

THE EFFECTS OF THE MIXED-MEMBER ELECTORAL SYSTEM. CASE STUDY: Situation of the candidate from the national list of the party, who is, at the same time, an independent candidate in the single-member districts

New legal provisions

According to the new wording of the Electoral Code, the Parliamentary elections shall be held on the basis of a mixed voting system, in national and single-member districts. The candidates to the position of Member in the nationwide district shall be registered with the Central Electoral Commission, whereas the candidates to the position of Member in the single-member districts, including independent candidates, shall be registered with the constituency councils.

At the same time, Article 79(6) of the Electoral Code stipulates the following: **the person included in the list of candidates**, on behalf of an election candidate for elections based on the nationwide district, **may also run for elections in single-member district on behalf of the same election candidate or as an independent candidate.**

Opportunities to indirectly fund election campaigns of the parties that put up candidates on the national list, who also are independent candidates in the single-member districts

As a general norm, Article 41(2) of the Electoral Code clearly provides the existence of three separate categories of subjects holding the right to assign candidates:

- political parties;
- electoral blocks;
- citizens, through initiative groups.

When the provisions for the Parliamentary elections were adopted, the legislator established in Article 79 of the Code, as a special rule, that a person may be simultaneously assigned by both political parties or electoral blocks in the nationwide district, and by the citizens of the Republic of Moldova as an independent candidate in the single-member district.

The permission, granted by the law to the candidates on the national list of the political parties, to be at the same time independent candidates in the single-member districts, creates opportunities for indirect and masked funding of the election campaigns of the parties/electoral blocks admitting such situations.

Thus, the rules for funding election candidates in mixed voting system create a favorable legal background for avoiding the reporting of the funds spent for the indirect promotion of the party. This becomes possible when a person candidates both on the list of a party in a nationwide district, and in single-member district, as an independent candidate. In this case, the funds used to promote the candidate, who is seemingly independent, also adds value to the promotion of the party, on the list of which the candidate runs in elections simultaneously and with which the voters can associate the candidate.

Promo-LEX Association believes that **the new legal provisions** allowing the person, as a candidate on the national list, to participate as an independent candidate in single-member

districts, may affect a number of fundamental principles of electoral democracy stated in the Code of Good Practice in Electoral Matters[1]. Point 18 of the Code states that, **equality of opportunity should be ensured between parties and candidates** and should prompt the state to be impartial towards them and to equally apply to everyone the same legislation. Otherwise, the parties, that will take advantage of the new legal provisions, may be favored as against the rest of election candidates. These legal provisions also created favorable conditions for **breaching the principle of freedom of voters to form an opinion**, in the context of a cognitive dissonance caused by the fact that citizens are encouraged to cast their votes for a candidate who is in the national list of a party/election block, on the one hand, and runs concurrently as an independent candidate, on the other hand.

Possibility of double funding the election campaign of the election candidate from the nationwide district and his/her representatives from the single-member districts

*When we analyze this situation from the perspective of observing equal opportunities while financing election campaigns, Promo-LEX Association warns that if a potential candidate, included in the list of a party/electoral block for elections based on the nationwide district, runs also for elections **in single-member district as an independent candidate**, then he/she has the right and possibility to use **simultaneously two election funds**.*

Article 38 of the Code stipulates that the general ceiling for the transfer of funds on the “Electoral Fund” account of the election candidate shall be established by the Central Electoral Commission, using as a basis a coefficient multiplied by the number of **voters from the constituency, where the elections are held**.

This means that the party that submits a list of candidates for the nationwide district, has a general ceiling calculated

on the basis of the total number of voters (in the nationwide district) and, at the same time, the candidate from the single-member district, who is also included in the list of candidates for the nationwide district, has an election fund calculated on the basis of the number of voters from the single-member district, where he/she runs in elections. Providing that a list of candidates for the nationwide district may include 55 candidates, then to promote one candidate from the list, an amount of money, more or less equal to the entire electoral fund for the nationwide district, would be needed, calculated for a single-member district (55 candidates on the list/51 single-member districts). Otherwise, the total number of voters from the nationwide district constitutes the amount of voters from the single-member districts.

Starting from 0.5% coefficient from the average salary per economy used by CEC in the elections of 2015 and 2016, a potential ceiling for nationwide district, in 2017, would be of MDL 86 267 066. When dividing the amount for the promotion of 55 candidates included on the list, the party could spend about MDL 1 568 492. At the same time, given the number of 60 000 voters admitted for a single-member district, the ceiling of candidate's electoral fund in this type of district would be of MDL 1 590 000.

This means that a person, who is on the list of candidates for both nationwide district and single-member district, **contrary to the principle of equal opportunities, could benefit from a double funding, namely of financial resources from the party's electoral fund as well as financial resources from the electoral fund of the independent candidate. These financial resources can represent almost twice the ceiling for one single-member district.** We believe this is not fair to independent candidates from the single-member districts, who are **not** included simultaneously in the lists of candidates for the nationwide district.

To develop this idea, note that even when a party puts up its candidates in the single-member districts, other than those included in the list of candidates for nationwide district, it could have a national general fund/ceiling plus a maximum of 51 funds aimed for single-member districts.

We highlight that according to Article 109 of the Code of Good Practice in Electoral Matters, **in the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election must be annulled.** However, we found that the legal norm itself provides the possibility to exceed the funds.

