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# **Public call on the limited transparency and the flaws found in the adoption of decisions regarding the establishment of single-member constituencies**

The signatory civil society organisations are concerned with the limited transparency of the activity of the National Commission for the Establishment of Permanent Single-Member Constituencies and requires the Government to make the Draft Decision Establishing Single-Member Constituencies available for public consultations.

This request was made in connection with the following flaws found with the implementation of the Law No 154 of 20 July 2017 Amending the Electoral Code.

- ***The provisions of the Code of Good Practice in Electoral Matters (Venice Commission) regarding the role of the Parliament in establishing constituencies were ignored.***

According to Item 17 of the Code of Good Practices, 'The best solution would be to submit the problem in the first instance to a commission comprising a majority of independent members [...] The parliament would then make a decision on the basis of

the commission's proposals, with the possibility of a single appeal.' [\[1\]](#)

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.

**▪ *The Belated and Law-Braking Set-up of the National Commission for the Establishment of Single-Member Constituencies***

As provided for in Article 74(2) of the Code, single-member constituencies are to be approved by the Government on the basis of a decision made by an independent commission, the membership of which is established by Government Decision. Article III of the Law No 154 of 20 July 2017, provides for a 30-day term within which the Government is to create the National Commission for the Establishment of Permanent Single-Member Constituencies (the 'Commission'). In this respect, Promo-LEX Association, together with the **Legal Resources Centre from Moldova, made a public statement on 21 August 2017, whereby they brought into the limelight the fact that the Government did not establish the National Commission within the term provided for in the law, as this term lapsed out on 20 August 2017.** The nominal structure of the National Commission for the Establishment of Permanent Single-Member Constituencies was approved by the Government by the Decision No 708 of 6 September 2017, **17 days too late.**

**▪ *Undermining the Independence of the Commission***

On 18 August 2017, two days before the end of the term within which the membership of the Commission was supposed to be established, the Ministry of Justice launched for public

consultations a draft Regulation on the operation of the National Commission for the Establishment of Permanent Single-Member Constituencies. Note that the final draft document was approved by Government Decision No 670 of 23 August 2017. In our opinion, **the Government's initiative to regulate the activity of a commission, which, pursuant to the law, is presumed to be independent** and to 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.

▪ ***Limited Transparency of the Activity of the Commission***

Considering the time that passed since the Commission was established and since its Activity Regulation was adopted, we may state that there is limited transparency of the activity conducted by this body. We remind, in this regard, that on the basis of the Action Plan of the Commission, **[2] on 17 October 2017, public consultations were to take place regarding the method of establishing the constituencies.** We found that **there were no public consultations at all in the decision-making process of the Commission.**

Although the meetings of the Commission were public and broadcast via the mass-media, **the documents under development and the informative ones obtained from various authorities, as well as the minutes of the meetings, were not published in full.** This, despite Item 19(h) of the Regulation, providing that the Secretary of the Commission shall cooperate with the mass-media to reflect the activity of the Commission, and despite Item 14 providing that the Commission shall be assisted by a secretariat, which is to be ensured by the State

Chancellery.

This situation was mentioned in the Public Call of 4 October 2017 too, signed by the 17 non-governmental organisations of the Republic of Moldova and from the diaspora.[\[3\]](#) The civil society organisations drew attention, back then, to the fact that after having had 3 meetings, there were no minutes of the Commission on the web-site of the State Chancellery. What is more, **the information about the discussions regarding the decisions made by the Commission was not accessible by the interested population.**

At the time when this call was published, there were the minutes of the meetings of 12, 19 and 26 September 2017, as well as the links to the video recordings of the 8 meetings (link is inactive) on the web-site of the State Chancellery, on the 'Activity of the National Commission for the Establishment of Permanent Single-Member Constituencies' page.[\[4\]](#) Also, an announcement meant for the diaspora regarding the call for proposals on the establishment of constituencies was placed on the web-site by the Bureau for Diaspora Relations on 12 September (repeatedly posted on 20 September 2017).[\[5\]](#) Although the 'Gente Moldava' Association from the diaspora responded to this call and sent proposals, none of them were found back in any summary of divergences that was supposed to be published on the web-site of the BDR or of the State Chancellery in line with the requirements of the Law No 239 on Transparency in Decision-Making of 13 November 2008. According to this law and to the Government Decision No 967 on the Mechanism of Public Consultations with the Civil Society in Decision-Making, of 9 August 2016, **the public authorities are under the obligation to ensure transparency in decision-making at every stage of it, to make sure the information is accessible and to ensure public consultations on draft decisions.**

