geographic), then the biggest region should be granted a certain amount of seats, while the rest of the seats are to be provided decreasingly according to the number of population from the region as compared to the largest one.

If an option is made for the lop-sided federation's form, with subjects of federation and the so-called federal territory, the most successful form of mandates' distribution would be performed through direct voting by equal constituencies, that would include a number of electors as equal as possible. The form of assigning the federal legislative body by the lower chamber, in parallel with regional legislative bodies of senators, is out of place here, for it tends to over-represent both ethnical and territorial minorities.

As far as it concerns the duration and the character of the senator's mandate, it should be, undoubtedly, of a greater longevity as compared to that of the deputy's. The mandates of those two chambers should have different timing in order to ensure different composition of chambers and, consequently, a political competition of conceptions. In case the senators are appointed by local parliaments, they have to be elected unitarily, while in case of universal elections, the elections by stages may be carried out. Given the fact that the number of senate mandates is not quite large, the seats saved for the regions will be scarce, which would not allow the representation for all political forces of local parliaments, and, therefore, the risk is of the nature that the majority party of the local legislative body be over-represented in the federal chamber. Anyway, the imperative mandate must be excluded, as in the case of the lower chamber. The senators' mandates should not be dependent upon the mandate of deputies delegating them, since it cannot be withdrawn. The senators are to be privileged to have stability in their position.

3.1. The Deputy Status

The nullity of the imperative mandate is established in all constitutions of the European countries. The deputies represent the whole nation, they are bound neither to certain categories of electors that voted them, nor to the parties on the panels of which they stood for. This principle is established in the current Constitution of the Republic of Moldova and should be maintained in the future constitution as well.

At first sight it may seem that the principle of the free mandate is in great contradiction with the reality of a contemporary party state and that there is an "incompatibility of principles". Some constitutions, such as the German one, however, offer appropriate solutions to this problem. Articles 21 and 38 of the German Constitution clearly state that the deputy's status cannot be conceived out of the activity within political parties and vice versa, the value of a free mandate is essential for the collaboration between the parliament political parties.

A contemporary parliament is a political body, inside of which, as far as the possibilities are, the optimal solution to a problem should be found in terms of rationality within the process of an open competition of conceptions. A contemporary deputy should equally fit into the image of an independent deputy. As in accordance to the German Law regulations, the contemporary deputy is rather a professional politician, than a union (federation) officer or an expert joining other deputies in a party, and together they are able to fulfil their purposes only by common, united and co-ordinated activities of the faction they are part of. Thus, the free mandate excludes neither the parties' collaboration in the political decision-making process of the parliament, nor both the deputies' connection with their parties and the guidelines worked out and promoted by the factions. On the other hand, the free mandate, however, sets bounds to this connection and constitutes an element of political freedom evolving within parties and factions, which acts as a premise for the democracy as a whole.

The free mandate renders weaker the connection between deputy and party, and deprives it of legal sanctions weight. Therefore, a certain political conduct in the parliament may be laid down in any legal form to none of the deputies and due to this fact the cohesion within a faction depends, first of all, upon the deputies' voluntary and free approval of decisions. This approval should be based not only on intimate conviction regarding the correctness of faction's decision, but also on majority principle, according to which the deputy is subject to the will of majority, for he relies on the competent opinion of other deputies and does not intend to prejudice the faction's solidarity. At the same time, this involves the party's pressing on the deputy on the occasion of the following elections. In these terms, the dependence of deputy upon the party is more emphasised in the electionperiod before the mandates validation. The mandate acquisition depends on whether the deputy was included or not in the party's panel of candidates. From the very moment of validation, however, the mandate becomes free. Leaving the party or being removed from the party or the parliamentary faction, as well as passing into another faction, does not entail the mandate loss, but, on the other hand, may imply the loss of membership of the parliamentary commission, especially when it comes to a position within the involved commission.

