

The Promo-LEX Observation Mission for the New Parliamentary Elections of 15 March 2020 in the single-member constituency no. 38 from Hincesti

*15 March 2020
21.30*

On the opportunity of holding new parliamentary elections in the single-member constituency no. 38 from Hincesti on 15 March 2020

Context

On 27 December 2019 the Central Electoral Commission (CEC) set the date for holding the new parliamentary elections in the single-member constituency (SMC) no. 38 from Hincesti for 15 March 2020. We reiterate the Promo-LEX opinion according to which the date for the new parliamentary elections has been set by the CEC with delay, because the legal deadline covers the period from 5 February 2020 to 5 March 2020.[\[1\]](#).

Meanwhile, on 11 March 2020, four days before the day of the new parliamentary elections in the SMC no. 38, the World Health Organization (WHO) declared COVID-19 pandemic, in the context of the increase in the number of cases worldwide, as well as the increase in the geographical area of manifestation in more than 110 countries, and due to the increased risk of further spread of the infection globally[\[2\]](#).

At the meeting of the National Extraordinary Public Health Commission (NEPHC) on 8 March 2020 was announced the first case of COVID-19 infection in the Republic of Moldova. In the context of finding and spreading of the cases of COVID-19 infection, the NEPHC by Decision no. 7 of 13 March 2020 raises alert level to code red at national level on the epidemiological status. According to the legislation, "Code Red Alert" means an imminent risk of triggering a public health emergency.

On 11 March 2020, the CEC published and submitted a Circular Letter[\[3\]](#) designed to comply with the provisions of the NEPHC Decision of 10 March 2020, which involves preventing more than 50 people from being in one place and disinfecting the polling station area. Also, following the establishment of the Code Red at national level, on the evening of 14 March 2020, the CEC, by means of an announcement posted on a social network notified that it submitted an appeal to the NEPHC requesting the Commission's opinion on the possibility of continuing the activities on the organization and conduct of the elections of 15 March this year. At the end of the announcement it was specified that "we will inform you further about the decisions taken". In addition, until the beginning of the vote, there were no posts on the given topic.

On 15 March, the CEC received the reply of the President of the Supreme Security Council[\[4\]](#) stating that the Decision no. 7 of 13 March 2020 issued by the NEPHC provides for the exhaustive restrictions on the actions to be taken by public authorities, in order to prevent the worsening of the epidemiological situation in the country. However, these measures do not concern the organisation of elections, but require public authorities (including electoral authorities) to take all necessary preventive measures.

On 13-14 March 2020 in the public space appeared information about the fact that a person infected with the COVID-19 virus is from the village of Balceana, one of the localities near

the SMC no. 38 from Hancesti.

We emphasize that in the public space on the days immediately before the elections day there were numerous requests of citizens about the opportunity to postpone the parliamentary elections, given that the citizens' health is in danger.

Promo-LEX observers also reported only one case when a candidate requested "immediate cancellation of the elections in Hincesti" through a request submitted to the CEC on 14.03.2020[5].

Findings of the Promo-LEX observers on the elections day

At the press conference organized for the presentation of the Report no. 1 of the Promo-LEX Observation Mission for the elections in the SMC no. 38 on 12 March 2020, the Mission announced the creation of two mobile teams of observers for the elections day. In the circumstances of the rapid worsening of the epidemiological situation, the Promo-LEX OM has delegated only one team that worked in low observation regime.

The mobile team observed the processes of opening of polling stations and conducting the voting procedures in 11 polling stations out of 44 opened. According to observers, voting procedures were generally followed. Among the reported incidents are the reporting in at least three polling stations in two localities (Loganesti – PS no. 28, 29; Hincesti – PS no. 5) of organized transportation of voters.

We draw attention to the low turnout compared to the previous elections held in single-member constituencies:

Parliamentary Elections, 24.02.2019, SMC no. 38 Hincesti	New Parliamentary Elections, 20.10.2019, SMC no. 17 Nisporeni	New Parliamentary Elections, 20.10.2019, SMC no. 33 Chisinau	New Parliamentary Elections, 15.03.2020, SMC no. 38 Hincesti
42.4%	43.5%	39.3%	23.3%

The cause of the low presence may most likely be the uncertain situation in the public space and the actions taken by the authorities. Thus, on the one hand the authorities called on all the population of the country to stay at home, in this respect being ordered to stop public transport in Chisinau, but also for the first time the activity of religious cults. On the other hand, a vote was held, in which voters were called to the polls.

Findings on the opportunity of holding the elections

According to art. 8 of the Electoral Code^[6] elections take place on a single day, on Sunday or any other day indicated in the act establishing elections, throughout the country or locality. With reference to the issue addressed, art. 56 establishes that during the voting time it is forbidden to close the polling station and to suspend the voting, **except in cases of mass disorder, natural calamities, other unforeseen circumstances, which put voters at risk** or make it impossible to carry out voting. In such situations, the President of the electoral bureau may suspend voting for a maximum period of 2 hours.

According to the Promo-LEX OM, the imminent risks of the epidemic can meet the conditions of circumstances that put voters at risk, respectively, could be those exceptional cases that could lead to the suspension of voting for a certain period.

At the same time, we draw attention that these are not unforeseen circumstances for the elections day, these being known before the Elections Day, respectively the authorities should have demonstrated a more pro-active behavior and anticipate possible cases of illness on the Elections Day.

We appreciate that under the conditions created, both the electoral authorities and the authorities of the local public administrations, including the Extraordinary Public Health

Commission of Hincesti district, have made efforts to minimize the epidemiological risks, both for the members of the electoral bodies and for the voters. According to observers, the members of the electoral bureaus were equipped with protective masks and gloves, also at the entrance to the PS and on the tables of the members of the electoral bureaus there were bottles of antiseptic solution.

