

No 96 of 12.05.2017

To Mr. Sergiu Sirbu,
Deputy Chairperson of the Democratic
Party of Moldova (PDM),
address: Chisinau Municipality, 32 Tighina Street

sent by Facebook and by registered mail

Esteemed Deputy Chairperson,

'Promo-LEX' civil association (Promo-LEX) appreciates your filing of the request on 4 May 2017, supplemented by the request of 7 May 2017, whereby you gave your opinion regarding some information from the 'Political Party Financing in the Republic of Moldova. 2016 Retrospective' Report, published on 3 May 2017 (hereinafter referred to as 'report')¹ and asked for certain opinions laid down in the report to be invalidated.

We, hereby, let you know that we appreciate your active participation, and that of other PDM members, in monitoring the activity of Promo-LEX, and that we regret, however, that this does not take place in a more open and transparent manner, by having you and other PDM representatives present at public events, including at those events where monitoring reports are presented, that Promo-LEX has always invited you to. We cannot disagree with the fact that PDM was among the few parties that submitted to CEC financial statements, which was mentioned by Promo-LEX in that same report². You are also right, dear Deputy Chairperson, that PDM submitted – within the term provided for by the law – the 2016 financial statement, which was mentioned in the report too³. However, we must mention, in this context, that PDM refused to meet with Promo-LEX representatives for an interview at central level, but we do appreciate that the representatives of 16 territorial branches of PDM out of all 41 branches of this party were open to discuss to Promo-LEX monitors. We hope that in the future political parties will be more open to the fair monitoring of their funds conducted by Promo-LEX Association to promote the financial transparency of their activity.

¹ See the report and news article on <https://promolex.md/8648-promo-lex-subventiile-de-la-stat-sunt-o-sursa-de-fortificare-a-activitatilor-de-baza-ale-partidelor-dar-raportarea-financiara-ramane-una-defectuoasa-2/>

² See page 20, paragraph 2, regarding the fact PDM was among the two parties that submitted campaign reports during 2016.

³ See point 2.1.3 of the report, page 21.

Remember that the aim of the monitoring activity and of the report itself is to reconstruct the overall picture of parties' expenses during the period between elections in 2016, and to assess the compliance of reporting, recording and supervision with the legal norms that entered into force in 2016. This was mentioned right on the introductory chapter of the report. The conclusions and the findings laid down in the report were drawn on the basis of 13 interviews with representatives of central party branches, 257 interviews with representatives of territorial branches, and after having analysed about 1054 events organized by 14 political parties subject to monitoring. As many as 28 annual political parties' financial statements were looked into, having analysed and presented the legal and regulatory provisions effective in 2016.

By the post that you made in the virtual environment (on Facebook) on 4 May 2017, that was then supplemented on 7 May 2017, you – as PDM representative – developed a preliminary request whereby you asked for Promo-LEX to officially invalidate and fully review the report in strict compliance with the law in force. In this regard, we are happy about the fact that you analysed our report and that you came up with all those objections in your post.

We, hereby, inform you that, considering Article 16 of the Law on Freedom of Expression, we cannot grant your request to invalidate the information on pages 19 and 22 of the report.

In this context, we respectfully remind you that according to Article 2 of the Law on Freedom of Expression No 64 of 23.04.2010, invalidating refers to rescinding slanderous statements about something that does not correspond to reality. According to Article 16(3) of the same Law – the author of a request shall put down in the request the information he/she believes to be slanderous and – in case such statements with regards to deeds were spread – the circumstances that prove that information was essentially false or, in case of value judgement – circumstances that prove that there are not enough factual grounds.

In your request, you alleged that the information on pages 19 and 22 of the report represents *a classical and unprecedented case of manipulation and fabrication*. Thus, it comes out that you disagree with Article 32 of the Regulation, mentioned in the report, as well as with the drawing of certain conclusions on its basis. In your preliminary request you addressed:

- The mismatches between what Promo-LEX stated on page 19 – that PDM has to give back an amount of MDL 10 111 050, while in the press release and on page 22 the amount of MDL 29 076 000 is mentioned.
- That Article 32 of the Regulation on Political Party Funding cannot apply because this article, alongside other rules of this regulation, was challenged in court by a number of political parties back in March 2016, and the Centre Court of Chisinau Municipality pronounced a Decision on 30 September 2016 whereby it nullified it because the sentence: *'The amount of a cash donation made in the reporting year by an individual to a political party shall not exceed one average monthly salary per economy, as established for that year'* is illegal.

To support you opinion, you mentioned a number of provisions of the Law on Administrative Courts, of the Constitution of RM and of the Law on Political Parties.

