

Promo - LEX

Promovarea democrației și a drepturilor omului

**Promo-LEX analysis
of potential problematic aspects and
possible effects of single-member
constituencies established according
to the current legal provisions**

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Promo-LEX ANALYSIS

of potential problematic aspects and possible effects of single-member constituencies established according to the current legal provisions

Promo-LEX Association regrets and disapproves of the way in which the Government Decision on Permanent Single-Member Constituencies was approved at the meeting of 7 November 2017. We reiterate that this document, so important for the transparent and righteous implementation of the Law No 154 of 20 July 2017 Amending the Electoral Code, had to be subjected by the Government to an ample public consultation process, in which both the stakeholders (parties, civic associations, local public administration, etc.) and the general public had to be involved.

However, we do believe that there is enough time still to organise plenary discussions with the society before 30 November 2017. What we saw was a Government Decisions being approved hastily, without discussions and at a meeting that did not take place according to the ordinary schedule of Government meetings.

At the same time, remember that when the amendments to the electoral legislation were approved, Promo-LEX Association identified and pinpointed several legal gaps and issues in the implementation of the mixed-member electoral system which, as Promo-LEX believes, need to be tackled immediately. These are some of them: lack of a Constitutional Court Decision on the notification of a group of MPs regarding the control of the constitutionality of the Law No 154 of 20 July 2017; reduced representativeness of the Parliament, should the MPs be elected in single-member constituencies in one single round; it is necessary to clarify what is the situation of the candidate from the national list of the party, who is, at the same time, an independent candidate in a single-member district; legal aspects of student voting, etc. Note that none of the issues raised by the Association was looked into.

Considering this context and the mission of Promo-LEX Association to monitor democratic processes and promote the values of participative democracy, regardless of the attitude of political decision-makers, we continue to share our findings regarding the current situation in the political and legal areas, as well as to make suggestions to improve the implementation of the Law No 154 of 20 July 2017. This Opinion addresses:

1. 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

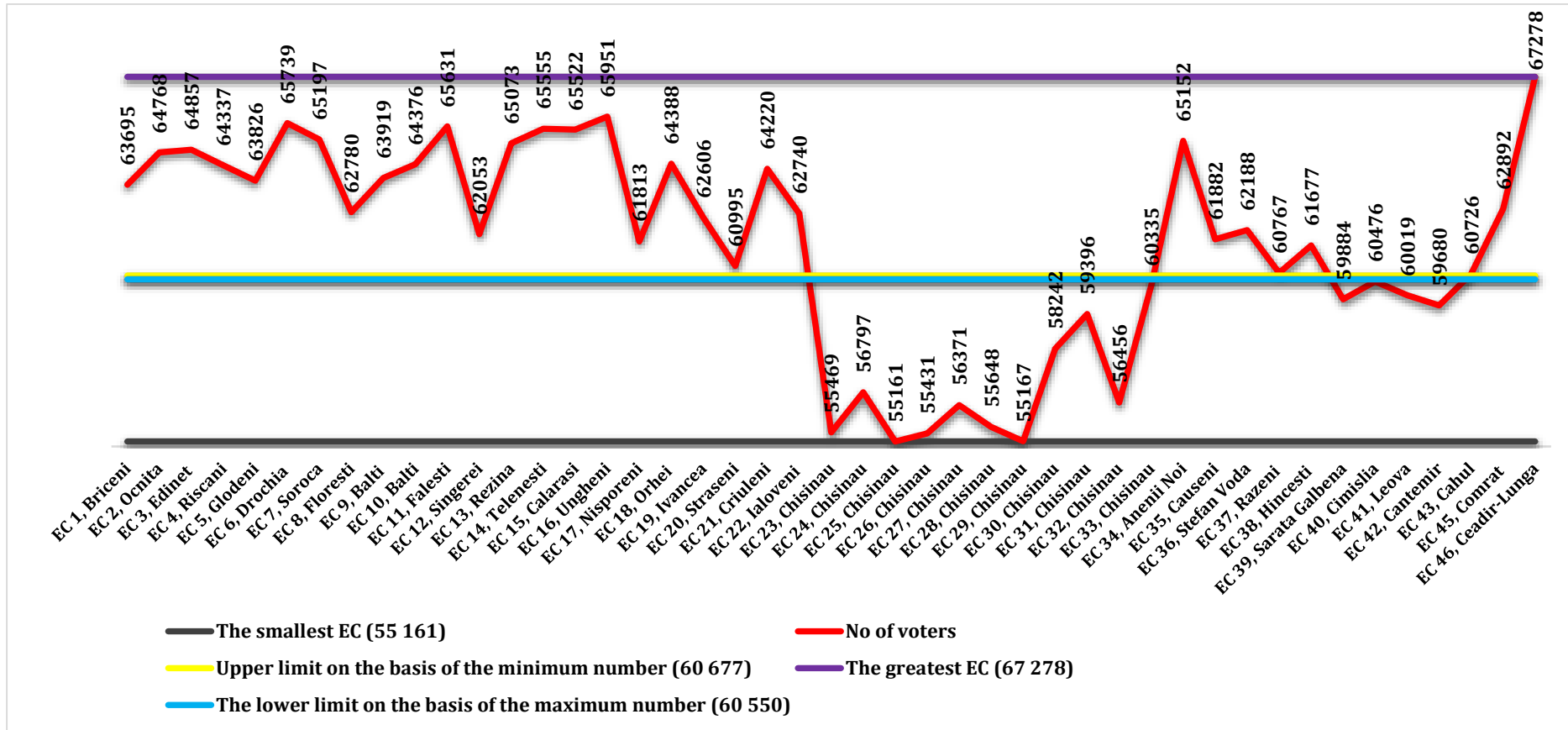
The number of voters registered in the State Register of Voters (SRV) was taken as the constituency establishment criterion. In this respect, pay attention that in compliance with the Electoral Code, the constituencies across the territory of Moldova that is under the jurisdiction of the constitutional 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 12117 voters, i.e. 18.01% of 67278¹ and 21.96% of 55161, respectively.