Thus, the free mandate, unlike the imperative one, ensures greater deputies' independence both within factions and parties and in the relations involved. At the same time, it gives the possibility to conducting discussions within the parties and to developing the party democracy. This is the meaning of Article 21 of the German federal Constitution,

which ensures the freedom of concepts formation and their expression within the parties to a greater extent than this could be done by the dispositions from the parties' statutes. Due to the decisive role the political parties play in a contemporary state, this phenomenon becomes the most important element of the political process freedom, within which the society's political will and unity should evolve.

3.2. Internal Organisation

With regard to the internal organisation of the federal parliament, in both lower chamber and upper chamber, it should be mentioned that, traditionally, all parliaments have similar organisation. It is obvious that those two chambers perform their activity as in accordance to their own working regulations.

The lower chamber, which is the chamber of representatives elected by universal ballot in a democratic way, is being constituted according to principles similar to those of other countries'. Thus, the deputies are constituted in parliamentary factions depending on political affinities, in parliamentary commissions given the previous professional experience. While the factions represent political bodies within the chamber, contributing to the political will formation, the commissions are the real chamber's working bodies, which have to deal with the greater part of work in the legislative process: detailed examination of draft laws, their endorsement, amendment and preparation for the following reading, etc. Another chamber's working body, the governing body, is the so-called presidium (standing committee) of the chamber, its naming may vary from country to country. This body is collegial, has a permanent activity, including the period among sessions, its main task is to prepare and ensure the working sessions of members of parliament. The collegiality of the standing committee differs from one state to another. Thus, in some parliaments the members of the standing committee are relatively equal, while in other countries the pre-eminence of the parliament chairman can be noticed. In the latter case, the chairman of the chamber is a regular state authority. Beside the internal order ensurance, the chairman has a series of important prerogatives, such as presiding meetings, giving the floor to speakers, representing the chamber as against other state structures, he is also the main manager of budgetary funds, etc.

In Germany, for instance, the president of Bundestag has the right to dispose of the parliament precincts, exerting some police prerogatives, meaning that no one has the right to carry out searches or arrests in the lower chamber building of the German parliament

without prior consent of its chairman. Concomitantly, the president of Bundestag represents both the state authority and administrative authority for all parliament officers.

In Great Britain the chairman of the House of Commons is called “the speaker” and is elected at the beginning of the new legislature. The rules are that the speaker must be independent. This means that at the moment of his electing as a chairman, he officially retires from the party he was part of and does not participate to the chamber’s voting. The chairman of the House of Commons construes the chamber’s regulation of functioning at the highest degree, and his decisions are indisputably accepted. The speaker is, therefore, only a chairman; he is not a leader, but an arbitrator. The speaker is assisted in his activity by the secretary of the House of Commons and his assistants, as well as by the police officer, all appointed by the Crown as permanent officers of the House of Commons.

The upper chambers are usually organised on the principle of the lower chambers. There are, however, some differences, related especially to the chairing of this chamber. For example, the German Bundesrat, in its capacity of a body appointed by the governments of lands, has a little different organisation as compared to that of Bundestag. The chairman of this chamber is elected only for one-year period and not for the whole term of the legislature. In Austria, the meetings of the federal Council are chaired by rotating the representatives of the lands for six months each, in alphabetical order of the lands.

In many federal states those two chambers can constitute the federal assembly, convened on certain occasions. Thus, the national Council and the federal Council of Austria form together the federal Assembly, which is being convened in joint meetings in order to adopt decisions on war declaration or for the federal Chairman to be sworn in before the members of Parliament. Anyway, the federal Chairman convenes the Assembly, while the joint meeting is chaired one after the other by those two chambers’ chairmen, starting with the chairman of the Senate. At the same time, the Austrian Constitution stipulates that the working procedure is the procedure established for the chamber of deputies.