Promo-LEX looked into the arguments you provided in support of your statements about the illegal use by the association of Article 32 of the aforementioned Regulation. Still, Promo-LEX does not have an active role in the legal proceedings as far as the aforementioned case is concerned and is not a party that would be directly affected by that particular rule, therefore, we will not go into polemics about the lawfulness or unlawfulness of this rule. Nevertheless, we believe that the preliminary request is likely to have been determined by a superficial reading of the text and the conclusions are likely to have been drawn only after having read bits of information from mass-media sources that, either purposefully or not, took over and published only fragments of the findings laid down in the report.

To address your objections, we will provide the full piece of text that became the matter at issue and will also provide additional arguments.

So, with regards to the first objection: *the mismatches between what Promo-LEX stated on page 19 – that PDM has to give back an amount of MDL 10 111 050, while in the press release and on page 22 the amount of MDL 29 076 000 is mentioned.*

You can see below an excerpt from the report, containing particularly the paragraphs concerned.

2.1.1. Rapoartele financiare semestriale (I) pentru anul 2016

Pct. 32 din Regulamentul privind finanțarea activității partidelor politice, aprobat prin hotărârea CEC nr. 4401 din 23 decembrie 2015 (în continuare – Regulament), stabilește că suma donațiilor în numerar oferită unui partid de o persoană fizică în anul de gestiune nu poate depăși un salariu mediu lunar pe economie²², stabilit pentru anul respectiv²³. Analiza Promo-LEX reiterează că 4 formațiuni politice cădeau sub incidența prevederilor de mai sus și aveau obligația de a returna sumele respective: PL – 287 098 lei, PDM – 10 111 050 lei, PCRM – 294 750 lei, PPPN – 394 950 lei.

Punctul 27 din Regulament stipulează imputernicirea CEC de a înainta Serviciului Fiscal de Stat un demers privind verificarea provenienței donațiilor ce depășesc suma de 75 mii lei²⁴. Suplimentar,

21 PL, PPP, PPDA, PAD, PP MPA, PAS, PLDM, PLR, PVE, PCRM, PM, PP UCM, PP PPRM, PP PRM, PPSM, MSPFN.

22 Pentru anul 2016, salariul mediu lunar pe economie a fost stabilit în mărime de 5 050 lei.

23 Partidele care nu au respectat prevederea în cauză, în speță acceptarea/raportarea donațiilor în numerar care depășesc suma de 5 050 lei, riscu a fi sancționate și/sau obligate să verse în bugetul de stat sau să restituie sumele primite peste plafoanele stabilite.

24 În textul Codului fiscal, sintagma „Inspectoratul Fiscal Principal de Stat de pe lângă Ministerul Finanțelor”, „Inspectoratul Fiscal Principal de Stat”, „inspectorat fiscal de stat teritorial”, „inspectoratul fiscal de stat specializat”, „organul fiscal teritorial”, „organul fiscal”, la orice formă gramaticală, au fost substituie cu cuvintele „Serviciul Fiscal de Stat” la forma gramaticală corespunzătoare, cu excepția cazurilor în care codul prevede altfel, conform Legii nr. 281 din 16.12.2016, în vigoare la 01.04.2017.

2.1.3. Rapoartele financiare anuale pentru anul 2016

Potrivit analizei Promo-LEX, 8 formațiuni politice²⁵ riscă a fi sancționate și/sau obligate să verse în bugetul de stat sau să restituie sumele neconforme primite peste plafoanele stabilite. Atragem atenția organului de supraveghere și control asupra termenelor de prescripție pentru aplicarea sancțiunilor corespunzătoare și, ulterior, asupra inițierii procedurilor de restituire a sumelor utilizate de partidele politice contrar prevederilor normative în vigoare. (A se vedea datele tabelului 4)

Tabelul 4. Donațiile făcute în numerar partidelor, peste plafoanele stabilite de 5 050 lei²⁵.

Partid politic	Nr. donații (numerar)	Suma donațiilor, lei (numerar)	Plafonul permis de norma legală, lei	Cuantumul conform, lei	Cuantumul neconform, lei	Versăminte la bugetul de stat, lei
PP PDA	6	200000	5050	30300	169700	169 700
PSRM	3	30614	5050	15150	15464	15 464
PPPN	13	507000	5050	65 650	441 350	441 350
PPEM	6	54600	5050	30300	24300	24 300
PCRM	29	361000	5050	146450	214550	214 550
PDM	1899	38 665 950	5050	9589950	29 076 000	29 076000
PSP	1	29000	5050	5050	23950	23 950
PL	5	483798	5050	25250	458548	458548
Total						30 423 862

Conform pct. 27 din Regulamentul CEC privind finanțarea activității partidelor politice, CEC trebuie să trimită un demers privind verificarea provenienței donațiilor ce depășesc suma de 75 mii lei pentru următoarele partide: PPPN – 1 caz, PDM – 1 caz²⁶ (în numerar – 14 donatori, prin transfer – 1 donator), PL – 2 cazuri, PP PDA – 1 caz, PCRM – 1 caz.