Moreover, since the law allows it, **the parties may also support / put up in the same single-member districts two candidates** from the nationwide list, one as a representative of the party, and the other one as a pretended independent candidate. This also underlines the principle of equal opportunities and can confuse the voter, compromising in this way their free and conscious choice.

As a conclusion, we are of the opinion that the practice of candidates participating in Parliamentary elections as an independent candidate in the single-member districts, being at the same time included in the list of candidates for the nationwide district, is vicious. First, it creates indirect and unequal opportunities of election campaigns funding for the parties/electoral blocks that will admit such situations, second, it creates preconditions for gaining the right and opportunity to use simultaneously two electoral funds.

Basically, the new legal provisions create conditions to promote practices that affect such fundamental components of electoral democracy as participants' equal opportunities in the electoral process and freedom of voters to form an opinion, which are stipulated in the Code of Good Practice in Electoral Matters.

***In this context,** we want to underline that Law No 154 provides for a three-month term, a period in which the Government should come with proposals to adjust the law in force to the new wording of the Electoral Code, as well as with proposals to improve the latter, if any shortcomings are found in this respect. We would like to mention that this term expires on 21 October 2017 and falls within the minimum one-year term before the elections recommended by the Venice Commission, a term after which it is not recommended to amend the electoral law.*

***We hope that** the authorities will solve this situation and will make the required amendments, so that to hold the next Parliamentary elections without any conflictual, uncertain and interpretable situations. In this way, we reiterate the need to ensure the implementation of the recommendations of the Venice Commission, national and international observers, as well as to consider the formal letters of the Constitutional Court, which were formulated after the analysis of the circumstances in which the 2016 Presidential elections were held.*

Recommendations:

- amend Article 79 of the Electoral Code in order to exclude the possibility for a person, included on the list of candidates of a party/electoral block for elections based in the nationwide district, to run in the single-member district as an independent candidate, but only as a representative of the party or exclusively as an independent candidate;
- amend and supplement the electoral legislation and the electoral normative framework in order to exclude the possibility of double and unfair funding of election campaigns, exclude the provisions that can generate inequalities between the electoral candidates, especially towards the independent candidates from the single-member districts who are not at the same time in the nationwide lists provided by the parties/electoral

blocks, respectively;

- the Parliament and Government should intensify their efforts to adjust the legal framework, following the recommendations developed by Promo-LEX^[2], official addresses of the Constitutional Court, recommendations of national and international observers, etc.

[1]

[http://www.venice.coe.int/webforms/documents/default.aspx?pdf file=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdf file=CDL-AD(2002)023rev-e)

[2]

[https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/?lang=en;](https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/?lang=en)

[https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitutional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en;](https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitutional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en)

[https://promolex.md/10213-efectele-sistemului-mixt-studiu-de-caz-votul-studentilor-si-elevilor-poate-decide-soarta-alegerilor-din-unele-circumsriptii-uninomale/?lang=en;](https://promolex.md/10213-efectele-sistemului-mixt-studiu-de-caz-votul-studentilor-si-elevilor-poate-decide-soarta-alegerilor-din-unele-circumsriptii-uninomale/?lang=en)

[https://promolex.md/10543-apel-public-privind-transparenta-activitatii-comisiei-nationale-pentru-constituirea-circumsriptiilor-uninomale-permanente/.](https://promolex.md/10543-apel-public-privind-transparenta-activitatii-comisiei-nationale-pentru-constituirea-circumsriptiilor-uninomale-permanente/)

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**PUBLIC APPEAL on the
transparency of the activity**

of the National Commission for the Establishment of Permanent Uninominal Constituencies

Civil society organizations from the country and abroad are concerned about the lack of transparency of the activity of the National Commission for the Establishment of Permanent Uninominal Constituencies. Given that there are suspicions of political interference on this Commission, its activity has to be as transparent as possible to ensure permanent access to the information about adopted decisions, as well as open and impartial public consultation of the draft decision on the establishment of uninominal constituencies.

On 20 July 2017, the Parliament of the Republic of Moldova approved Law no. 154 on the switch from the proportional electoral system to a mixed system, despite the lack of a social and political consensus and contrary to the recommendations of the Venice Commission.^[1] The law stipulated, among others, the creation of an independent Commission for establishing permanent uninominal constituencies (hereinafter “the Commission”) within 30 days from the entry into force of the law. On 6 September 2017, with a delay of more than two weeks, the Government created the Commission.

Previously, on 23 August 2017, the Government approved the Commission’s Regulation, although the Electoral Code provided that the Commission would act on its own regulation approved by the Government. This was criticized by several civil society organizations in Moldova because it is a direct

interference with the Commission's work and violates its independence.[\[2\]](#) The risk of political influence in the process of creating uninominal constituencies was also underlined by the Venice Commission in its opinion on the amendment of the electoral system in the Republic of Moldova in June 2017.[\[3\]](#)

According to the Commission's Action Plan,[\[4\]](#) it will hold 6 meetings and subsequently on 24 October 2017 it will approve the decision on the establishment of uninominal constituencies to be submitted to the Government. Out of the 6 meetings envisaged, 3 have already taken place. So far, no minutes of the meetings have been published on the website of the State Chancellery, which according to point 14 of the Commission's Regulation, is the institution that provides its Secretariat. Moreover, the information on discussions about the meetings and decisions adopted by the Commission is not available for the interested public.

