

OPINION of the Signatory Organisations on Draft Law No 439 from 24.11.2016

**To Mrs. Raisa Apolschii
President of the Parliamentary Committee
Legal Committee on Appointments and Immunities**

In Bill Number 439, MP Vladimir Țurcan proposes amending Article 29¹ of the Electoral Code, which regulates the establishment and functioning of polling stations abroad. According to the current wording of the article, the number of polling stations abroad is determined by the number of people registered beforehand and the results of previous elections. In the new wording of the article, the authorities are obliged to open polling stations abroad in proportion to the number of citizens present in each country according to data from the MFAEI.

The signatory organisations do not support this initiative for several reasons. The MFAEI's official data, which come from host governments through diplomatic missions and consular offices^[1], cannot serve as a legal basis for establishing the number of polling stations abroad for the following reasons:

- the method used to collect the data is not transparent;
- the final data consist of information submitted by the authorities of other countries, and the accuracy of this information cannot be verified by relevant institutions of the Republic of Moldova;
- different countries have different rules and deadlines for the temporary registration of aliens. Therefore, information provided by foreign governments on the number of Moldovan citizens in other countries will be

distorted;

- using data generated by other countries as the only criterion for opening polling stations abroad is a voluntary limitation of state sovereignty and allows the indirect interference of other countries in the electoral process.
- we can not exclude the possibility that not all countries will be willing to provide information about the number of Moldovan citizens residing in their borders;
- it is not a neutral criterion; on the contrary, it is politicised. The data are collected by the MFAEI, that is, by the Government of the Republic of Moldova, which represents the political will of the parliamentary majority. The political opposition does not participate in decision-making under this system;
- data provided by MFAEI are often irrelevant in establishing of numbers of polling stations and voters, because these data do not reflect the actual number of citizens in each country (for example):

Country	Number of Moldovan citizens, according to MFAEI	Number of voters, parliamentary election 2014	Number of voters, presidential election 2016, first round	Number of voters, presidential election 2016, second round
Belgium	1,364	1,163	1,419	2,995
Belarus	3,481	107	71	116
Ireland	728	1,467	2,079	3,000

Even if the legislative initiative is not successful, Article 29¹ of the Electoral Code should be amended to eliminate situations in which citizens from abroad cannot exercise their right to vote. In the opinion of the signatory organisations,

paragraph (3) of Article 29¹ should be changed in the following way:

"(3) In addition to the polling stations provided for in para. (2), a number of polling stations in other districts shall also be opened with the consent of the relevant authorities of those countries. Polling stations abroad shall be established by the Central Electoral Commission based on the number of voters who participated in the previous election, statistical data from the State Registry of Population on the number of Moldovan citizens who have permanent residency abroad, and preliminary registration of citizens abroad. During the organization and conduct of elections abroad, the Central Electoral Commission shall cooperate with the Government of the Republic of Moldova, the Ministry of Foreign Affairs and European Integration, and the diplomatic missions and consular offices in the relevant countries."

Two new elements are included in this revision.

First, we propose a new concept of shared responsibility among the state institutions involved in the organisation and conduct of elections. Thus, the Association proposes flipping the direction of decision-making between the Government/MFAEI and the CEC regarding the establishment of polling stations abroad. The proportional representation of all political forces in the Commission should ensure an unbiased, transparent and less-politicised process for determining the number of polling stations to open abroad, the distribution of these polling stations between countries, and the number of ballots distributed to these polling stations. In their turn, the Government and the MFAEI should have an executive role in this process and ensure the full execution of CEC decisions, of course in strict compliance with the criteria provided by the Electoral Code. In addition, both the Government and the MFAEI should make necessary information available so that the CEC can provide for election processes abroad.

Secondly, we believe that the following three criteria should serve as a legal basis for determining the number and distribution of polling stations:

- the number of voters who participated in the previous election;
- statistical data from the State Registry of Population on the number of Moldovan citizens with permanent residency abroad;
- preliminary registration by citizens abroad;

Referencing statistical data from the State Registry of Population on Moldovan citizens with permanent residency abroad is a new element^[2]. We believe that it is absolutely necessary to consider the right of citizens who have changed their official place of residence to vote. In our opinion, it is necessary to include these citizens of the Republic of Moldova in the main electoral lists of polling stations abroad.

We believe that these criteria correspond to fundamental elements of the integrity of electoral procedures like: relevance, impartiality and transparency.

In addition to our opinion on Article 29¹ of the Electoral Code of the Republic of Moldova, the signatory organisations have several proposals.

Following the increase in the number of voters abroad during the last election, and in light of the potential growth of the diaspora vote because of the ongoing process of emigration, we propose that extraterritorial polling stations become a separate constituency. It is necessary to establish an Electoral Constituency Council in charge of conducting voting abroad. In this respect, the provisions of Article 27 of the Electoral Code should be changed.

The signatory organisations, in light of the upcoming

presidential and parliamentary elections, consider it necessary to ensure that citizens of the Republic of Moldova abroad have the ability to sign signature sheets in support of designated candidates. Creating a separate constituency for voters abroad would be a first step in this respect. A second step would be to eliminate the need for local public authorities to authenticate signature sheets in national elections. For instance, the most common reason signatures were annulled by the Central Electoral Commission during the verification of signature sheets was that many signatures belonged to people who did not reside in the corresponding district (8,652 cases). At the same time, we warn that there is no list in which LPA leaders note signature sheets with errors. Given the circumstances, we conclude that the procedure was irrelevant, especially in national elections.

We believe it is absolutely necessary to increase the number of ballots that can be delivered to polling stations abroad. The limited number of 3,000 ballots currently provided for in the Electoral Code does not seem to reflect the maximum processing capabilities of a polling station. For instance, the ballots at one of the polling stations in London in 2016 ran out at about 2:00 pm, 7 hours after the opening of the polling station and 7 hours before its closing. This confirms that a well-organised polling station can reasonably process up to 6,000 ballot papers. We propose replacing the number "3000" in the Article 49(3) of the Electoral Code with the number "6000".

In addition, we ask that public and electoral authorities decide on and present the possibilities and opportunities for electronic voting before the next national election, as is stipulated in the CEC's Strategic Plan for 2016-2019. We think that such alternative ways to exercise the right to vote will increase the availability of voting procedures for Moldovan citizens who are abroad or who cannot travel to a polling station on Election Day.

The signatory organizations, as stakeholders, under Article 11(2) and (2¹) of the Law on Transparency in Decision-Making and in accordance with the statutory provisions, propose to initiate public consultations and stand ready to participate and to present recommendations on the bill concerned.

We hereby request to be informed about the results of the review of the demands and recommendations expressed.

Signatory organizations:

1. Promo-LEX Association;
2. Legal Resources Centre from Moldova (LRCM);
3. "ADEPT" Association for Participatory Democracy
4. Center for Analysis and Evaluation of Reforms (CAER)
5. A0 "Terra – 1530"
6. A0 "Always Together"

^[1] <http://socialistii.md/igor-dodon-cere-deschiderea-a-159-sectii-de-votare-in-rusia/>

^[2] <http://www.registru.md/date-statistice/referitor-la-cetatenii-rm-plecati-pestehotare-la-loc-permanent-de-trai>