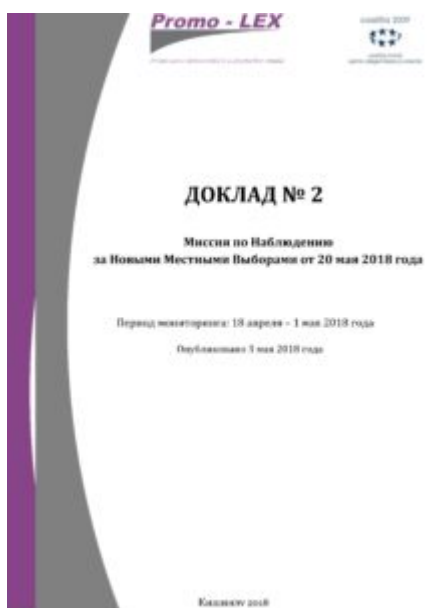
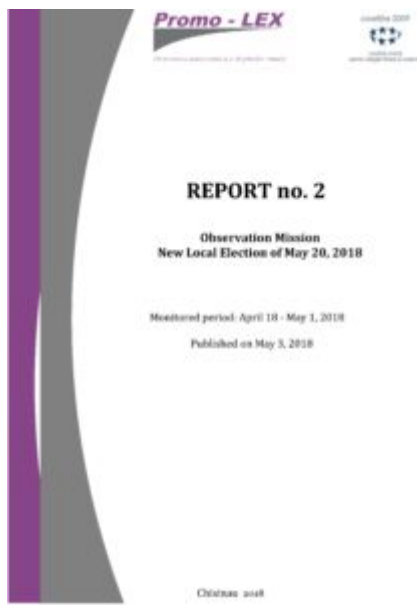
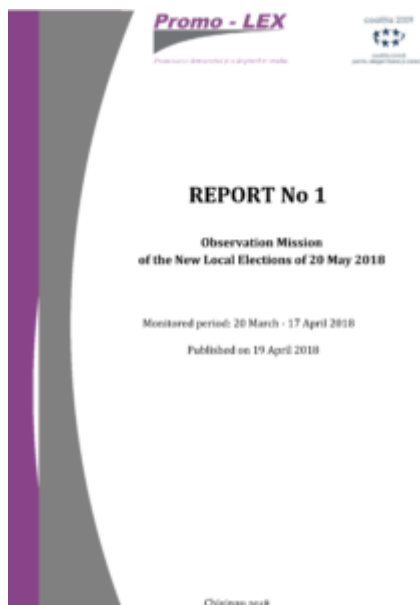


Report no. 2 | Observation Mission New Local Election of May 20, 2018



REPORT No 1 | Observation Missions of the New Local Elections of 20 May 2018



REPORT on the outputs of the <http://intruniri.chisinau.md/> platform, during 2011-2017



**Statement by the EaP CSF
Moldovan National Platform on
the increasing tendencies of
unjustified limitation of the
right of Moldovan citizens to
initiate and conduct**

Legislative referenda

14 March 2018

The current national legislation of the Republic of Moldova provides for the right of the citizens to initiate national and constitutional referenda. Article 155 of the Election Code stipulates that the national referendum may be, inter alia,[\[1\]](#) initiated by at least 200 000 citizens who are eligible to vote. In case of a constitutional referendum, provisions of Article 141 clause paragraph (1) of the Constitution shall be. According to this article, the citizens initiating the review of the Constitution have to come from at least half of the second level administrative units and at least 20000 signatures must be registered in each of them in support of this initiative. Thus, since there are at least 36 administrative units of the second level,[\[2\]](#) in order to initiate amending the Constitution, at least 20 thousand signatures – 18 administrative units of the second level are required, which represents at least 360 000 signatures, well above the threshold of 200.000 signatures.

We can infer that by introducing a minimum number of signatures necessary to be collected to initiate an ordinary legislative initiative or to amend the Constitution, the legislator sought to guarantee the right of citizens to initiate different types of national referenda and to ensure the direct exercise of sovereignty.