Findings

The examples above show at their best that the current internal governing of the Parliament of the Republic of Moldova is observing the general rules of the European parliamentary system. The general principles of the Parliament internal organisation are reflected in the present Constitution of the country and can serve as the basis for the future

federal Parliament. It is obvious that additional suggestions can be made in this regard. For instance, it would be advisable to increase the status of the Parliament Chairman by granting him/her prerogatives similar to those of his/her counterparts from other parliamentary European states exemplified above. It would be better if, according to the example of the British speaker, the position of the Parliament Chairman could be arbitral and less political. At the same time, it is appropriate that the right to the opposition be strengthened and stressed upon. The deputies declaring themselves as the opposition should not be cast out, but, on the contrary, involved in the legislative process through additional rights granted by the regulation, as is the case of Great Britain, where the deputies of the opposition are able to enforce their objections within standing committees.

4. Jurisdictions of those two chambers of the Parliament. Government system

Referring to the delimitation of jurisdictions between those two chambers, the bulk of the legislative prerogatives should be assigned to the lower chamber as the exponent of the entire nation's benefits.

First of all, we should mention the decisive role of the lower chamber in establishing the internal and external policy of the state. In this regard, the lower chamber participation to the state's general government must be determined by its exclusive competence related to the federal government formation and its control. This is determined by the parliamentary system of government that the Republic of Moldova has in present and that it should have in the future. Examining the constitutional systems of some European countries with the same government regime, we can easily notice that the principle of lower chamber supremacy in terms of the legislative power relation with the executive one is prevailing in all of them. Even in the systems of presidential regime of government, both legislative chambers have a minimum role regarding their involvement in the executive system constituting.

4.1. Relationships of the parliament with the executive system

While emphasising once again the principle of the people's sovereignty, the government must derive from the legislative system and namely, the lower chamber, i.e. the chamber of the people's representatives, which is the sovereignty bearer. Therefore, the lower chamber should have the exclusive role of the federal government constituting. Thus, taking into consideration the political composition of the chamber, the federal president

shall appoint the candidacy for the position of Prime minister, as well as the government by his decree, based on the vote of confidence granted by the deputies. In this regard, some remarks are to be made. Firstly, it should be mentioned that in some countries the capacity of Prime minister and of the member of government in general is compatible with the capacity of deputy, while in other countries this is a must. Then we have to add that the candidate must originate either from the chamber of deputies or from outside, but on condition that this person has the ability of being a deputy. And finally, in some countries, such as Germany, the chamber of deputies can have the right to appoint its own candidate for the position of Prime minister in case it does not agree with the candidates advanced by the federal president. In such situations the chamber of deputies carries on a ballot for the position of Prime minister.

At the same time, the function of control is being exerted by constituting parliamentary commissions, by means of questions and interpellations formulated by the members of parliament from both the lower chamber and the upper chamber. The members of the government must be obliged to react to questions and interpellations and participate whenever necessary in the meetings of those two chambers. The sanctions that may be applied while exercising the parliamentary control should be limited to the vote of non-confidence as *ultima ratio*. The distrust may be expressed not with respect to a separate minister, but only to the Prime minister, in other words, to the whole cabinet; because only the head of the cabinet is responsible for the activity of his entire team or of certain parts of it. In order to ensure the government and political stability in the country, there is a cogent example of Germany, where expressing the vote of non-confidence is possible only on condition that the chamber of deputies elects a successor, claiming to the federal President the dismissal of the federal chancellor. This example of 'constructive' vote of non-confidence is useful for the implementation of a genuine democracy based on mutual consent in the Republic of Moldova.

4.2. Legislative Process

Secondly, we have to underline the important role of the lower chamber within the legislative process. The upper chamber must, however, have the role of the body of control and correction of this process. This should be achieved by assigning to the senate of the right of veto over some categories of laws and decisions adopted by the first chamber. In Austria, for instance, all decisions adopted by the national Council must be immediately submitted to the federal Council that may reject approval, meaning that the law will be

delivered to the lower chamber for a repeated examination. Thus, the federal chamber may influence the legislative process by exerting its right of veto.

