

# **Promo-LEX Association statement on draft law No 232 of 10.07.2023 on the amendment of certain regulations**

*(implementing some considerations contained in the  
Constitutional Court Decision No 10/2023 on reviewing the  
constitutionality of the Şor Party)*

In principle, Promo-LEX Association appreciates the authors' initiative to amend the legal framework to ensure the execution and implementation of the Constitutional Court Decision No 10/2023 on reviewing the constitutionality of the Şor Party. At the same time, we would like to point out the need for observing the proportionality principle when determining the categories of persons whose right to be elected would be restricted.

Even though the Constitutional Court did not find any legal gaps when examining the case of Şor party's constitutionality and did not call it to the notice of relevant authorities, the Parliament pro-actively drafted a bill transposing the Court's considerations.

We consider that the proposed amendments to the Law on Political Parties prohibiting the use of attributes of political parties declared unconstitutional and changing/clarifying the subsequent procedure for a political party's liquidation following its declaration unconstitutional are judicious.

However, the proposal to amend the Electoral Code by adding

one more justifying reason to the list of restrictions to the right to be elected requires extensive consultation with political parties and stakeholders, legal expertise, and consultation with the Venice Commission.

Based on the following circumstances:

1. The general local elections are planned for [5 November 2023](#) and the election period will start on 7 August 2023. It is not recommended to change the electoral legal framework before the elections or during the election period.[\[1\]](#)
2. The [Code of Good Electoral Practice](#), clause 1.1 d) provides for cumulative conditions for ineligibility to elect and be elected[\[2\]](#), while these conditions do not seem to be met in the case of the restriction of the right to be elected proposed by the draft law. Specifically,
  - a) Authors of the draft law intend to introduce and apply a prohibition with retroactive effect, since at the time of the Constitutional Court's Decision No 10/2023 such a prohibition or such an effect of the party's declared unconstitutionality did not exist in the law or the High Court's ruling.
  - b) Further examination is required as to whether ineligibility to be elected (which is an individual restriction) can be introduced into law and applied in the case of a political party's declared unconstitutionality (which is a sanction applied to a legal entity, where the individual responsibility or guilt of a person has not been established). In this regard, the proportionality principle seems not to have been analyzed by the legal initiative's authors, given the inclusion of such a broad category of persons whose right to be elected would be restricted.

It could be admitted, however, that a measure temporarily restricting the right to be elected could be justified, under

certain conditions, in relation to members of the executive body of the political party declared unconstitutional, given the importance of decisions made by such members.

It should be recalled that the High Court referred to the fact that statements, speeches and positions of the party's President, Vice-Presidents and party leaders, as well as actions/inactions of the party's management to distance themselves from the actions or public statements of party leaders are imputable to the party (clauses 162-164 of the Constitutional Court Decision No 10/2023).

At the same time, such measure cannot be justified in relation to persons who held elective office or were listed as substitute candidates, unless the individual guilt of each person has been proved.

3. In this context, we also recall the [Case of Tănase vs. the Republic of Moldova](#), 2010, where the plaintiffs claimed a violation of Article 3 of Protocol No 1 on the right to stand for election. At the end of 2007, the Parliament introduced a ban on the right of persons holding two or more citizenships to be elected as MPs. In that case, the Court found that a restriction of that kind limited the rights guaranteed by Article 3 of Protocol No 1 to an extent affecting their very essence, thus making them absolutely ineffective. Similarly, the European Court of Human Rights has held, *inter alia*, that:

- a restriction of electoral rights must not prevent any persons or groups of persons from participating in the country's political life;
- the fact that the ban in question was introduced shortly before the elections, at a time when the number of votes for the ruling party was in decline, further indicates the disproportionate nature of the measure.

Our recommendation to the authors and Parliament's Committee on Legal Affairs, Appointments and Immunities is to:

1. Further examine the necessity and proportionality of the proposal to include a new reason for restricting the right to be elected;
2. Conduct broad public consultations on the subject;
3. Request a legal expert opinion on the draft law, specifically the proposed provision to amend the Electoral Code;
4. Request the Venice Commission's opinion on the restriction of the right to be elected.

[\[1\]](#) The Code of Good Electoral Practice, clause 2 b) stipulates that fundamental elements of electoral law (...) can be amended not earlier than a year before the elections.

[\[2\]](#) Cumulative conditions for ineligibility to vote and to be elected are: ineligibility must be provided for by law; the proportionality principle must be observed; suspension of electoral rights must be based on the recognition of mental incapacity or a final prison sentence ordered by a the court for a serious crime; a person may be deprived of political rights or declared mentally incapable only by a special court judgment.