On July 27, 2017, the Constitutional Court of the Republic of Moldova declared unconstitutional[\[3\]](#) the provisions of the current Article 155 paragraph 2 of the Election Code (after republishing, the numbering of the articles was modified), which provided the President of the Republic of Moldova, the Government and 200.000 citizens with the right to initiate any type of referendum.

On January 12, 2018, the Central Electoral Commission (CEC) rejected[\[4\]](#) the request for registration of an initiative group for initiating a national legislative referendum to repeal the amendments and addenda adopted by the Law No 154/2017, by which the mixed electoral system for the parliamentary elections was introduced. The Commission substantiated its decision by formally invoking procedural deficiencies admitted by the group members, although they were qualified by some civil society[\[5\]](#) organisations as insufficient for the rejection.

Going even further, by this decision, the Commission questioned the citizens' right to initiate legislative referenda: 'it is not clear whether a legislative referendum on the approval of the constitutional laws adopted by Parliament, as required by Article 157 (1) clause b) of the Election Code can be organised. Therefore, this article, which sets out an exhaustive list of the issues that may be subject to the national referendum, does not provide for the possibility of organising another legislative referendum than the one on the approval of the laws adopted by the Parliament. It is also stipulated that 'other important issues of society and the state' provided for by Article 157 paragraph (1) clause d) include both the consultative and the legislative referendum'.

On February 15, 2018, the Ministry of Justice of the Republic of Moldova initiated the public consultation[\[6\]](#) on a draft law aimed at amending the Election Code by granting the Parliament the exclusive right to initiate the national legislative referendum.[\[7\]](#) In this context, several civil society organisations have issued opinions[\[8\]](#) on this draft law[\[9\]](#) and have 'expressed their disagreement with the proposed amendments to the draft law. The people of the Republic of Moldova, as the sole sovereign power holder, cannot be deprived of the right to initiate any type of referendum. Moreover, we **there are a number of artificial barriers**

unnecessary in a democratic society, which seem to be able to impede the intentions of exercising direct democracy by the people.

On March 7, 2018, in violation to the legislation in force,[\[10\]](#) the Legal Commission of the Moldovan Parliament examined the CEC's request for official interpretation of the Election Code and issued an advisory opinion, even though the Commission requested a formal interpretation. According to the Advisory Opinion No. CJ-10/74 as of March 7, 2018,[\[11\]](#) the Parliament is the supreme representative body of the people and the sole legislative authority of the state, empowered with the right to decide on the electoral system, the right of citizens to proceed with a legislative referendum not regulated by the Constitution.

On March 12, 2018, the Central Electoral Commission rejected[\[12\]](#) a new request from the initiative group to organise a national legislative referendum on the adoption of a law on the electoral system, which stipulates that the Parliament's elections would be based on a proportional voting system. Although the legal framework has not been amended, the CEC justified its refusal to register the application by invoking the (non-existent) constitutional jurisdiction in the field of initiating the national legislative referendum, in the absence of the legal norms on the initiation of the referendum by the citizens, as well as by the international regulations on not modifying the electoral system within at least one year before the ordinary elections.

In conclusion,

Recalling that the referendum is an instrument of direct democracy, through which citizens can express their views on issues of national interest;

Calling for attention to consistently conspicuous actions by a number of public authorities aimed at limiting the exercise of

constitutional rights by the citizens of the Republic of Moldova;

Regretting that the Constitutional Court of the Republic of Moldova, in examining a particular case, unjustifiably extended the scope of the review and declared a rule guaranteeing the right of citizens to initiate any type of referendum fully, not partially, unconstitutional;

Regretting that, following the Constitutional Court's decision, several public authorities such as the Central Electoral Commission, the Ministry of Justice and the Parliamentary Legal Committee for Appointments and Immunities have used various means to limit the right of citizens to initiate any type of referendum;

Considering the prerogative of the Parliament to declare all proposals to initiate the referendum to be excessive and potentially serving as an unjustified and exclusive instrument of political opportunity to block popular initiatives;

Insisting on the fact that participatory democracy is important and that in the decision-making process it is of paramount importance to assure the good faith of public institutions and other political actors, which should be the decisive factor in the evolution of law and jurisprudence in the Republic of Moldova;