29 Partidele care au completat parțial liniile bugetare: PC, PL, PVE, PPP, PRSM, PPPRM, PSD, PSP, PPCNM, PPMMA, MFSM.

30 Partidele care au raportat sedii în locațiune și în proprietate, dar nu au inclus cheltuieli pentru funcționarea acestora: PC, PSD, PPCNM, PPMMA, PPCD.

31 PPPAS.

32 PL, PSP, PDM, PCRM, PPEM, PSRM, PPPN, PPDA.

33 Partidele care nu au respectat prevederea în cauză, în speță acceptarea/raportarea donațiilor în numerar care depășesc suma de 5 050 lei, riscă a fi sancționate și/sau obligate să verse în bugetul de stat sau să restituie sumele primite peste plafoanele stabilite.

34 Chiar dacă PDM nu a avut donații în numerar ce depășesc cuantumul de 75 mii lei, partidul a înregistrat 14 donații de 75 mii lei, astfel eludând la limita posibilă procedura verificării provenienței donațiilor.

We cannot accept to make changes to this piece of text because there is no mismatch. So, sub-chapter 2.1.1. *Semi-annual Financial Statements (I) for 2016 (page 18)*, provides for the reporting method and for the content of political parties' statements for the first semester of 2016. Therefore, the conclusions on page 19 are only about the first half of 2016, whereas the information on page 22 belongs to sub-chapter 2.1.3. *Annual Financial Statements for 2016*, which is about the information for the entire year of 2016. Hence, the amounts put down on the aforementioned pages are different.

Your second argument in support of the allegation that the information in the report is false and that Article 32 of the Regulation on Political Party Funding cannot apply because this article, alongside other rules of this regulation, was challenged in court by a number of political parties back in March 2016, and the Centre Court of Chisinau Municipality pronounced a Decision on 30 September 2016 whereby it nullified it because the sentence: *'The amount of a cash donation made in the reporting year by an individual to a political party shall not exceed one average monthly salary per economy, as established for that year'* is illegal.

As mentioned in the Introduction and in the chapter regarding the report methodology, the conclusions put down in the report are drawn up exclusively on the basis of the legal rules in force in 2016. Accordingly, the regulatory framework in force on 31 December 2016 was the legal basis that the conclusions were developed on. The authors analysed a number of laws, regulatory acts and regulations.

With regards to the situation of PDM in particular, the financial statements lodged by this party with CEC were analysed. The authors of the report found that PDM collected cash donations from 1899 individuals, in the total amount of MDL 38 665 950. Another finding was that these donations exceeded by far the MDL 5050 ceiling established per donor and thus – the risk for PDM is that it will have to give back to donors or transfer to the state budget the amount of MDL 29 076 000.

This conclusion was drawn on the basis of Article 32 of the aforementioned regulation, which was developed in order to ensure the enforcement of Article 2(26) of the Law on Political Parties⁴, which provides that: *(2) Money donations to a political party shall be given via banking operations (bank card, direct transfer), whereas donor's identity shall be specified in the bank document. If the donor does not have a bank account and the donation is made in cash, the money shall be deposited on political party's bank account. If the money is deposited in cash at the headquarters of the political party, the individual shall confirm the donation by signing a declaration on his/her own responsibility, which will be kept and annexed to the accounting documents. The form of such a declaration shall be approved by the Central Electoral Commission.*

According to Article 30 of this law, the independent body that ensures the supervision and control of political party funding is CEC, constituted and empowered with duties as provided for in the Electoral Code and in this law. Thus, CEC approved on 23 December 2015 the Regulation on Political Party Funding, which, according to the above-mentioned Article 30 of the Law on Political Parties, sets the maximum ceilings for **cash donations**.

Your arguments in the request are valid, but they do not affect in any way the conclusions laid down in the report because the conclusions in the report are based on other arguments and provisions than those that you referred to.

