

# **EXPRESS ANALYSIS**

## **Possible Scenarios for Setting the Date of 2015 Local General Elections**

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The express analysis was produced as part of information and civic education activities carried out by the Promo-LEX Election Monitoring Effort as part of the Civic Coalition for Free and Fair Elections. The Monitoring Effort received technical assistance from the National Democratic Institute for International Affairs (NDI), and financial support from the US Agency for International Development (USAID) and the National Endowment for Democracy (NED). The opinions presented in this analysis are those of the authors and do not necessarily reflect the views of donors.

The date of general local elections in Moldova is a topical issue, and is widely discussed in the society. Various politicians were involved in speculative assumptions regarding general local elections and the possibility of postponing these elections indefinitely. Promo-LEX presents three basic possible scenarios regarding establishing and organizing local general elections. Other scenarios derive from the three scenarios mentioned here. Note that the analysis is based on the principle of continuity and representativeness of state power, and the method of analogy.

The principle of continuity implies that state power can be extended for a period of time, even after the expiry of the mandate, thus legalizing the “interim function of a people’s electee”. However, according to the principle of representation, elected officials have a limited time in office, and after its expiration, they may hold the office for a clearly set period of time. The analogy method enables us to draw certain conclusions and inferences, making a similarity between the general provisions for conducting elections, both parliamentary and local.

Together, the mentioned principles give elected officials the possibility to exercise an “interim mandate” for a very short period of time, and it is required only for organizing elections. In the case of electing members of Parliament, the supreme representative body, there is a set maximum period of “interim mandate of a people’s electee”, and when it expires, criminal sanctions for usurpation of power may be applied. The respective period is set in Art.76 of the Election Code, which states that elections may be held within 3 months after the expiration of the mandate of the Parliament. The maximum period of 3 months, applicable for electees to the supreme representative body, cannot be extended for other elected officials, namely local and raion councilors, and mayors. Thus the “interim mandate” of these officials may not exceed 3 months, after which the same criminal sanctions for usurpation of power may be applied.

There are currently over 900 local public administrations to which people delegated their representatives: mayors, local councilors and raions councilors, elected at the general local elections of 5 and 19 June 2011. These officials began their mandates on different dates, unlike MPs all of whom exercise their office from the same date. That is why, for the purpose of the analysis below, we will use the rule of the first person to assume office, and not the last one. Our main argument is that after the expiration of the period of 3 months, at least a part of local elected officials may be suspected of usurpation power regarding some of their decisions.

Reiterating these findings, we believe that the date on which the Parliament’s term expires should be the main benchmark for further calculations. By analogy, this benchmark should be superimposed to the timeline for general local elections to deduct when the next local elections may be organized. Thus, the date on which the Parliament’s mandate expires is the basic question we must answer in order to be able to establish the date from which to start calculations for local elections. The opinions of jurists and politicians differ in that regard, and leave room for interpretations.



*These calculations were drafted by analogy with parliamentary elections*

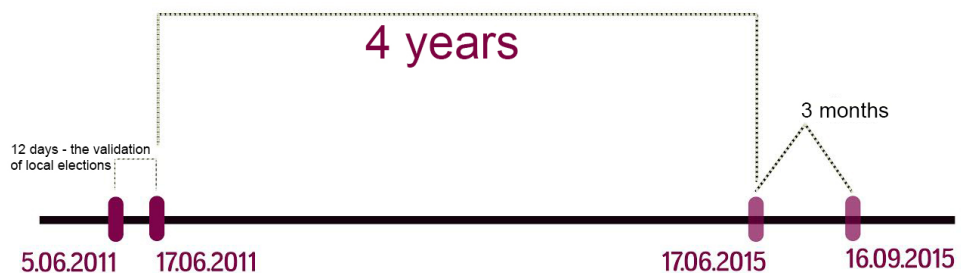
**- Scenario 1 – Parliament’s Mandate is connected with the MP Mandate**

Under Art.2 para.4 of the Law on the Status of Members of Parliament, members

enter in their official capacity upon their election provided the election has been validated. In this case, the time reference is related to the date of the previous election. Given that the previous local elections were held on 5 June 2011, we will consider this date as a benchmark for this scenario. Under the first scenario, the local elections should be held between 5 June and 4 September 2015, and this scenario is backed by Promo-LEX lawyers and confirmed by the previous history of general local elections.