The EaP CSF Moldovan National Platform Organisations call on:

The public authorities, parliamentary and extra-parliamentary political parties, civil society organisations promoting democracy and supremacy of human rights, other relevant national political and non-political actors:

- to abandon initiatives to limit the rights of citizens to exercise their sovereignty directly by initiating any type of referendum;
- to initiate a genuine and constructive dialogue with

promoters and opponents of ideas limiting the right of citizens to initiate any type of referendum;

- to request Venice Commission's opinion on limiting the right of citizens to initiate any type of referendum;
- to recognize, support and promote all legal requests initiated at national level to block initiatives limiting the right of citizens to initiate any type of referendum;
- to amend the legislation to ensure a legal certainty of citizens' right to initiate any type of referendum and, according to the obligation of public authorities, to allocate the financial resources needed to consult the will of the people;

The international partners of the Republic of Moldova:

- to continuously monitor the intention of the authorities of the Republic of Moldova to unjustifiably limit the right of the citizens of the Republic of Moldova to initiate any type of referendum but also to freely express their opinion on this issue of national interest in a democratic process;
- to insist on the consultation with the Venice Commission's opinion on draft laws on the right of Moldovan citizens to initiate any type of

Members of the Moldovan National Platform of the Eastern Partnership Civil Society Forum

Endnotes

[\[1\]](#) Besides citizens eligible to vote, the national referendum may be initiated by at least one third of MPs, President of the Republic of Moldova and Government. According to Article 155(2) of the Election Code the mentioned subjects could initiate any type of referendum.

[2] According to the Law No 764 as of 27 December 2001 on the Territorial-Administrative Organisation of the Republic of Moldova, the 36 second level -administrative units include 32 districts, Chisinau and Balti municipalities, as well as by two territorial-administrative units with special status (TAU Gagauzia and Transnistrian region).

[3]

<http://constcourt.md/ccdocview.php?tip=hotariri&docid=627&l=ro>

[4]

<http://cec.md/index.php?pag=news&id=1001&rid=21420&l=ro>

[5]

<https://promolex.md/11378-opinia-asociatiei-promo-lex-respinge-rea-cererii-de-inregistrare-a-grupului-de-initiativa-pentru-desfasurarea-unui-referendum-legislativ-pune-la-intoiala-dreptul-cetatenilor-de-a-exercita-direct-suver/?lang=en>

[6]

http://www.justice.gov.md/public/files/2018/transparenta_in_procesul_decizional/februarie/1381.pdf

[7]

<https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf>

[8]

<https://watchdog.md/2018/02/26/opinia-asociatiei-comunitatea-watchdog-md-asupra-proiectului-legii-pentru-modificarea-si-completarea-codului-electoral-autor-ministerul-justitiei/>

[9]

<https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf>

[10] According to Article 72(2) of the Law No 100 of 22 December 2017, the formal interpretation of laws is carried

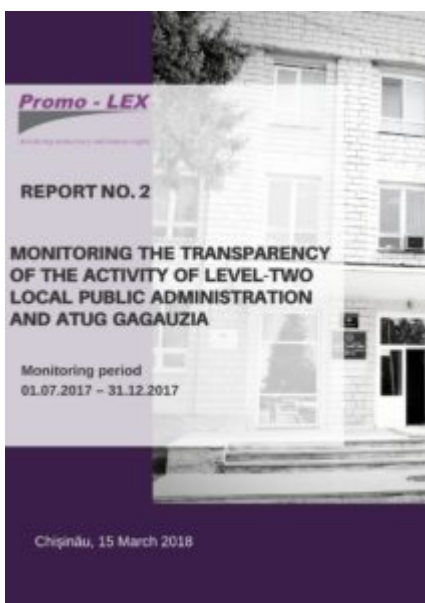
out exclusively by the Parliament by the adoption of interpreting laws.