In order not to allow for the legislative process become difficult and to avoid eventual blockings that may become quite frequent, the Republic of Moldova will find the practice of some countries restricting the senate's right of veto rather useful. Thus, certain categories of laws or decisions can be simply excepted from compulsory approval by the federal chamber, meaning they could be submitted, by sidestepping the senate, directly to the president for promulgation and publication. Another way would be to simplify the procedure of the chamber of deputies' surpassing the senate's veto. For example, the same quorum could be admitted to the repeated voting. In order not to completely under-estimate the role of the federal chamber, its right of veto should, however, be strong in some cases. Thus, in case of some laws affecting directly the interests of the federation's members, the right to veto must be strengthened by establishing a higher quorum of its surpassing by the chamber of deputies. If the senate did not approve the federal budget law, the repeated voting of the law in the same wording should be carried out with an expert majority, 2/3, for instance.

In the field of international relations both chambers should compete for the prerogative of approving the international treaties signed by the authorities of the executive power on behalf of the federation, especially, when it comes to the treaties on immediate interests of some federation's subject.

At the same time, both chambers should co-operate by exercising common assignments. The chambers could, for instance, constitute the federal assembly, by sitting in joint meetings in order to examine issues of national importance, like the federal President being sworn in or the approval of measures regarding the external armed aggression repelling or on the war declaration. The chambers could also co-operate while forming joint parliamentary commissions, such as the commission of mediation, the aim of which is contributing to the final version of the draft law.

4.3. Legislative initiative and the government participation to the legislative power exertion

The legislative initiative in the federal legislative process should be exerted both by the federal legislative system and especially by the federal government. The example of Austria is eloquent in this regard by the fact the federal draft laws may be initiated by the members of the national Council, by 1/3 of the members of the federal Council or by the

federal Government. At the same time, as stipulated in the Constitution, the federal chamber may introduce its own draft laws into the lower chamber through the federal government. Thus, the role of the chamber of deputies as the direct people's representative, as well as the emphasised role of the executive system within a parliamentary regime of government is rendered more evident. Concomitantly, the people may directly exert the power by initiating laws through the mediation of the public subscription in an amount of at least 100 thousand citizens with the right to vote or 1/6 of the population of three lands. The people's initiative is submitted by the Central Election Committee to the chamber of deputies where it is compulsorily debated.

A strong right of initiative of the executive system may be seen especially in the context of the parliamentary regime of government settlement. In general, the government's right to initiate draft laws is deeply rooted in the history and is a contemporary remnant of the period of power confusion peculiar to the absolutistic monarchy; nowadays the Executive system implication in the legislative process by initiation of draft laws is politically justified. The government is responsible for the general administration and ensures the fulfilment of the internal and external state's policy. By virtue of this responsibility, the Government should have the prerogative of proposing draft laws to the Parliament and, at the same time, in its capacity of the expert body, the Government should have the prerogative to endorse and amend the legislative proposals made by the members of Parliament.

The other component of the dual executive system, the President of the Republic, should be excluded from direct exerting of this right, since his essential function resides in being the head of the state, meaning the state representative, especially in the field of international relations. At the same time, unlike the Government that is appointed based on mutual consent, the President is the expression of the democracy of a majority, judging by the procedure of his direct election. If we take into account the aforementioned political arguments related to this right assignment to the Government, it should be added that the President is not responsible from the political point of view, he is not the person who ensures the internal and external policy achievement of the state, therefore the President should not initiate laws. But he could initiate the legislative process by his periodical messages addressed to the Parliament, in which the head of the state states his position towards the most important problems of the nation, as well as the modality of their solution.

As for the head of the state participation in the legislative power exertion, we have to mention that both in the countries with monarchical form of government and in the

republican states, the head of the state, either monarch or president, is convening the Parliament into the constitution meeting (in some countries the President opens each parliamentary session), is addressing periodical messages, is signing the laws adopted by the Parliament.

Thus, the government should be vested with a powerful right of legislative initiative. This right entails, simultaneously, the right to participate in all stages of the legislative process, including parliamentary debates. The right to debates has its political justification, too: since a draft is initiated by the government, the latter has the right to know the draft's future in all further stages. So, the minister responsible for the draft must become a member of the expert parliamentary commission and closely follow the process from inside the Parliament, as is the case in Great Britain, for instance. It should be also mentioned that in Great Britain the most adopted laws are initiated by the Government.