According to Law no. 239 on transparency in the decision-making process of 13 November 2008 and Government Decision no. 967 on the public consultation mechanism with civil society in the decision-making process of 9 August 2016, the public authorities are obliged to ensure the transparency of the decision-making process at all stages, to ensure the access to information and to ensure the public consultation on the draft decisions.

In view of the above, namely the context in which the electoral system was changed and in which the Commission was created, the way in which the Commission's Regulation was adopted, the Commission lacks already public confidence. This is why the transparency and professionalism requirements to the work of this Commission are even stricter. Otherwise, the suspicions that it was created for the benefit of the parties which voted for the change of the electoral system, will be confirmed.

In view of the above, as well as of the importance and impact of the decisions adopted by this Commission and the short time limits for its activity, we call on the Commission for the Establishment of Permanent Uninominal Constituencies and the State Chancellery to:

1. urgently publish the minutes of all Commission meetings and any other information relating to the Commission's work on the State Chancellery website;
2. publicly consult the draft decision on the constitution of uninominal constituencies by publishing an announcement for submission of comments on the draft decision before its adoption within a reasonable deadline;
3. publish the summary of comments and objections, as provided by the legislation on decisional transparency.

SIGNATURES:

1. Association "AssoMoldave", Rome, Italy
2. Association "Baștina – Comunitatea Cetățenilor Moldoveni și nu numai", Padova, Italy
3. Association "Dacia", Venice, Italy
4. Association "Gente Moldava", Venice, Italy
5. Moldovan-Italian Volunteer Association "Renașterea", Parma, Italy
6. Association for Participatory Democracy (ADEPT)
7. Association for Efficient and Responsible Governance (AGER)
8. Promo-LEX Association
9. CPR-Moldova
10. Legal Resources Centre from Moldova (CRJM)
11. Center Partnership for Development (CPD)
12. Community of Bessarabians in Ireland "Moldova Vision", Dublin, Ireland
13. Institute for Public Policy (IPP)
14. Transparency International-Moldova
15. Moldovan-Greek Friendship Union "Alexandru Ipsilantis",

Atena, Greece

[1] Venice Commission, OSCE/ODIHR, Opinion on the electoral system for the election of the Parliament, CDL-AD(2017)012, 19 June 2017, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e).

[2] Promo-LEX, Legal Resources Centre from Moldova, Declaration: The implementation of the mixed electoral system starts late, in violation of the law and undermines the independence of the Commission for the constitution of uninominal constituencies (Romanian only), 21 August 2017, <https://promolex.md/10189-opinia-asociatiei-promo-lex-cu-referire-la-proiectul-regulamentului-initiat-de-ministerul-justitiei-privind-activitatea-comisiei-de-delimitare-a-circumscripțiilor-uninomiale/>.

[3] Venice Commission, OSCE/ODIHR, Opinion on the electoral system for the election of the Parliament, CDL-AD(2017)012, 19 June 2017, page 5, p. 14.

[4] http://brd.gov.md/sites/default/files/planul_de_actiuni_calenduristic.pdf.

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REPORT – Political party financing in the Republic of

Moldova. Semester I, 2017



THE EFFECTS OF THE MIXED-MEMBER ELECTORAL SYSTEM. CASE

STUDY: Limitation of the Constitutional Right to Elect of the Voters with no Domicile or Residence

According to the State Register of Voters, 155 683 voters with no domicile or residence were registered in the Republic of Moldova as of 1 September 2017[\[1\]](#). These 155 683 citizens eligible to vote account for 4.78% of the total number of 3 255 361 voters included in the State Register of Voters (as of 1 September 2017)[\[2\]](#). Promo-LEX Association considers it necessary to explicitly regulate the status of this category of voters in the context of amendments to the electoral legislation and to make sure they are not excluded from the electoral process and not deprived of the right to vote. However, new legislative provisions adopted through Law No 154 of 20 July 2017, unjustifiably limit the constitutional right to elect of the voters with no domicile or residence.

Voting at place of domicile or residence

According to the definitions given in the Electoral Code, domicile refers to a person's permanent place of living, while residence refers to the temporary place of living, both confirmed in the Identity Card.

Article 9 of the Electoral Code, as a general rule, provides in para. (1) that the voting right shall be exercised in the locality where the voter has a domicile, unless otherwise stipulated in this Code. Paragraph (2) of the same article stipulates that in the case when the voter has a domicile and a residence at the same time during the period of the residence's term validity, the voter votes in the locality in which he/she has his /her residence.

Following the amendments to the Electoral Code made on 20 July 2017, Article 87(4) states that the voter shall vote at the polling station situated in the single-member constituency **he/she has domicile in**. The voters who **do not have domicile** in the corresponding constituency **shall not participate** in the parliamentary elections in single-member constituencies.

We should note here that the only limitations of the right to vote permitted by Article 38 of the Constitution are the age limit of 18 years a person shall turn before the voting day inclusively and ban from voting in the manner by the law. Article 13 of the Electoral Code elaborates this thesis, expressly stating that those declared incapable by a final court judgement may not vote. It also reiterates the age limit and interdictions stipulated by law. We think that such an interdiction provided by the law has to be express, direct, clear and aligned to the constitutional provisions. The legislator can not accept wordings and legal provisions that could be arbitrarily interpreted and applied.