- ***Ignoring the Special Criteria for the Determination of the Number of Constituencies to be Established on the***

## ***Left Bank of Nistru River, as well as for Voters Residing Abroad***

Although both the Electoral Code and the Regulation on the activity of the Commission establish certain criteria to determine the number of permanent single-member constituencies on the left bank of Nistru River and abroad, the Commission totally ignored them. In its Opinion of 23 October 2017, Promo-LEX Association proposed equidistant and clear criteria, including on the basis of the Electoral Code provisions, which allowed to determine that **six constituencies needed to be established abroad**[\[6\]](#). Also, an analysis conducted by 'Gente Moldava' Association from the diaspora concluded that five constituencies needed to be established abroad.[\[7\]](#) Remember that both the proposals made by Promo-LEX, and those made by 'Gente Moldava' were not discussed at the meetings. At the same time, the Commission approved the establishment of **only 3 constituencies abroad and of 2 on the left bank of Nistru River, without explaining what criterion was used to establish 5 constituencies in these territories, nor where did the 3+2 formula come from.**

- ***The interpretability of and failure to observe the demographic criterion for distribution used for the establishment of constituencies on the territory of the Republic of Moldova that is under the jurisdiction of the constitutional authorities***

The number of registered voters was taken as the constituency establishment criterion. In this respect, pay attention that in compliance with the Electoral Code, the constituencies across the territory of Moldova that is under the jurisdiction of the constitutional authorities will consist of relatively equal numbers of voters – **between 55000 and 60000 voters eligible to vote**. Also, in keeping with the spirit of good practices, the Electoral Code provides that the difference in the number of voters from one single-member constituency to another must not account for more than 10%. We found at least

the following issues in this regard:

- it is not clear what number will be taken as a basis for the maximum admissible deviation of 10%, since the range 55000-60000 leaves room for interpretation;
  - only 10 constituencies fall within the limit of 55000 – 60000 (all of them in Chisinau Municipality);
  - the difference between the most numerous constituency – 67278 (No 46, Ceadir-Lunga) and the least numerous one – 55161 (No 25, Chisinau Municipality) is of 12171 voters.
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- ***The Obligation of the Government to Submit the Draft Decision Establishing Single-Member Constituencies to Public Consultations***

Although the Electoral Code does not provide for a term within which the Commission is supposed to adopt and submit for Government approval the Decision Establishing Single-Member Constituencies, the Regulation provides for a term of 13 months before the mandate of the Parliament is over. At the same time, both the Electoral Code and the Regulation provide that no changes may be made to the constituencies in the last 12 months before ordinary elections. According to Article 63 of the Constitution and of the Constitutional Court Decision No 31 of 10 November 2010, the mandate of the Parliament is 4 months long and it starts on the date that the MPs are elected to the Parliament. The last elections in the Parliament took place on 30 November 2014 and, thus, the Commission was to submit the list of single-member constituencies to the Government until 30 October 2017, **and the Government was supposed to approve it by 30 November 2017**. The Commission voted the draft list of single-member constituencies meant to be submitted to the Government at the meeting of 30 October 2017. Considering the aforementioned, we believe that the Government has enough time to initiate public consultations on the matter.

- Lack of a decision, issued by the Constitutional Court, on the MPs' notification on the control of the constitutionality of the Law No 154 of 20 July 2017

Through the notification No 117a, a group of MPs asked the Court to conduct a control on the constitutionality and declare unconstitutional the Law No 154 of 20 July 2017, which changed the electoral system of the Republic of Moldova[8]. In this respect, we believe that the decision establishing the single-member constituencies as part of implementing the Law No 154 of 20 July 2017, must be adopted after the Decision of the Court is pronounced. From the point of view of signatories, the Constitutional Court must examine the notification as a matter of emergency.