**- Scenario 2 – Parliament’s Mandate is connected with the MP Mandate’s Validation Date**

Argument - the provisions of the same Art.2 para.4 of the Law on the Status of Members of Parliament, members enter in their official capacity upon their election if the election has been validated. In this con-



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text, the mandate is determined by its validation, and that some lawyers believe that the mandate becomes legal once this condition is met. MPs’ mandates are validated by the Constitutional Court. By analogy, the benchmark time for general local elections would be the date on which the first local councilor mandates were validated. However, given the fact that it is practically impossible to determine the date on which the mandates of councilors were validated in each of the 900 local or raion councils, we will use the maximum period provided by law for this procedure. Thus, under Art.58 of the Election Code, Precinct Election Bureaus have no more than 18 hours (from the closing of polling stations) to tabulate the votes. Subsequently, District Electoral Councils have up to 48 hours (from the closing of polling stations) to send the final election protocols to the competent body – in this case, as appropriate, a court or the Central Electoral Commission. As we can see, the first period of 18 hours is included in the second period of 48 hours, so we will use the latter. Further, the court or the CEC have up to 10 days to confirm the election results and validate the mandates. This means that the maximum term provided for relevant bodies for validating the elections is 12 days after Election Day. Under this scenario, local elections should be held between 17 June and 16 September 2015.

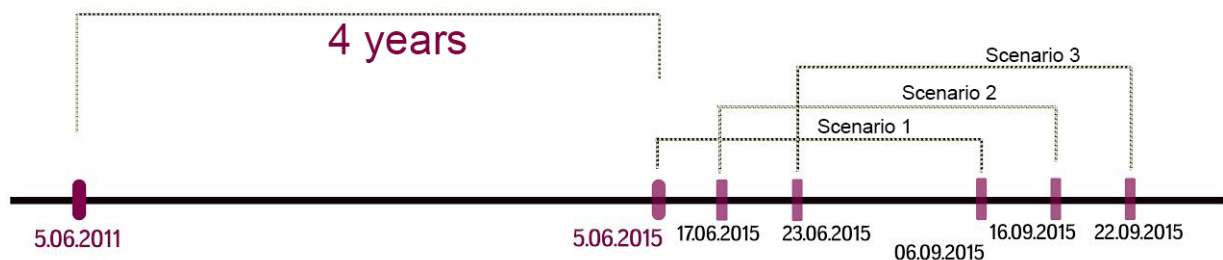
**- Scenario 3 – Parliament’s Mandate is connected with the Date of the Constitution of the Parliament**



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Argument - Art.3 of the Law on Parliamentary Rules states that the Parliament is legally constituted from the date of its constituent meeting. An analogy can be made with local or raion councils. However, it is more difficult to establish an accurate benchmark time because there are over 900 local and raion councils, and they formed at different times. In this context, we can take as a basis the CEC Decision No. 315 of 22 June 2011, which established the schedule of convening the first meetings of raion and municipal councils. According to the Decision, the first constituent meetings were convened on 23 June 2011, and were held through 5 July 2011. Accordingly, under this scenario, the local elections should be held between 23 June and 22 September 2015. Some local councils could have convened in their first meetings before 23 June 2011, but due to the lack of information on this subject, we shall with the available information on raion councils.

**- Other possible scenarios**



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The three scenarios described above can be adjusted and changed. One major argument could be the second round of voting in the general local elections. We are not in favor of operating with dates related to the second round of the elections for reasons described above, and namely the suspicion of usurpation faced by elected officials who started their mandates after the first round of elections and take decisions after the expiration of the “interim mandate”.

The idea of reforming the system of local public administration and postponing local general elections indefinitely to allow for the implementation of this reform has been widely discussed lately. We note that, at this time, according to Art.15 para.3 of the Law on Local Public Administration, the mandate of a local council may be extended by organic law and only in case of war or disaster. There are no other legal grounds to allow for the extension of the respective mandate, and reform of the system of local government is not a valid argument to that end.

## **- History of previous local general elections**

Parliament Decision no. 128 of 20 March 2003 (entered in force on 20 March 2003) established 25 May 2003 as the date of local general elections;

Parliament Decision no. 77 of 23 March 2007 (entered in force on 23 March 2007) established 3 June 2007 as the date of local general elections;

Parliament Decision no. 51 of 31 March 2011 (entered in force on 4 April 2011) established 5 June 2011 as the date of local general elections.

## **- Conclusions**

Based on the principles of continuity and representativeness of the government, after analyzing the legal framework, which does not set an express timeline for holding local elections, applying the analogy of law, and taking into account the timelines of setting the election date for previous elections, we deduce that the 2015 local general elections should be held between 5 June and 4 September 2015. Parliament should set the date of elections at least 60 days before the Election Day. Political statements regarding the possibility of extending the mandate of local elected officials outside the periods referred to in this analysis do not have a legal basis, as, under Art.15 para.3 of the Law on Local Public Administration, the mandate of the council may be extended only by organic law and only in case of war or disaster.

## **- Recommendations**

To avoid speculations and interpretations on setting the election date, Parliament shall adopt the Decision to establish the date of local elections as early as possible to.

Before passing that Decision, Parliament shall pass amendments to the Election Code and other legislative acts, as required by the civil society, to avoid deficiencies, gaps and conflict situations described in their election monitoring reports.

11 march 2015

**Democratic Processes Monitoring Program**

**Promo-LEX Association**