Another form of the Government's participation to the exertion of the legislative power is the legislative authorisation. The latter consists, in fact, in assigning to the Government the prerogative of primary regulation of social relations, which usually is in the exclusive competence of the Parliament. The Government's empowering with the right of issuing Orders in Council originates from the British constitutional tradition, which used to grant to the head of the state – the King – the assignment of undertaking all necessary measures in order to ensure the kingdom's political security and defence. Nowadays, the legislative commissioning is a defining feature of a parliamentary system.

In the French constitutional system, the practice of Orders in Council used in the period 1875-1958 has been taken over under the name of decrees (Article 38 of the Constitution). This procedure can be used in France especially as far as the budget is concerned. Thus, if the draft budget introduced by the Government is not adopted by the Parliament in a period of 70 days, the Government has the right to adopt by itself the respective normative act by decree.

Article 83 of the Spanish Constitution of 1978 stipulates that the Parliament may delegate the Government through a framework law to issue edicts with the vigour of law (legislative decrees); the framework law sets down the field of regulation and the length of delegation. The Government may adopt Orders in Council in case of "emergency necessity", as well.

The Portuguese Parliament, according to Article 164 e) of the Constitution, has the competence to grant to the Government the authorisation to legislate. The Portuguese Government, vested with a legislative competence, can issue Orders in Council in the fields

not assigned to the Assembly of the Republic (parliament), as well as in the respective fields according to the authorisation law.

By virtue of Article 44 of the Greek Constitution, the President of the Republic may, in cases of emergency, necessity and contingency, edict at the suggestion of the Cabinet acts with legislative force. These acts are subject to the ratification by the Chamber of deputies in conformity to the provisions of Article 72 para. 1 of Constitution within a period of 14 days from their edicting or the convening of the legislative forum session.

Conclusions and recommendations

To sum it up, there are more modalities of legislative delegation depending on the authority achieving it, as well as its length and object. Thus, we noticed that the legislative function might be generally delegated to the executive system and particularly to the government. In the first case, this function is achieved jointly by those two state executive entities – the head of the state and the Government: the Government initiates, while the head of the state issues the act. In the second case, the Government itself is the sole authority to initiate and issue the act.

According to the second criterion, it can be noticed that the legislative delegation may be occasional, when the Government is empowered to issue decrees, mainly during the parliamentary recesses and, at the same time, restricted to certain fields of regulation and to certain time periods. But it also can be permanent – when the executive system is empowered to issue Orders in Council at any time as requested by circumstances, regulating more fields assigned to ordinary laws.

These things have to be taken into consideration while regulating the legislation institution delegated in the Constitution of the Republic of Moldova. This institution should be thought out so as to strengthen the existent parliamentary system and to increase the role of the executive system in the country's governing. At present, the institution of the legislative delegation does not have an important role in the Republic of Moldova, it is being carried out very seldom, if at all, and, therefore, the executive system's working is very difficult and is very dependent upon the legislation offered by the Parliament.

At the same time, Transnistria is not acquainted with this institution at all. The Cabinet is, as a matter of fact, a team of subordinates in the president's administration. The transnistrian president himself is the very authority at the executive level. He is at the same time the head of the "state" and of the government. In fact, Transnistria has another system of organisation, i.e. the presidential system, which may be a serious impediment.

As a rule, the form of federal subjects governing is similar to that of the entire federation. Thus, if Canada is a parliamentary monarchy at the central level, then its provinces are republics, but still parliamentary ones. If the USA is a presidential republic, then its member states are organised the same way – in presidential republics. Italy is a parliamentary republic, and the state power in its regions is organised according to the same principle. Within these conformities there are, of course, certain peculiarities. Thus, for instance, one of the USA states – Nebraska, all lands, but for Bavaria, all provinces of Canada, the states of Mexico, the majority of Indian states, Swiss cantons, Italian regions have unicameral parliaments, while the federal parliaments of the same countries are bicameral. Another feature would be that the counterpart institution of the head of the state is absent in German and Austrian lands, in the regions of Italy; the assignments of the respective institution are exerted by the head of the Government in Germany and Austria, and by the head of the local parliament in Italy.