Thus, we believe that the Electoral Code provision stipulating that a person has to have a domicile in order to exercise his/her right to vote in a single-member constituency, is unconstitutional, discriminatory and confining.

Voting in the nationwide constituency and single-member constituencies

Note that the **new wording of the Electoral Code does not provide for the voting procedure in the nationwide constituency for persons with no domicile** confirmed in the Identity Card. Article 1 of the Code stipulates that:

- nationwide constituency is a national-level electoral constituency, where election of the Members of Parliament is organised and conducted [\[3\]](#) on the basis of party-list proportional representation voting system;
- single-member constituency is an electoral constituency,

where election of the single mandate of a Member of Parliament is organised and conducted on the basis of majority vote.

Further on, Article 4(2) of the Electoral Code provides that during the parliamentary election each voter has the right to vote using two ballot papers – one for the nationwide constituency and the other for the single-member constituency. Thus, given the provisions of Article 87(4), which state that the **voters who do not have domicile** in the corresponding constituency **shall not participate** in the parliamentary elections in single-member constituencies, the following question arises – to what extent does this regulation refer to the voting in the nationwide constituency? In other words, can voters with no domicile vote using one single ballot paper – the one for the nationwide constituency? Theoretically, this can be achieved if the electoral bodies use two voter lists, since, according to Article 53(1) of the Electoral Code, voters shall confirm the receipt of the ballot by signing in the voter list next to his/her name. However, using two lists of voters will hamper the activity of electoral bodies and can lead to various technical and human errors in handling the voter lists and ballot papers.

Promo-LEX Association finds that *amendments regarding the participation voters with no domicile in the election in various types of constituencies, introduced in the Electoral Code, are not explicit and leave room for interpretation. A possible permission to vote only in the nationwide constituency would affect the value of options expressed by the citizens, and thus, the principle of equality of votes enshrined in the Constitution. Besides, this would also violate the Guidelines of the European Commission for Democracy through Law, according to which, each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes*[\[4\]](#).

The previous practice of participation of voters with no domicile or residence in the Parliamentary elections, held on the basis of proportional representation voting system

During the previous elections held on the basis of proportional representation voting system in a single nationwide constituency, the provisions of the Electoral Code allowed the voters with no domicile or residence to vote in a variety of ways.

The first one implied voting on the basis of additional lists. Article 53(2) expressly provides that voters who do not have a registration at a domicile or residence can vote on the basis of additional lists which will include voter's name, surname, date and place of birth, *the last domicile in the Republic of Moldova*, personal identification number (IDPN).

These provisions are in contradiction with those of Article 87(4) of the Code, thus, according to the new regulations, if the voter does not reside in the corresponding single-member constituency, he/she cannot vote.

The second way – is to vote on the basis of the main lists. In this respect, Article 39(8) of the Code provides that persons holding the right to vote who have changed their place of residence after the last elections, have the right 30 days before the next elections at the latest to declare their new place of residence to the local public administration authority so as to be included in the lists of voters of the polling station of the place of stay. The appropriate local public administration authorities will deliver without delay the respective information to the Central Election Commission (CEC).

According to the definition in the Electoral Code, the statement on the whereabouts is a procedure through which citizens with the right to vote declare their location on the day of election. However, giving the statement on the

whereabouts does not mean declaring the domicile or residence. Respectively, statement on the whereabouts on the day of election can not be regarded as equivalent to the domicile. Nonetheless, when extensively interpreting the cited regulation in the context of the previously used proportional representation voting system, we can conclude that in the absence of the need to expressly indicate the domicile and in the conditions of a single nationwide constituency, this mechanism could be used by persons, who, for some reason, are not registered at a permanent place of residence on the election day, to exercise their constitutional right to vote. Thus, according to the current provisions, introduced in the context of changing the electoral system from the proportional to the mixed-member one, the voters can not use the mechanism provided in Article 39(8) anymore.

Correspondingly, in case of the rules provided in Article 87(4) of the amended Electoral Code, the absence of a valid domicile on the election day makes it impossible to apply the provisions of Article 39(8).

Limitation of the right of the voters with no domicile or residence to sign in support of the candidates

It is worth noting, that by virtue of the new provisions of Article 80 of the Electoral Code, the citizens eligible to vote, who have no residence or domicile, would not be able to sign in support of a candidate during parliamentary elections, since para. (1) stipulates that in order to be registered by an electoral constituency council, a candidate for a single-member constituency should submit (on the basis of Articles 42 and 43) signature sheets containing signatures of the supporters eligible to vote, who reside in the single-member constituency where the candidate intends to run for election.

In conclusion, we believe that the Electoral Code provision stipulating that a person has to have a domicile in order to exercise his/her right to vote in a single-member constituency

is unconstitutional, discriminatory and confining, thus limiting the right to vote for about 155 683 of voters with no domicile or residence, accounting for 4.78% of the total number of 3 255 361 voters included in the State Register of Voters.

Recommendations

- amend Article 87(4) of the Electoral Code in order to exclude the provision stipulating that a person has to have a domicile, within the meaning of the Code, in order to exercise his/her right to vote;
- legislator should treat the mechanism of exercising the right to vote in nationwide or single-member constituency during parliamentary elections accurately and in compliance with the constitutional norms;
- amend Article 80 of the Electoral Code in order to exclude the conditions limiting the right of the voters with no domicile or residence to sign in support of the candidates.