[11]

<https://watch.cpr.md/cec-refuza-cetatenilor-dreptul-la-initierea-referendumului-legislativ-inca-o-proba-degradarii-mecanismelor-democratice/>

[12] <http://cec.md/index.php?pag=news&id=1001&rid=21675&l=ro>

REPORT | Monitoring the transparency of the activity of level-two Local Public Administration and ATUG Gagauzia





Promo-LEX OPINION on the Draft Law Amending and Supplementing the Electoral Code No. 1381-XIII of 21 November 1997 drafted by the Ministry of Justice

Promo-LEX OPINION

on the Draft Law Amending and Supplementing the
Electoral Code No 1381-XIII of 21 November 1997
drafted by the Ministry of Justice

Published on 3 March 2018

Opinie

OPINIE Promo-LEX

asupra proiectului Legii pentru modificarea și completarea
Codului electoral nr. 1381-XIII din 21 noiembrie 1997
elaborat de către Ministerul Justiției

Publicat la 3 martie 2018

Opinie

МНЕНИЕ Promo-LEX

по проекту Закона о внесении изменений и дополнений в
Кодекс о выборах № 1381-XIII от 21 ноября 1997 года
разработанному Министерством Юстиции

Опубликовано 3 марта 2018

Мнение

The Legislative Initiative on Integrity Certificates Needs to be Improved, warns Promo-

LEX Association

According to the [Opinion](#) published by Promo-LEX, there are shortcomings in the recent legislative initiative on the compulsory integrity certificates for those who register as candidates for a particular public position. Traditionally, the association comes with recommendations to improve the legal framework.

Thus, the deficiencies are related to the capacity of the National Integrity Authority to issue integrity certificates and their effects. The association recommends, inter alia, to establish expressly in the law the public character of integrity certificates, as well as to strengthen NIA's capacity to process a large number of applications within a short period of time.

Promo-LEX Recommendation: Online integrity certificates and territorial units for NIA

The requirement for tens of thousands of people to travel to 'NIA headquarters' can generate many shortcomings. A simple calculation shows that at least one thousand people will have to apply for an integrity certificate in order to run for the position of Member of Parliament at the next election. In this regard, the task that the NIA is supposed to fulfil seems to be dictated particularly by the short time that it will have to process all the applications.

This issue will grow even more complex when general local elections are held. Speaking about the Parliamentary Elections, we could still assume that NIA will manage to process the applications, while when it comes to the general local elections – its capacity is obviously insufficient. A review of the general local elections of June 2015 shows that there were about 68,000 candidates for elected public positions.

Therefore, Promo-LEX considers it appropriate and welcome to examine the possibility of issuing, or at least applying for an integrity certificate online. This way, the applicants would not need to come all the way to the NIA headquarters and the crowdedness that would otherwise form would also be avoided.

Similarly, it is necessary to establish territorial units for NIA that would be able to receive applications.

In search of the legal effects of the integrity certificate

Another example of the ambiguous legislative initiative is the legal effects of the integrity certificate. In this respect, neither the existing regulations, nor the ones proposed for adoption stipulate clearly whether the integrity certificate shall be released regardless of its content or, it shall not be released if containing a negative opinion.

Furthermore, the law does not establish the legal force of the certificate, or in its response to a complaint (filed in the context of the new local elections of 19 November 2017), the Central Electoral Commission stated that *'NIA's finding documents indicated in the integrity certificate do not serve as grounds for rejecting the registration of a candidate for election, but rather the failure to submit this certificate to the electoral body, as **the purpose of the document is to inform the public about the candidate concerned.**'*

In this context, the association considers it appropriate to provide expressly in law the public character of integrity certificates. It is absolutely necessary for the voter to see the big and clear picture about the candidates, but by no means can these certificates be kept secret and for institutional use only.