We would like to emphasize that the conditions for postponement or cancellation of electoral procedures are expressly provided by the Electoral Code only for republican and local referendums. Articles 156 and 186 of the Electoral Code provide that if the date of the republican/local referendum was set for the day on which the **state of emergency, siege or war is subsequently decreed or established**, it shall be **cancelled or postponed** for another day. Thus, from the legislative point of view, there are no rules that would allow the postponement or legal cancellation of parliamentary elections. However, according to art. 66 of the Constitution of the Republic of Moldova, only the **Parliament is the authority with the right to declare the state of emergency, siege and war**.

At the same time, Law no. 212/2004 on the regime of the state of emergency, siege and war in art. 4 para. (2) expressly provides that **during the state of emergency, siege or war**, established throughout the country, **it is prohibited** to amend the Constitution, to adopt, amend or repeal organic laws and electoral legislation, as well as **to conduct elections of central and local public authorities** and Republican and local referendums.

However, according to Law no. 212/2004, the state of emergency is the set of measures of political, economic, social and public order nature, which can be established by the Parliament, including provisionally in some localities. This includes, in the event of imminent triggering or occurrence of exceptional situations of a natural, technogenic or

biological-social nature.

Art. 20 of the aforementioned Law states that **during the state of emergency, depending on the concrete situation, the following measures can be applied**, including:

1. *b) establishment of a special country's entry and exit regime;*
2. *d) introducing a quarantine regime and other mandatory sanitary-antiepидemic measures;*
3. *f) establishing a special working regime for economic agents and public institutions, solving other issues related to their activity, necessary to carry out rescue-unlock works and other non-delayable works;*

We point out that the selected measures are exactly the ones approved and implemented consecutively by the NEPHC in the last period of time.

International standards for Public Security Providers in Elections^[7] condition to a large extent the postponement of elections by ordering a state of emergency. In this context, we reiterate that the Parliament is the only public authority that could decide to postpone or cancel the elections, exclusively by establishing a state of emergency. Thus, the critical opinions to the address of the electoral bodies regarding the inaction to stop the elections have no legal support.

In addition, we mention that the members of the electoral bodies are in a duplicitous situation from the perspective of organizing elections and ensuring the conditions imposed by the Code Red of Epidemiological Risk. As a reminder, both the Criminal Code (art. 215) and the Contravention Code (art. 76) provide for sanctions for failure to comply with the measures on prophylaxis, prevention or control of epidemic diseases, if this caused the spread of such a disease (we reiterate that from the point of view of observers these minimum preventive

actions took place in all polling stations visited by them). On the other hand, art. 181 of the Criminal Code establishes sanctioning for preventing the free exercise of electoral right or the activity of electoral bodies, that is to comply and organize the elections once another decision has not been issued by the Parliament.

In addition, from the perspective of the financial resources spent, we recall that for the organization of the new parliamentary elections in the SMC no. 38 from Hincesti were allocated financial means in the amount of MDL 4 226, 7 thousand stipulated in the budget for the 2020 presidential elections, because no financial means related to the organization and conduct of new parliamentary elections were distributed in the CEC budget for 2020. Thus, any action taken by electoral bodies that would have attempted to stop the already initiated process, in the absence of an appropriate decision of the Parliament, can have legal consequences, including from the perspective of irrational spending of budgetary resources.

Conclusions

In the light of the above, we conclude:

- that the Promo-LEX OM is not empowered to assess the degree of application of measures to prevent and respond to the infection with COVID-19, but according to observers, the electoral bureaus were equipped with the necessary minimum articles used for hygienic purposes. However, it is difficult to predict possible risks of contamination.
- in this context, we emphasize the dedication in the performance of the functional duties by the members of the electoral bureaus and the behavior of the responsible voters who, in this situation of information uncertainty, chose to go to the vote and exercise their right;

- according to the data available in the public space, only one candidate out of the five remaining in the electoral race addressed the CEC with the request for immediate cancellation of the elections;
- we draw attention to the fact that Parliament is the only institution that could decide to postpone the initiated elections;
- the Parliament must intervene legislatively on the need for explicit regulation of the mechanism for suspending or postponing the elections, including without the need to declare a state of emergency in this regard. However, otherwise, the electoral bodies are put in a distasteful situation to maneuver between the need to comply with the law and the need to ensure the satisfaction of the critical public requests substantiated *de facto* but without legal basis *de jure* on halting the electoral processes with the potential to spread the epidemiological infection.

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The opinions expressed in public reports and press releases of the Promo-LEX OM belong to the authors and do not necessarily reflect the position of the donors or partners. The content of the press release may be subject to editorial revision.

For more information, please contact:

Inga Stegarescu, Press Officer of the Promo-LEX Observation Mission for the new parliamentary elections of 15 March 2020:
GSM 069269684, e-mail: inga.stegarescu@promolex.md

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[1] For more details on the organization and conduct of the new parliamentary elections please refer to: the Report no. 1 of the Promo-LEX Observation Mission for the new parliamentary elections in the single-member constituency no. 38 from Hincesti.
<http://bit.ly/38P3a16>

[2] WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020.
<http://bit.ly/3d1fwXa>

[3] <http://bit.ly/2x0RpgR>

[4] <https://bit.ly/33ivho0>

[5] According to the Facebook page of Dorin Chirtoaca, the political movement UNIREA filed a request to the CEC on 14.03.2020 to cancel the new parliamentary elections.

[6] We refer to the rule applicable to new parliamentary elections, in accordance with the legislation in force until the date of adoption of the Law no. 113/2019.

[7] Guidelines for Public Security Providers in Elections. OSCE/ODIHR, 2017. p. 30.
<http://bit.ly/39WWS0c>