[1] Some of them could be permanently residing abroad, however the available public data do not allow identifying their exact number. Besides, Promo-LEX Association reiterates its request for the voters who are permanently residing abroad to be included in the basic lists of voters drawn up for voting in the polling stations opened outside the country.

[2] <http://cec.md/index.php?pag=news&id=1042&rid=20576&l=ro>

[3] We think that the reference made to the parliamentary elections only is restrictive, since both elections of the President of the Republic of Moldova and national referendums are held in the national administrative electoral unit.

[4] [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

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REPORT No 1 – Monitoring the Transparency of The Activity Of Level-Two Local Public Administration and Gagauzia ATU



Statement on the amendment of the electoral system in the Republic of Moldova HDIM 2017

Ladies and Gentlemen,

On July 20, current year, the Moldovan Parliament has adopted the law No. 154 on the switch from the proportional electoral system to a mixed system for electing the MPs. The signatory organizations recognize the right of the Moldovan Parliament to amend the electoral system.

However, the organizations underline that such a dramatic amendment of the electoral system should be done in strong correlation with the national standards established in the Constitution of the Republic of Moldova as well as the international commitments and recommendations of the UN, Council of Europe/Venice Commission, OSCE/ODIHR.

The signatory organizations draw the attention that the electoral system was amended without taking into account the main recommendation of the Venice Commission, which pointed out that the switch from the proportional to mixed voting system is not advisable for the Republic of Moldova.

In addition, the organizations want to pay your attention to a series of important deficiencies in the said law, such as:

1. The election of the MPs through a single round election, as it is provided in the adopted law, will ensure a lower representativeness of the Parliament, compared to the election of the President and of the mayors, which take place in two rounds. Under such circumstances, the

signatory organizations consider that the Parliament has infringed the Article 60 of the Constitution that establish the Parliament as a supreme representative body;

2. The organizations are very much concerned with the violation of the principle of equality of votes provided in the recently adopted law. This observation is based on the fact that, the minimum threshold to enter the Parliament on the basis of the list of candidates submitted by the political parties in the nationwide constituency will be higher than that to be recorded in certain single-member constituencies. For example, at a minimum electoral score of 6% and a participation rate of 50% of voters, a political party will be able to delegate only 3 members to the Parliament from the nationwide list of candidates, which equals about 28,000 votes per mandate. In the same time, in the single-member constituencies, at the same participation rate, an MP would be elected with only about 3-5 thousand votes; A special concern also resides in the fact that the principle of equality of votes wouldn't be possible to be enforced in the constituencies created on the territory of Gagauz autonomy, Transnistrian region as well as for the voters residing abroad;
3. In the light of the above mentioned deficiency, the signatory organizations regret that the Moldovan Parliament ignored the recommendation of the Venice Commission on the lowering of the electoral threshold from the 6% barrier. It should be underlined that, under the adopted mixed electoral system, the threshold for political parties to enter the Parliament was actually doubled. Thus, compared to the previous proportional system, under the new electoral system, a political party with 6% popular support at the national level will be able to delegate only 3 MPs;
4. The organizations are extremely concerned with the fact that the adopted law excludes from the electoral process

about 5% of the voters which equals approx. 158,000 voters who have neither domicile nor residence;

5. The last significant deficiency I want to bring to your attention refers to the ignorance of the Venice Recommendation which called the Parliament to establish an independent commission for drawing the boundaries of the single-mandate constituencies. On contrary, the Parliament empowered the Government, which is a political body subordinated to the Parliamentary majority, to set up the commission for the establishment of the single-member constituencies. Unfortunately, the Parliament also failed to include the boundaries of the single-member constituencies in the Electoral Code, as it was recommended by many civil society organizations.

In conclusion, given the infringement of the above mentioned principles and standards, the signatory organizations address the Moldovan authorities to withdraw the law on the amendment of the electoral system and return to a proportional electoral system.

The undersigned organizations also address to the representatives of the participating states and other international stakeholders the following recommendations:

1. To concede and support any legal request initiated within the country for the abolition of the mixed voting system and the return to a proportional voting system;
2. To monitor the implementation of the recommendations of the Venice Commission and OSCE/ODIHR produced in connection with the recently held elections and the amended electoral system.

Signatory organization:

- Promo-LEX Association
- Institute for Development and Social Initiatives Viitorul (IDIS Viitorul)

- Legal Resource Centre from Moldova
- Association of Independent Press
- European Institute of Politics and Reforms
- Transparency International Moldova
- Association for Participatory Democracy
- East Europe Foundation

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THE EFFECTS OF THE MIXED-MEMBER ELECTORAL SYSTEM CASE STUDY: STUDENTS' AND PUPILS' VOTE CAN BE FATE-CHANGING AT THE ELECTIONS IN SOME SINGLE-MEMBER CONSTITUENCIES

The votes cast by students and pupils eligible to vote at the elections in the Republic of Moldova has always been a matter for public discussions. The Promo-LEX election observation missions recommended the authorities more than once to give up the special voting regime for students and pupils whenever there are parliamentary elections, and make them abide by the same rules as the ones imposed for the other categories of voters. The new amendments to the Electoral Code still left the special provisions for students and pupils in place. Should these provisions be applied in bad faith, this might serve as an entry point for the results in single-member constituencies formed in settlements where there is a big number of voters to be tampered with.