First, Article 26(2) of the Law on Political Parties provides for two categories of donors. The first category consists of donors who have bank accounts, while the second – of donors who do not have bank accounts. Therefore, cash donations can only be made by persons who do not have

⁴ 294/21.12.2007 Law on Political Parties //Official Gazette 42-44/119, 29.02.2008.

a bank account, at least this is what comes out of the second sentence of Article 26(2) of the law: *if the donor does not have a bank account and the donation is made in cash.*

Promo-LEX could admit that out of the 2689 donations to PDM, only one was made by a person who had a bank account and made the donation via transfer (see the transfer of 20.06.2016 in the amount of MDL 500 thousand), while the other donors did not have bank accounts and acted, thus, in good faith making a cash donation.

Looking at it from this standpoint, we believe that **point 32 of the CEC Regulation, that some parties challenged, is meant to facilitate the collection of cash donations, as it provides for the quantum of one average salary per economy for both categories of donors.** Should the Decisions of Centre Court of 30.09.2016 be enforced, then CEC would have to establish other instruments to check whether the donors had bank accounts or not, since the law provides that those who have bank accounts may not make cash donations.

In this context, we reiterate that the purpose of the report was not to analyse the compatibility of by-laws (the CEC Regulation) with the provisions of the Constitutions and of the Law on Political Party Funding, but to analyse the way in which the parties observed the 2016 regulatory framework, including the Regulation concerned.

Moreover, with regards to the amounts PDM reported, we highlight that the report contains the following conclusion: *According to Promo-LEX analysis, 8 political formations risk being sanctioned and/or forced to transfer the amount exceeding the ceiling to the state budget or to return it.*

The phrase ‘risk being sanctioned and/or forced’ is a value judgement and a logical conclusions underlain by the above-mentioned provisions. Although on 30 September 2016 the Centre Court Decision nullified the aforementioned phrase, this Decision did not enter into force before 31 December 2016, and was still not effective at the time when the monitoring report was presented. Regarding the Decision of the Chisinau Court of Appeal of 2 May 2017, we believe that the lawyers of Promo-LEX had no way of foreseeing the content of a future court decision that was issued, as a matter of fact, right the day before the conclusions of the report were presented publicly. **Therefore, your conclusions that in the report we referred to a nullified document are not truthful.**

Furthermore, we would like to underline that those parties that collected money in violation of Article 32 of the Regulation are still at risk of being forced to give the money back. However, just the same as with the Decision of Chisinau Court of Appeal, the lawyers of Promo-LEX have no way to foresee what decision the SCJ will make.

With regards to the Law on Administrative Courts, we believe it necessary to specify that according to Article 1(2) of the Law on Administrative Courts, the persons who believes that a right of theirs was violated may got to the administrative court. As an administrative court, is grants the right of a person to challenge an act that violates certain rights of his/her, the administrative court is an institution that defends individual rights and cannot be turned to for *actio popularis*. **We draw particular attention to the fact that PDM did not challenge the**

Regulation concerned and did not lodge any preliminary request regarding the provisions of the Regulation. Therefore, our conclusion is that this Regulation did not affect the interests of PDM, which allows us to state that PDM was going to comply with this document, while the request that you filed gives one reasons to believe that you had no such intention.

According to Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, any person has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Making a clear distinction between information (facts) and opinions (value judgements) through the lens of ECtHR Judgements, facts can be proven, while the truthfulness of value judgements cannot. Opinions are the personal points of view about certain events, legal provisions and actions. Accordingly, the freedom of expression – regarded as a key element of the freedom of expression – must be fundamental in a democratic country, which by its definition allows for a pluralism of ideas. In the beginning of the report, we mentioned that the opinions laid down in the ‘Political Party Financing in the Republic of Moldova. 2016 Retrospective’ Report belong to the authors and do not necessarily reflect the donors’ views. Therefore, the involvement of foreign donors is not exactly appropriate for a preliminary request. Nevertheless, we assure you that the donors will learn about your opinion, as well as about the answer provided by Promo-LEX Association.

The Association respects your opinion, as set out in the request, and informs you that your request, whereby you ask for the invalidation of the information will be posted on our website, alongside the answer provided to it. This will ensure a plurality of opinions, and readers will have the opportunity to know what is the opinion of the party you represent. However, your opinion that the Association *is involved in obvious political partisanship and that it manipulates and falsifies financial statements, misinterprets the law, and ... STEELS donors’ money in favor of certain parties,* have no factual grounds and violates ethical norms, therefore these paragraphs will not be published on our website.

To conclude, Esteemed Deputy Chairperson, we hope that this incident was thus clarified and we are once again glad to have been able to find out a general opinion on the Promo-LEX report. We assure you that we will continue to have the same fair and impartial attitude towards all political parties.

Please accept our deepest appreciation.

Executive Director

Ion MANOLE

Program Director

Monitoring of Democratic Processes

Pavel POSTICA