Considering the aforementioned and given the importance and the impact of upstanding and transparent decision-making regarding the establishment of single-member constituencies, the signatory organisations request:

**the Parliament of the Republic of Moldova to:**

- amend the Law No 154 of 20 July 2017 in order to implement it beginning with the Parliamentary elections of 2022;
- amend Article 74(4)a) of the Electoral Code in order to adapt the number used as a special criterion for the distribution to the current demographic realities and processes from the Republic of Moldova, consideration given particularly to the number of voters abroad;

**the Government of the Republic of Moldova to:**

- organise a public consultation of the draft Government Decision until the decision approving the list of permanent single-member constituencies is adopted;
- ensure that, in the spirit of the provisions of the Code of Good Practice in Electoral Matters (Item 17), it has the possibility to remit for re-examination, whenever

necessary, the list of electoral constituencies, drawn up by the Commission, accompanied by the relevant recommendations, formulated including during public consultations;

- ensure the accessibility of all the Commission's documents that preceded the development of the draft decision;
- approve single-member constituencies, when the Constitutional Court sets out its views on the notification No 117a submitted on 5 September 2017 by a group of Members of Parliament.

**the Constitutional Court to:**

- examine rapidly the notification No 117a on the conduct of a control on the constitutionality and declare unconstitutional the Law No 154 of 20 July 2017

**the Commission for the Establishment of Single-Member Constituencies to:**

- publish, as a matter of emergency, all the minutes of the Commission's meetings;
- publish documents that would explain the criteria used for the establishment of the constituencies. We mean, particularly, the distribution of those 5 constituencies in the Transnistrian region of the Republic of Moldova and for Moldovan citizens residing abroad on the election day or the explanation of the relation between the number of voters in constituencies, whenever necessary, and the requirement that the deviation in the number of voters in single-member constituencies should not exceed 10%.

**Signatories<sup>[9]</sup>:**

1. Promo-LEX Association
2. Legal Resources Centre from Moldova (LRCM)
3. Center „Partnership for Development”

4. East Europe Foundation
5. Institute of Public Policy
6. Centre for Policies and Reforms
7. md
8. Association of Independent Press
9. Institute for Development and Social Initiatives  
„Viitorul”\*
10. AGER\*
11. Transparency International Moldova\*
12. Center for Independent Journalism\*

\*Appeal signed after approval of Government decision, 18.30

[1]<http://www.roaep.ro/legislatie/wp-content/uploads/2013/03/Codul-de-bune-practici-in-materie-electorala.pdf>

[2][http://brd.gov.md/sites/default/files/planul\\_de\\_actiuni\\_calendaristic.pdf](http://brd.gov.md/sites/default/files/planul_de_actiuni_calendaristic.pdf).

[3] Public Call on the Transparency of the National Commission for the Establishment of Permanent Single-Member Constituencies, 4 October 2017, <http://crjm.org/wp-content/uploads/2017/10/17-10-04-Apel-transparenta-comis-circumscriptii.pdf>.

[4]<http://cancelaria.gov.md/ro/apc/activitatea-comisiei-nationale-pentru-constituirea-circumscripțiilor-uninominate-permanente>.

[5]<http://brd.gov.md/ro/content/biroul-relatii-cu-diaspora-lanseaza-anuntul-repetat-privind-constituirea-circumscripțiilor>.

[6]The OPINION of Promo-LEX Association on the number of single-member constituencies to be created abroad and their distribution according to geographic areas. <https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumscripții-uninominate-care-urmeaza-a->

[fi-create-pestes-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro](https://www.google.com/search?q=fi-create-pestes-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro)

[7] 'Gente Moldova' Association, Venice, Italy, Comments regarding the establishment of single-member constituencies beyond the borders of the Republic of Moldova, 25 September 2017,

<https://drive.google.com/file/d/0BxwIRtSMdesFMXVzRFk3dDZzTDg/view>.