Preferential Voting Conditions for Students and Pupils, Compared with Other Voter Categories

Article 87(2) of the Electoral Code provides that **students and pupils eligible to vote may cast their vote in any polling station from the settlement that they study in**. To exercise this right, they must meet the following requirements:

1. a) show their ID card and the loose leaf;
2. b) show their student/pupil card of the educational institution **from that particular settlement that they study in**;
3. c) fill in and sign a sole responsibility declaration not to cast multiple votes, the criminal liability in case this obligation is violated being explained to them.

The Electoral Code does not provide, however, for rules to ensure the direct connection between the place where the educational institution is and the single-member constituencies where that institution is located, the connection existing only between the institution and the settlement. Thus, in big cities, such as Chisinau, where there will be certainly several single-member constituencies, students or pupils might vote in the polling stations opened around the educational institution, student dormitories, in the area where they are renting an apartment or in any other part of the city.

The Electoral Potential of Students and Pupils Eligible to Vote

At the parliamentary election of 30 November 2014, a total number of 390 985 voters out of the 618 176 voters on the main lists of voters, which is about 63.25%[\[1\]](#), cast their vote in Chisinau constituency (not counting the extraterritorial polling stations).

Article 74(4)(a) provides that the number of voters assigned

to the single-member constituencies on the territory of Moldova shall be relatively the same – somewhere between 55 000 and 60 000 eligible voters. Thus, Chisinau Municipality is expected to have about 10 single-member constituencies.

The official statistics show that in Chisinau Municipality, during 2016-2017, there were 66 691 students in universities[2] and 18 190 students in vocational education training schools.[3]

Risks

Considering the aforementioned, the more than 80 000 students and pupils eligible to vote represent a major electoral potential which, by casting their vote in a compact fashion, could play a fateful role in single-member constituency elections.

In this situation and at this moment in time, there are legal grounds for some political forces to be tempted to tap this electoral potential by incetivising and controlling the migration of students and pupils from one single-member constituency to another one located in the same settlement. Students and pupils could be persuaded to migrate within Chisinau Municipality on Election Day in two ways:

1. Voluntarily, based on preferences. One could make a candidate, who – for different reasons – is attractive for students and pupils, run in the electoral race. Accordingly, to help this person win the election, the students from Chisinau Municipality could go and vote voluntarily on the territory of the single-member constituency concerned.
2. Involuntarily, being determined to do so by external factors. Calculating the odds of winning and attracting an additional number of students and pupils eligible to vote by bribery (providing organised transportation to travel to some particular polling stations in different

constituencies, giving electoral gifts and organizing concerts, etc.), are major risk factors that could lead to the results in those particular single-member constituencies being influenced.

Thus, the uncontrolled or purposefully directed student and pupil migration on Election Day in Chisinau Municipality could influence significantly the election results in single-member constituencies.

Recommendations

1. Amend Article 87(2) of the Electoral Code by leaving out the preferential right granted to students and pupils to vote in any polling station in the settlement where they study and return, thus, to the general voting rules for them to vote in the constituency that they would be assigned to according to domicile;
2. Amend Article 87(2) of the Electoral Code by ensuring there is a link between the educational institution and the single-member constituency;
3. Hold the election on a Saturday to allow, thus, students travel to where their domicile is to exercise their right to vote and have enough time to come back to Chisinau to go to classes;
4. Grant facilities in terms of public transportation tickets to make it, thus, easier for the students and pupils to travel to where their domicile is and exercise their right to vote.

[1]<http://cec.md/index.php?pag=news&id=1548&rid=12866&l=ro>

[2]http://www.statistica.md/public/files/publicatii_electronice/Educatia/Educatia_RM_2017.pdf

[3]http://statbank.statistica.md/pxweb/pxweb/ro/60%20Statistic a%20regionala/60%20Statistica%20regionala__07%20INV/INV050600r eg.px/table/tableViewLayout1/?rxid=b2ff27d7-0b96-43c9-934b-42e

Declaration: Implementation of the mixed electoral system starts late, in violation of the law, and undermining the independence of the Commission for the Establishment of Single-Member Constituencies

Chisinau, 21 August 2017

The Parliament of the Republic of Moldova approved on 20 July 2017 the Law No 154 on Amendments and Addenda to Some Legislative Acts^[1], which changed the electoral system by switching from the proportional electoral system to a mixed one.

Article III of the Law No 154 obliges the Government to establish the National Commission for the Establishment of Permanent Single-Member Constituencies within 30 days, term which expired on 20 August 2017. Contrary to the obligation mentioned above, the **Government did not establish the National Commission within the deadline stipulated by the Law.** However,

on 18 August 2017, two days before the deadline, the Ministry of Justice launched for public consultations a draft Regulation^[2] on the operation of the National Commission for the Establishment of Permanent Single-Member Constituencies. **The Regulation provides neither the nominal structure of the Commission, nor the duration of its mandate.** Instead, the draft Regulation stipulates how the Commission should be established and organised, the rights and obligations of its members, the duties of the Commission's Chairperson and Secretary^[3]. Concurrently, the draft establishes how to organise and conduct the Commission's meetings, and how to adopt its decisions.