Therefore, it is desirable that the principles of the federal state organisation be applied in the subjects' organisation as soon as possible. In order to render the federation more efficient, the federal power of the state and that of the subjects must be exerted by similar mechanisms, based on similar principles, and this obviously implies that the state organisation at the subjects' level be identical with that of the federal level. Consequently, the new Constitution should provide that the state power bodies within the federal subjects be organised according to the federal organic law, adopted by the federal Parliament.

As a matter of fact, some provisions can be inserted in the wording of the federal Constitution itself. The constitutions of some federal states contain provisions regarding the state organisation bases of the federation's subjects. According to Article 28 para.1 of the German federal Constitution, the state organisation in lands must correspond to the republican, democratic principles of the social state of law, in terms of the fundamental Law.

It is advisable that the entire federation makes its choice in favour of the parliamentary system of government both for the federal level and for the federal subjects' level.

5. Legislative power within federal subjects

Every federal state, together with the federal system of the legislative, executive and judicial power has a system of legislative, executive and judicial powers of the federal

subjects. Usually, the constitutions of the federal subjects determine the order of their organisation, as well as their competence. There are, however, exceptions, such as Austria, where the federal Constitution directly determines the state power organisation within lands.

The lower chambers or the only chambers of the local parliaments (of the federal subjects or other autonomous units) are directly elected by citizens for a mandate comprised between 2 and 4 years. Their composition does not exceed, as a rule, the number of 40-60 persons, while sometimes it accounts even for less, though there are cases when such parliaments account for hundreds of deputies. Thus, the House of Representatives of New Hampshire (USA) consists of 400 members. Article 170 para.1 of the Constitution of India stipulates that the legislative Assembly (united or the lower chamber of the member-state parliament) must account for maximum 500 members and not less than 60 members elected within the given state by direct voting in the territorial election constituencies.

The election right in case of local parliamentary elections of some countries is more democratic (we are speaking about a smaller age qualification in the passive election right), in others it is less democratic as compared to the federal parliamentary elections. A sojourn qualification is established for the candidates to be elected in the Landtag of the German lands, which is not required in the elections for the Bundestag.

The competence, internal organisation and the working procedure of the local parliaments are generally identical to those of the central parliaments.

The Landtag of Saxony is defined by the Constitution as the people's elective representation. It exerts the legislative power, controls the executive power and makes up the political will. The deputies represent the whole people and, while in their mandate exertion, are exclusively based on their consciousness. The right to opposition is ensured. The Landtag usually consists of 120 deputies elected within a joint proportional ballot of a majority. The passive election right is burdened by a sojourn qualification. The Landtag mandate lasts for 5 years, but it can be dissolved in advance by the decision of 2/3 of the number of deputies; and in this case the following elections are organised within 60 days. The Landtag decides on its sessions and meetings. The president of the Landtag may convene it at his own initiative and is compelled to do this at the requirement of 1/4 of deputies or of the local Government. The meetings are public, the closed sessions are held if decided by 2/3 of the number of present deputies, if proposed by 12 deputies or by a member of the Government. All decisions are made upon the vote of the absolute majority of deputies, while the deliberative quorum is 50 plus one. The Landtag is electing its

president, vice-presidents and secretaries, is making up standing committees and the petition committee, it also may and is obliged, if required by 1/5 of deputies, to constitute the investigation committee. In relation to the executive system, the Landtag is electing the head of the Cabinet by secret voting and if it fails to do so in a 4-month period, is consequently dissolved (Article 60). As is the case within the federal level, the Landtag is vested with the “constructive” vote of non-confidence: the Landtag may revoke its confidence towards the chancellor only after his successor has been elected (Article 69). The Landtag is checking up the executive system activity through its regular reports in the presence of deputies, as well as through the questions asked by deputies to the members of the government, to which the latter are obliged to answer immediately and completely. Articles 70-76 regulate the problems of law proclamation. The laws are adopted by the Landtag or through referendum. The right to legislative initiative is vested to the Government, to deputies or to a number of minimum 40 thousand of voters. The referendum takes place at the request of minimum 450 thousand and maximum 15 % of voters. The possibility of the legislative delegation is provided for, as is the case of the federal level.