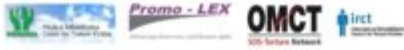
[8]<http://constcourt.md/ccdocview.php?tip=sesizari&docid=677&lang=ro>

[9]The list remains open for other signatories.

[PDF](#)

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# **Civil society report for the Review of the Third Periodic Report of Moldova (CAT/C/MDA/3) at the 62th session of the UN Committee Against Torture (2)**



Civil society report for the Review of the Third Periodic Report of Moldova  
(CAT/C/MDA/3) at the 62th session of the  
UN Committee Against Torture  
(NOVEMBER 6 – DECEMBER 6, 2017)

**JOINT SUBMISSION**

OF PROMO-LEX ASSOCIATION, REHABILITATION CENTRE FOR TORTURE VICTIMS "MEMORIA"  
(ICTY MEMORIAL), WORLD ORGANIZATION AGAINST TORTURE AND INTERNATIONAL  
REHABILITATION COUNCIL FOR TORTURE VICTIMS

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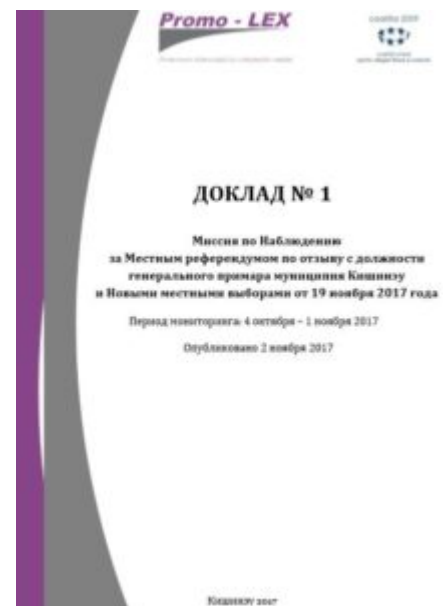
# Civil society report for the Review of the Third Periodic Report of Moldova (CAT/C/MDA/3) at the 62th session of the UN Committee Against Torture

# Report on Human Rights in the Transnistrian Region of the Republic of Moldova/Jan-Jun. 2017



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# REPORT No 1 – Observation Mission for the local referendum on the dismissal of Chisinau General Mayor and the new local elections of 19 November 2017



**REPORT No 1**

**Observation Mission  
for the local referendum on the dismissal of Chisinau General  
Mayor  
and the new local elections of 19 November 2017**

Monitored period: 4 October - 1 November 2017

Published on 2 November 2017

Chisinau 2017

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# **OPINION of Promo-LEX Association on the number of single-member constituencies to be created abroad and their distribution according to geographic areas [1]**

## ***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 a national district encompassing the whole territory of the Republic of Moldova and the polling stations from abroad, as well as on the basis of 51 single-member constituencies, including the communities from the left bank of the Nistru river (Transnistria) and from abroad. The

Parliament, as the supreme legislative body, has not established exact weights for the constituencies to be created abroad and in the territorial-administrative units with special status. In this context, the constituencies have to be created in accordance with the criteria set out in the Electoral Code and the general recommendations suggested by the international standards.

### ***Methodology for Calculating the Number of Single-Member Districts to Be Created Abroad***

Promo-LEX Association used two indicators to determine the number of constituencies to be created abroad:

- the number of citizens left for/staying abroad. According to the data presented by the Ministry of Foreign Affairs and European Integration (MFAEI) [\[2\]](#) 805,509 Moldovan citizens were abroad in 2016;
- the number of voters abroad who participated in the last national election [\[3\]](#), i.e. 138,723 people who received ballot papers during the second round of the presidential election.

These indicators and figures were divided to the total number of Moldovan citizens, as well as to the total number of voters [\[4\]](#). An approximate number of single-member constituencies that should be created abroad was calculated for each of the two indicators mentioned above on the basis of the total number of 51 single-member districts to be created in the country.