Article 74(3) of the Electoral Code, in the version issued after the adoption of Law No 154 of 20 July 2017, states that the **independent Commission for the Establishment of Single-Member Constituencies shall act under its own regulation, approved by the Government. Accordingly, the Government's initiative to regulate the activity of a commission, which, pursuant to the law, is presumed to be independent and should draw up its own Activity Regulation, which should only technically be approved by the Government, is nothing but a direct interference in the work of this body and an intention to suppress its independence.** Pursuant to Article III of Law No 154 of 20 July 2017, the Government, until 20 August 2017, was supposed only to approve the nominal structure of the independent Commission and set its activity mandate over time, as well as the deadline within which the established Commission will propose to the Government its own Activity Regulation. In addition, Article 3 of the draft Regulation, stating that the Government shall approve the Commission structure at least 14 months before the Parliament's mandate expires, is currently in direct contradiction with Article III of the Law No 154 of 20 July 2017.

We reiterate the position^[4] of Promo-LEX Association, that granting the right to set up permanent single-member

constituencies to a political body, namely the Government, which is subordinated to the parliamentary majority, and the failure to include the boundaries of the single-member constituencies in the Electoral Code are major deficiencies of the mixed electoral system approved by Law No 154 of 20 July 2017. Besides, we point out other shortcomings of the draft Regulation to be taken into account by the established Commission when drafting its own Regulation:

Contrary to the legal provisions laid down in the Electoral Code, the Government introduced a new position for the Commission's members, namely: a representative of the political party that nominated a candidate who participated in the second round of the last presidential election (p.3, letter f);

1. The member revocation procedure is not described explicitly and definitively. The initiation is made by 1/3 of members, and the revocation itself is not regulated (p.12).
2. Point 18 stipulates the position of Chairperson and Secretary of the meeting (in the absence of the Commission Chairperson), but a procedure for their election is not described. On the other hand, p.18 rule comes in direct contradiction with p. 27, which establishes that if the Commission Chairperson is unable to attend the meeting, his/her duties should be fulfilled by the Secretary of the Commission.
3. Admitting the adoption of Commission's decisions by the majority of present members would allow adopting decisions by almost one-fourth of the members of this body (p. 29). Hence, the recommendation is to adopt decisions by the majority of the elected members.
4. Given that the Commission's basic task is to establish permanent single-member constituencies, we deem it appropriate to delimit or even exclude situations and decisions that can be approved by secret ballot (p.30).

5. The limitation of the number of representatives of civil society organisations to only one representative compared to academics, who seem to be represented by 3 people, raises concerns.

However, we welcome and recommend that, when developing its own Regulation, the Commission take into account the suggestion of the Ministry of Justice to include in its composition members with consultative voting rights from other relevant entities: central public authorities, extra-parliamentary political parties, civil society organisations, etc. We also believe that developing a Calendar Plan is a useful tool that can be taken forward, but it is better for it to be mandatory for a good and orderly operation.

Signatories:

Promo-LEX Association

Legal Resources Centre from Moldova (LRCM)

[1]<http://monitorul.md/index/viewpdf/id/1982/?lang=1>

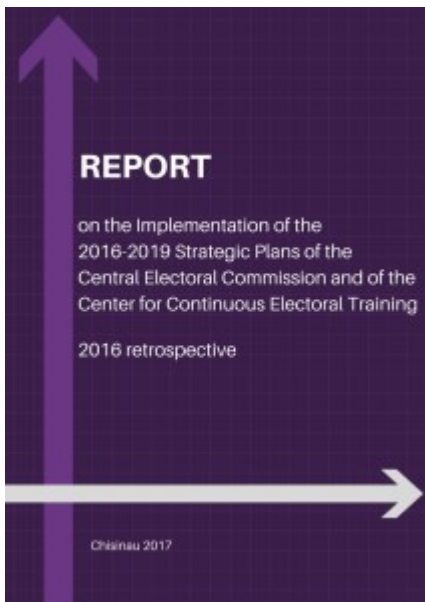
[2]http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/august/2017.08.18_Regulament_CNCCU_v3_1.pdf

[3]http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/august/NF2017.08.18_Regulament_CNCCU_v3.pdf

[4]<https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/>

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REPORT on the Implementation of the 2016-2019 Strategic Plans of the Central Electoral Commission and of the Center for Continuous Electoral Training. 2016 Retrospective





STATEMENT on the Amendment of the Voting System of the Members of Parliament

Promo-LEX Association regrets the amendment of the electoral system and adoption on July 20, 2017^[1] of the draft law No 60 of 14.03.2017 on the switch from the proportional electoral system to a mixed system for electing the MPs of the Republic of Moldova. On the same day, the Law was promulgated by the President of the Republic Moldova and it entered into force on 21 July 2017 by publication of the Law No 154^[2] in the Official Gazette. In this context, we would like to recall that Promo-LEX Association, as well as other non-governmental organizations, have requested the Parliament of the Republic of Moldova to adopt any amendments to the electoral system in view of its implementation at the parliamentary elections of 2022, i.e. over one ordinary electoral cycle^[3].