Within the Swiss cantons and semicantons the legislative power is exerted by a general assembly of citizens, called *Landsgemeinde*⁵, for which the elected Parliament (quasiparliament) prepares only the draft decisions.

In many federal states, where the national referendums are not held (i.e. USA), the laws of the federal subjects are being quite frequently adopted through the local referendum. This state of things is especially characteristic to Switzerland, where the national referendums are also held. Within the federation’s subjects there are various forms of people’s initiative, like people’s legislative initiative and the petition referendum. Thus, in 17 of the USA states, groups of electors (usually 5-10%) may introduce drafts of constitutional amendments in the Legislature (local parliament), in 21 states – ordinary draft laws and in 18 states the petition referendum is held.

Findings

The examples above are eloquent for the Republic of Moldova. As we can notice, the organisation of the legislative power in federation subjects is not very different from that of the federal level. The discrepancy, however, may be found in the legislative process of both levels, and, particularly, in an enhanced democracy at the local level. The

⁵ *Landsgemeinde* from German means the community of a county or country.

experience of other countries, unprecedented, in fact, for our country, like the direct people's participation to legislation, may arouse interest for the Republic of Moldova. Taking into account the geographic dimensions of our country, and especially those of the future federation subjects, we may conclude that it is possible to implement this experience in the Republic of Moldova. The direct democracy would be helpful in surpassing many social problems. As a result of these measures, the people's sovereignty and the purpose of federalisation – to decentralise the power – are brought once again into light.

6. Distribution of legislative jurisdictions between federation and subjects

The delimitation of jurisdictions between federation and its subjects represents the key-problem of the state's federative structure, since the power balance from the territorial point of view depends on the way this issue is settled down. The constitutional practice of many countries displays several models of jurisdictions' distribution. These models are based on the following elements:

- Exclusive jurisdiction of the federation;
- Exclusive jurisdiction of the federal subjects;
- Concurrent jurisdiction of the federation and its subjects;
- The rest of jurisdictions, delimited according to the centralisation degree of the given federation.

The first model is that of the USA, of some Latino-American federations, of Australia and Switzerland, where the constitution is limited to the establishment of exclusive jurisdictions of the union, while the rest of jurisdictions are assigned to federation subjects.

The USA Constitution, for example, defines the Union jurisdiction mainly as legislative assignments and other Congress assignments and, to a lesser extent, the prerogatives of the President and of federal judicial power. Thus, Article I, section 8 of the Constitution formulates 17 positions of the Congress jurisdictions (settlement and levy of duties and other taxes, defence and common welfare insurance, external and interstate trade regulation, etc.), but besides all these, the 18th position states that the Congress should issue all the necessary and timely laws for the exertion of the above-mentioned prerogatives, as

well as of other prerogatives, which, according to Constitution, are assigned to the USA Government and its departments.

According to the tenth amendment, “the prerogatives, not delegated to the Union and not forbidden to the member-states, stay within the jurisdiction of the states or of the people”. In the reference literature this constitutional norm is treated as the *presumption of the states jurisdiction* (i.e. in cases not foreseen by the Constitution, the jurisdiction belongs to the states). At the same time, the syntagm *or of the people* arises a problem of interpretation. The people are considered the totality of the USA citizens – the whole electoral body, the Union, after all. The Supreme Court has presented the interpretations of these provisions, which led to the concept of *implicit prerogatives*. Their essence resides in the fact that beside the prerogatives foreseen in the Constitution, the Congress of the Union has at its disposal other prerogatives implied by the constituent legislator, ensuing that the scope of federal jurisdictions, in general, and of the USA Congress, in particular, are broader than it may seem at first sight.