Thus, by dividing the number of citizens from abroad to the total number of Moldovan citizens, we would get 20.29%; respectively, 20.29% of the total of 51 single-member constituencies would constitute about 10 constituencies that should be created abroad, according to the first indicator (see the details in Table 1).

Table 1

<b>Indicator</b>	The total number of Moldovan citizens <a href="#">[5]</a>	The number of citizens left for/staying abroad	% of citizens abroad	<b>No of single-member constituencies to be created abroad (out of 51)</b>
The number of citizens left for/staying abroad	3,970,729	805,509	20.29%	<b>10</b>

Similarly, according to the calculations done on the basis of the number of voting citizens from abroad, who participated in the 2016 Presidential Election, 4.26% of the total number of voters from SVR voted outside the country; respectively, 4.26% of the total of 51 single-member constituencies would constitute about 2 constituencies that should be created abroad, according to the second indicator (see the details in Table 2).

Table 2

<b>Indicator</b>	Total number of voters <a href="#">[6]</a>	No of voters who received ballot papers during the second round of the 2016 Presidential Election	% of voters out of the total, who voted outside the country	<b>No of single-member constituencies to be created abroad (out of 51)</b>

Number of voters abroad who participated in the last national election	3,255,361	138,723	4.26%	2
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By summing up the weights obtained for these indicators (20.29% + 4.26%), we obtain a total coefficient of 24.55%, which in its turn should be divided to the divisor 2 (the number of indicators taken into account), resulting in an aggregate weight of 12.28%. Thus, the aggregate weight of 12.28% is the coefficient to be taken into account when determining the number of constituencies that should be created outside the country (out of a total of 51 constituencies) [\[7\]](#).

**In conclusion, according to these calculations, the diaspora citizens should be assigned about 12.28% or 6 constituencies of the total of 51 single-member constituencies.**

***Determining the Geographical Areas and the Number of Single-Member Constituencies to Be Created in Each Area***

According to Article 74(5) of the Electoral Code, the authority responsible for creating single-member constituencies shall take into account the following condition when creating them abroad:

1. the information held by the Moldovan diplomatic missions and Consular Offices in the countries of residence;
2. the information held by the central public authorities, including the relevant official statistical data;
3. the information resulting from prior registration of citizens staying abroad, in accordance with the procedure established by the regulation approved by the

Central Electoral Commission;

4. the number of voters who participated in the last election;
5. other relevant data obtained by the central public authorities, upon request, from the authorities of the host country, as prescribed by law;
6. when establishing the boundaries of constituencies created abroad, the Commission shall act in accordance with the regulation approved by the Government, and shall take into account the relevant geographic areas, such as:
  - the Member States of the European Union, Norway, Iceland, Switzerland, Liechtenstein, San Marino, the countries of South-East Europe that are not members of the European Union, Turkey, Israel;
  - the Member States of the Commonwealth of Independent States, Ukraine, Georgia, Asia, the Middle East;
  - North America, South America, Africa, Australia, New Zealand, taking into account the boundaries of the states that can not be intersected on the inside.

The Promo-LEX Association believes that the first four indicators mentioned in the law are decisive for the distribution of constituencies within the geographical areas established by the Parliament. We reiterate that the geographical areas are distributed as follows:

- **Europe<sup>[8]</sup>**: Member States of the European Union, Norway, Iceland, Switzerland, Liechtenstein, San Marino, the countries of South-East Europe that are not members of the European Union, Turkey, Israel;
- **CIS and Asia**: the Member States of the Commonwealth of Independent States, Ukraine, Georgia, Asia, the Middle East;
- **America and other territories**: North America, South

America, Africa, Australia, New Zealand.