At the same time, **Promo-LEX Association draws the attention**

that the electoral system was amended without taking into account the main recommendation of the Venice Commission, which pointed out that the switch from the proportional to mixed voting system is not advisable for the Republic of Moldova[4]. Moreover, the Venice Commission has reiterated and drawn the attention in its opinion that as early as in 2003 they recommended the Republic of Moldova to switch from the proportional electoral system with a single constituency to a proportional system with multi-member constituencies[5].

A conclusion similar to the one stated in the opinion of the Venice Commission was formulated in the 'Electoral System Design in Moldova' study[6] drafted by Promo-LEX. We would like to recall that according to the above study, the most appropriate option for the Republic of Moldova would have been the implementation of a proportional electoral system with multi-member constituencies and open lists of candidates. In this context, **Promo-LEX Association reaffirms its support for switching back to the proportional electoral system by setting up multi-member constituencies and open lists of candidates, but it is guided by the rule of law.**

Although the Law No 422 on the 'Amendment of the Electoral System' contains certain provisions promoted by the Promo-LEX Association inclusively, such as the mandatory setting up of constituencies for the Transnistrian region and for the citizens living abroad, granting technical and financial incentives to ensure gender equality by the political parties, increasing the number of ballot papers for polling stations abroad, etc., **Promo-LEX Association believes that the said Law still contains a series of important deficiencies** such as:

- Empower a political body, namely the Government, which is subordinated to the parliamentary majority, to set up permanent single-member constituencies, as well as failure to include the boundaries of the single-member constituencies in the Electoral Code;
- Deny the provisions of Article 60 of the Constitution

establishing that the Parliament is the supreme representative body and the election of the MPs in a single round of election will ensure a lower representativeness compared to the election of the President of the country and the mayors, which take place in two rounds, specifically to increase the representativeness;

- Establish the preconditions for violation of the principle of equal votes, as the minimum threshold to enter the Parliament on the basis of the list of candidates submitted by the political parties in the nationwide constituency will be higher than that to be recorded in certain single-member constituencies (for example, in case of 50 percent participation of the voters and a minimum electoral score of 6 percent or about 84,000 votes obtained by a political party, the latter could delegate only 3 members to the Parliament, i.e. about 28,000 votes for a member, while in the single-member constituency at the same participation rate a member could be elected with about 3-5 thousand votes or even less);
- Ignore the recommendation of the Venice Commission on the lowering of the electoral threshold, or de facto double increase of the threshold. Compared to the previous proportional system, when a political party with popular support of 6% could delegate at least 6 MPs, according to the new electoral system, the same political party with similar popular support at the national level will be able to delegate at least 3 MPs, i.e. two times less;
- The Law No 422 does not provide for a clear voting mechanism for about 158 thousand voters [\[7\]](#), who have neither domicile nor residence;
- The lack of a mechanism for exercising the right to vote on the basis of the voting right certificate at least in the nationwide constituency by the voters who will not be on the territory of the single-member district on the

election day;

- Diversify the electoral accountability mechanism for certain election candidates registered in the single-member districts, who will be obliged to submit the documents required for registration to the constituency councils, and the financial reporting documents to CEC, while the latter can cope with both challenges where the optimal working conditions are ensured;
- The permission, granted by the law to the candidates on the national list of the political parties, to be at the same time independent candidates in the single-member districts, creates opportunities for indirect, unequal and unfair funding of the election campaigns of the parties admitting such situations;
- The lack of a clear legal mechanism through which the constituency councils for the management of the electoral process within single-member districts shall be established (on the basis of the communities from several level-two administrative-territorial units).

In addition to the above-mentioned deficiencies, **the mixed voting system may lead to a continuous series of partial elections in the single-member districts, it will increase the costs for organizing the parliamentary elections and election campaigns, the risk of corrupting the voters, especially in the single-member districts, the risk of “corrupting” the MPs by “selective allocation” of the financial resources from public money to fulfill their election promises on the territory of the single-member district of which they were elected, as well as the risk of excessive fragmentation of the electorate, and the emergence of social and ethnic conflicts. In the context of the aforesaid, Promo-LEX Association believes that the recently adopted mixed electoral system has several disadvantages compared to the proportional system, especially the proportional system with multi-member constituencies and open lists of candidates.**

In conclusion, Promo-LEX Association, as a political organization, has reported and will continuously report the deficiencies observed in the proposed drafts, as well as in the already adopted laws and regulations relating to the administration and management of the electoral process. At the same time, **Promo-LEX expresses its willingness to help to eliminate or minimize the negative effects and deficiencies observed or found in the Electoral Code and other regulatory acts.** Promo-LEX Association will continue to monitor the exercising of the right to vote and to be elected irrespective of the implemented voting system.

[1] Legally performed duty on the basis of Article 72(1) and Article 72(3)a) of the Constitution

[2] <http://monitorul.md/index/viewpdf/id/1982/lang/1/>

[3]

<https://promolex.md/8021-mai-multe-organizatii-neguvernementale-solicita-parlamentului-sa-urgenteze-procedurile-de-modificare-a-legislatiei-electorale-in-stricta-conformitate-cu-adresele-curtii-constitutionale-si-recomandaril/>

[4] [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e_pct.15](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e_pct.15)

[5] [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e_pct.34](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e_pct.34)

[6] https://promolex.md/wp-content/uploads/2017/05/sistem_electoral_R0_web.pdf

[7] <http://cec.md/index.php?pag=news&id=1042&rid=19677&l=ro>

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