Promo-LEX recommendations

In order to eliminate these and other deficiencies listed in the [Opinion](#) on the integrity certificate, the association

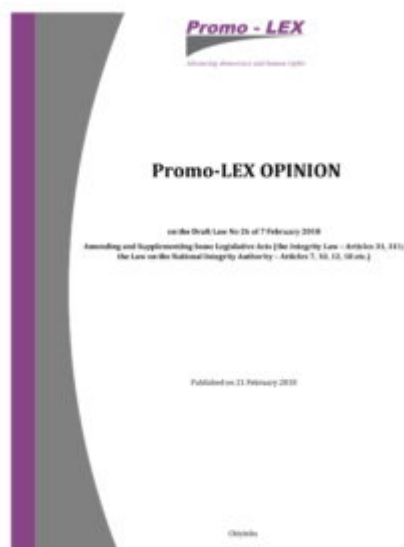
comes with a set of recommendations:

1. establish a longer validity period of the integrity certificate so as to make it possible for it to be filed on time;
2. make it possible to file the application electronically, the applicants being thus relieved of the need to travel to the NIA headquarters in person and wait in queues which will most likely form;
3. as a complementary option to the online filing of applications, we recommend to allow for applications to be also filed by proxy (this way, besides the fact that one won't have to come in person, the right to candidate of persons away from the country for the moment or for whom it is temporarily impossible to travel will not be limited);
4. establish NIA territorial units that would be able to receive applications too, which would lighten the task the NIA has according to the centralised procedure.
5. setting out some strict rules for the collaboration between the NIA and other authorities, as regards information provision;
6. regulating in detail the legal effects of integrity certificates;
7. regulating in detail the procedure and deadlines for challenging integrity certificates;
8. looking into the possibility of submitting applications and of even issuing integrity certificates in a centralised way via the electoral bodies. All the more so because such a practice exists already;
9. transparency and availability to the public of the issued integrity certificates.

[The PDF version of the press release.](#)

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Promo-LEX OPINION on the Draft Law No 26 of 7 February 2018 Amending and Supplementing Some Legislative Acts (the Integrity Law – Articles 31, 311; the Law on the National Integrity Authority – Articles 7, 10, 12, 18 etc.)





REPORT | Human rights in the transnistrian region of the Republic of Moldova/July – December 2017



Opinion of Promo-LEX Association: Only 12 out of 32 European Recommendations Regarding the Mixed Electoral System were Implemented

Promo-LEX Association's analysis alerts on irregularities in Parliament's implementation of recommendations regarding the mixed-member electoral system provided by the Venice Commission and by the Organization for Security and Co-operation in Europe (OSCE).

Accepting the recommendations does not necessarily mean implementing them

As of today, only 12 out of 32 recommendations were implemented. In fact, out of 7 recommendations that were accepted in the electoral legislation and then implemented, 5

were implemented in breach of the legal norm or with delays. These irregularities include: 'independence' of the National Commission Establishing the Constituencies, delimitation of constituencies with the condition of not exceeding the 10% deviation, establishment of the constituencies abroad, 'clear' criteria for establishing constituencies in the Transnistrian region, as well as the release of integrity records, following the example of the new local elections.

Furthermore, the non-transparent and sometimes inconsistent with the legal provisions implementation of recommendations at this stage raises reasonable suspicions about the integrity and the discretionary nature of the future implementation of recommendations. Besides this, due to the irregularities, the conduct of elections under the new law can be at risk as well.

Parliament states that all recommendations were implemented

On the other hand, according to the assessment made by the Parliament – all the recommendations identified by the legislative authority in the Common Opinion were fulfilled. The [Association's analysis](#), however, proves that this result was achieved due to a positive self-assessment regarding all the recommendations included in the Parliamentary analysis, on the one hand, and by omitting certain recommendations the experts made in the Common Opinion of the Venice Commission and OSCE/ODIHR, on the other hand.

Society must not be divided

The recommendation to achieve wide consensus in the society concerning the mixed electoral system deserves particular attention. Considering the nature of the political events in Moldova and the electoral debates organised by the Association, we see no broad consensus on this matter. To the contrary, the society is rather divided. In addition, the opinion polls, including those ordered by Promo-LEX, revealed that the mixed electoral system is not appreciated by most of the population.

In the opinion of Promo-LEX, the position shared by the Venice Commission and OSCE/ODIHR that the modification of the electoral system of Moldova is not recommendable, is generic and principled.

See details and other important aspects in the [Promo-LEX Analysis](#).

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[PDF](#)