Given the four criteria provided for by the Electoral Code, similarly to the analysis proposed by 'Gente Moldova' Association[9], Promo-LEX Association has performed a series of mathematical calculations to obtain percentage weights for the number of constituencies that should be created abroad in each of the three geographical areas established by law. Thus, the following tables indicate the corresponding calculations for each indicator taken apart:

Table 3

<b>a) based on the information held by the Moldovan diplomatic missions and Consular Offices in the countries of residence</b>				
<b>Geographical area</b>	<b>Number of citizens left for/staying abroad</b>	<b>% of the number of citizens</b>	<b>Number of single-member constituencies according to the established weight (6)</b>	<b>Number of single-member constituencies to be created on the basis of criterion a)</b>
<b>Europe</b>	240,423	29.85%	$0.298 \times 6 = 1.80$	1.80
<b>CIS and Asia</b>	517,532	64.25%	$0.642 \times 6 = 3.85$	3.85
<b>America and other territories</b>	47,554	5.90%	$0.059 \times 6 = 0.35$	0.35
<b>Total</b>	<b>805,509</b>	<b>100 %</b>		<b>6</b>

The above table shows that, based on the information held by the Moldovan diplomatic missions and Consular Offices in the countries of residence, the number of voters in the CIS and Asia geographical areas exceeds twice the number of voters in the European countries, and the America geographical area and other territories reach about 6% of the total number. Therefore, according to Promo-LEX estimates, out of the 6 constituencies to be created, 1.80 constituencies should be created in Europe, 3.85 – in CIS and Asia, 0.35 – in America

and other territories.

Table 4

<b>b) based on the information held by SIRC Regstru as of 01.07.2017[10]</b>				
Geographical area	Number of citizens	% of the number of citizens	Number of single-member constituencies according to the weight	Number of single-member constituencies distributed on the basis of criterion b)
<b>Europe</b>	22,891	22.07%	$0.221*6 = 1.32$	1.32
<b>CIS and Asia</b>	64,025	61.74%	$0.617*6 = 3.71$	3.71
<b>America and other territories</b>	16,783	16.19%	$0.162*6 = 0.97$	0.97
<b>Total</b>	<b>103,699</b>	<b>100 %</b>		<b>6</b>

On the basis of the information held by central public authorities, including relevant official statistical data, Promo-LEX finds that 1.32 constituencies should be created in Europe, 3.71 single-member constituencies in CIS and Asia, and 0.97 constituencies in America and other territories.

Table 5

<b>c) based on the information obtained from prior registration for the 2016 Presidential Election of the citizens staying abroad</b>				
Geographical area	Number of voters	% of the number of voters	Number of single-member constituencies according to the weight	Number of single-member constituencies distributed on the basis of criterion c)

<b>Europe</b>	2,800	78.43%	$0.784*6 = 4.71$	4.71
<b>CIS and Asia</b>	227	6.36%	$0.064*6 = 0.38$	0.38
<b>America and other territories</b>	543	15.21%	$0.152*6 = 0.91$	0.91
<b>Total</b>	<b>3,570</b>	<b>100%</b>		<b>6</b>

Taking the result of the prior registration for the 2016 Presidential Election of the citizens staying abroad as a basis for calculation, the table above shows that the number of voters in Europe exceeds 2.75 times the number of voters in the other geographical areas taken together. Therefore, 4.71 single-member constituencies are to be created in this area, 0.91 single-member constituencies – in America and other territories, and 0.38 single-member constituencies in CIS area and Asia.

Table 6

<b>d) based on the number of voters abroad, who participated in the last election</b>				
<b>Geographical area</b>	<b>Number of voters</b>	<b>% of the number of voters</b>	<b>Number of single-member constituencies according to the weight</b>	<b>Number of single-member constituencies distributed on the basis of criterion d)</b>
<b>Europe</b>	114 892	82,82 %	$0,828*6 = 4,97$	4,97
<b>CIS and Asia</b>	13 116	9,45 %	$0,095*6 = 0,57$	0,57
<b>America and other territories</b>	10 715	7,72 %	$0,077 *6 = 0,46$	0,46
<b>Total</b>	<b>138 723</b>	<b>100 %</b>		<b>6</b>

Similar calculations performed on the basis of the number of voters abroad, who participated in the 2016 Presidential Election show that 4.97 single-member constituencies should be created in Europe, 0.57 single-member constituencies – in CIS and Asia, and 0.46 single-member constituencies in America and other territories.