Another model is provided by the German Constitution. Article 30 clearly states the presumption of the lands’ jurisdiction: “The prerogative exertion and state duties carrying out are the assignment of lands, unless not provided for otherwise by the Constitution”. Concomitantly, Article 31 stipulates that the federal right has priority over the land’s right. Since it is not precisely stated that this principle is functional only within the scope of joint jurisdictions of federation and lands, there is the possibility of federal implications in the jurisdictions of lands. In spite of this fact, the Constitution makes a distinction between the federal jurisdiction and that of the lands concerning the legislation and the federal laws enforcement.

The legislative field re-establishes the presumption of the lands’ jurisdiction: the lands are vested with the right to legislate, as long as this is not the federation’s jurisdiction. At the same time, the Constitution determines two spheres of legislative jurisdiction: federal and joint. The first sphere concerns the legislation, which is exclusively federal, while the second sphere – the concurrent legislation of the federation and lands. At the same time, the federal Constitution did not deprive the lands of the possibility to legislate in the sphere of the exclusively federal jurisdiction: they can do it if empowered by special federal laws. As for the concurrent legislation, the lands are empowered to legislate to the extent of which the federation is not legislating in the given field. Thus, the federation has the prior right to legislate, especially in cases when some national issue regulation is needed, for example issues related to ensuring equal living standards on the federal territory

or to maintaining the economic unity to national benefit. At the same time, in case there is no need for federal regulation, the federal law may provide for the substitution of regulation by the laws of lands.

More than that, the federal parliament is encouraged to issue framework laws, which have to be effected by the local parliaments. The local laws must be issued within pre-established terms. At the same time, the framework laws may go into details and provide for norms of direct application.

Austria has another interesting model. Its Constitution has also provided for the general presumption of the lands' jurisdiction and has fixed several variants of the jurisdictions delimitation between federation and lands.

The first variant consists in the fact that the legislative activity, as well as the executive activity relates exclusively to the federation. This refers to the constitutional jurisdiction, external relations, setting of monopolies, currency issue, post office, telegraphy and phone services, etc.

According to the second variant, the legislation is under the federation's jurisdiction, while the enforcement activities are assigned to lands. Subsequently, this variant of prerogatives' distribution concerns the issues like citizenship and sojourn of foreigners and stateless persons, communal husbandry, road police, etc.

The third variant consists in the establishment of the general principles of legislation by the federal parliament, while the parliaments of lands adopt laws of putting them into effect and the local governments enforce the whole legislation, accordingly. This is referred, for instance, to the establishment of medical conditions for spas, real estate reforms, Labour Law, etc.

The fourth variant is the following: both the legislation and the enforcement of laws are under the jurisdiction of lands. The Constitution establishes a presumption of lands jurisdiction and almost does not contain norms that would provide for the exclusive jurisdiction of lands. There are, however, norms of this kind, as an example may serve the exclusive prerogative of lands to organise kindergartens and orphanages.

As we can see, the presumption of the federal subjects' jurisdiction is instituted as a principle in the majority of the federal states constitutions. At the same time, some exclusive legislation domains of the federation are delimitated from the subjects' ones. As a rule, the federation assumes the domains of national interest, while those of local interest are assigned to the regions as exclusive domains of theirs. The edges of these two categories of domains constitute the concurrent (joint) jurisdiction.

Findings

All models described above are useful for the Republic of Moldova. In order to render the Moldovan federation stronger and more fit to life, the federal Parliament should have under its jurisdiction the regulation of the majority of issues and an important right of intervention in the domain assigned to the federal subjects, within reasonable limits not to diminish their autonomy. For a more efficient organisation of the federation, the federal Parliament should be vested with the right of issuing laws from within each of the domains, and even from outside the joint domains, as is the case in India, where the union Parliament may adopt laws in every domain, including those which are not in the joint list, and those deciding upon new taxes. These measures would lessen considerably the financial autonomy of the federal subjects, but the federal centre could make some transfers to regions in exchange for their acceptance to participate in some federal programs, especially when their implementation is under the exclusive jurisdiction of subjects. Thus, a joint school and preschool education program could be implemented.