Finally, the number of single-member constituencies to be created in each of the three geographical areas represents the sum of the number of constituencies resulting from the calculations for each of the four criteria, divided by the number of criteria (four). The table below presents the final aggregate results of this analysis:

Table 7

<b>CONCLUDING TABLE</b>					
<b>Geographical area</b>	<b>INDICATOR</b> Information held by the Moldovan diplomatic missions and Consular Offices in the countries of residence	<b>INDICATOR</b> Information held by the central public authorities, including the relevant official statistical data	<b>INDICATOR</b> Information obtained from prior registration of the citizens staying abroad	<b>INDICATOR</b> Number of voters abroad, who participated in the last election	<b>Number of single-member constituencies to be created in each geographical area</b>
<b>Europe</b>	1,80	1,32	4,71	4,97	<b>3,20</b>
<b>CIS and Asia</b>	3,85	3,71	0,38	0,57	<b>2,13</b>
<b>America and other territories</b>	0,35	0,97	0,91	0,46	<b>0,67</b>
<b>Total</b>	<b>6,00</b>	<b>6,00</b>	<b>6,00</b>	<b>6,00</b>	<b>6,00</b>

**Thus**, bearing in mind the facts mentioned above, the number of single-member constituencies and their distribution must be a representative, proportional and universal outcome, to ensure

fair conditions for every voter. Given that the Parliament has not set weights, the vote of each voter must have the same power both in the country and abroad.

In order to ensure this, all the possible criteria, including those established by the legal framework, have been taken into account. Thus, there has been determined an optimal way of distribution<sup>[11]</sup> and a fair number of constituencies to be created for Moldovan citizens living abroad, according to the geographical areas established by the Parliament.

**In conclusion**, Promo-LEX Association points out the necessity to create 6 constituencies abroad, and recommends their following distribution by geographical areas:

- the Member States of the European Union, Norway, Iceland, Switzerland, Liechtenstein, San Marino, the countries of South-East Europe, which are not members of the European Union, Turkey, Israel – **3 constituencies**;
- the Member States of the Commonwealth of Independent States, Ukraine, Georgia, Asia, the Middle East – **2 constituencies**;
- North America, South America, Africa, Australia, New Zealand – **1 constituency**.

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[1] Calculations done on the basis of the information gathered from various open sources. Should the methodology be accepted, they ought to be reviewed on the basis of the official information submitted and confirmed by the relevant authorities

<sup>[2]</sup>

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

<sup>[3]</sup> <http://cec.md/index.php?pag=news&id=1991&rid=19965&l=ro>

<sup>[4]</sup> <http://cec.md/index.php?pag=news&id=1042&rid=20576&l=ro>

<sup>[5]</sup>

<http://www.registru.md/date-statisticce/in-profil-administrativ-teritorial>

[6]

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

[7] If this methodology is used, it is recommended that the weight of about 12% be added to the figures of 55,000-60,000, which represent the number of voters needed to create a single-member constituency in the country, because it is according to this weight that the constituencies will be opened outside the country, where the voters who are de facto included in the voter lists will vote.

[8] The generic names of geographic areas are generalizing and are used in the study to facilitate the presentation of the information.

[9]

[https://drive.google.com/file/d/0B\\_QM79BYEMjnRHdEblDxYU5aWjA/view](https://drive.google.com/file/d/0B_QM79BYEMjnRHdEblDxYU5aWjA/view)

[10] The information held by SIRC Registru as of 01.07.2017, <http://www.registru.md/date-statisticce/referitor-la-cetateniirm-plecati-pestehotare-la-loc-permanent-de-trai>

[11] If this calculation methodology is used, it is also recommended to use it inside the geographical areas to establish fairly the number of constituencies (countries) in each geographical area.

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## **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<sup>[1]</sup>. 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<sup>[2]</sup>, official

addresses of the Constitutional Court, recommendations of national and international observers, etc.

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[1]

[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)

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

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

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**REPORT – Implementation of the methodical instruction on the intervention of police in preventing HIV infection in**

# high-risk groups



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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-circumsriptiilor-uninominale/>.

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

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