¹ http://www.gov.md/sites/default/files/tabel_totalizator_circumsriptii_30_octombrie_0.pdf

Taking as a starting point the interpretable nature of the figure on the basis of which the maximum admissible deviation of 10% is computed – we will use the upper limit (67278 voters) and the bottom one (55161 voters) to determine the number of constituencies that fit within that range.

Chart 1. Extent to which the constituencies fall within the maximum admissible 10% deviation



If we take 67278 voters as a basis for calculating the 10% deviation (Constituency No 46, Ceadir-Lunga), which is the upper value of the number of voters in a constituency, then a simple mathematical operation will show us that the bottom value of the 10% deviation is around 60550 voters. **About 15 constituencies²** out of 45³ (33.33%) do not fall within this range and are thus presumably **established in violation of the legal provisions**. On the other hand, if we use in this operation the number of voters from the least numerous constituency – i.e. 55161, then the upper value of the 10% deviation would be 60677. **About 30 constituencies⁴** out of 45 (66.67%) do not fall within this range and are thus presumably **established in violation of the legal provisions**.

2. The Possibility to Use Administrative Resources in Electoral Campaigns

The role of local leaders becomes even more important in election campaigns in single-member constituencies. The last general local elections took place on 14 June 2014. At the same time, during 2015-2017, the political arena at local decision-making level changed because of the processes and trends in parties' activity at central level. Keeping in mind the 2015 electoral results and the findings of Promo-LEX observers, we will try to analyse the possibility to use administrative resources depending on what party that the representatives of level-one executive authorities (mayors) and the representatives of level-two deliberative authorities (district councillors) were in.

The fact that there is a great number of mayors of a certain political affiliation within one single-member constituency could provide conditions allowing for administrative resources to be used in the election campaigns in those constituencies and for favouring certain election candidates, particularly since these mayors are members of the governing parties.⁵

Having analysed what parties the mayors were from in the 46 single-member constituencies, Promo-LEX observers arrived at the following conclusions (see Annex 1)⁶:

- a. In **25 constituencies out of 46 (54.35%)** – PDM owns a relative/absolute majority of mayor positions. In **12 constituencies of the 25, PDM owns 50% and more (absolute majority)** mayor positions. Most of them are in the single-member constituency No 16 from Ungheni t. – 81.25%.
- b. PDM mayors are either not present or represent a minority in 21 constituencies. These are (the party with the greatest number of mayors is provided): Nos 9 and 10 (Balti mun.) – PN and PN/PCRM; No 22 (Ialoveni) – PLDM; Nos 23-33 (all in Chisinau mun.), and Nos 23-31 covered the interim position as Chisinau mun. Mayor General, and No 32 – PLDM, No 33 – PL; No 35 (Causeni) – PLDM; No 37 (Razeni) – PLDM; No 42 (Cantemir) – PLDM; No 43 (Cahul) - PLDM; No 44 (Taraclia) – PCRM; No 45 (Comrat) – IC; No 46 (Ceadir-Lunga) – IC.

² Single-member constituencies Nos 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 (all of them in Chisinau mun.), No 39 from Sarata Galbena twp., No 40 from Cimislia t., No 41 from Leova t. and No 42 from Cantemir t.

³ The 2 constituencies from the left bank of Nistru River and the constituency No 44 from Taraclia were not taken into account.

⁴ The single-member constituencies No 1 from Briceni t., No 2 from Ocnita t., No 3 from Edinet t., No 4 from Riscani t., No 5 from Glodeni t., No 6 from Drochia t., No 7 from Soroca t., No 8 from Floresti t., No 9 Balti mun., No 10 Balti mun., No 11 from Falesti t., No 12 from Singerei t., No 13 from Rezina t., No 14 from Telenesti t., No 15 from Calarasi t., No 16 from Ungheni t., No 17 from Nisporeni t., No 18 from Orhei t., No 19 Ivancea twp., No 20 from Straseni t., No 21 from Criuleni t., No 22 from Ialoveni t., No 34 from Anenii Noi t., No 35 from Causeni t., No 36 from Ștefan Voda t., No 37 Razeni twp., No 38 from Hincesti t., No 43 from Cahul t., No 45 Comrat mun., No 46 from Ceadir-Lunga t.

⁵ This hypothesis was also developed on the basis of Promo-LEX observers' findings on the cases in which it can be stated that administrative resources were used as part of the activity of initiative groups for the Presidential Elections of 30 October 2016. Remember that the candidate appointed by PDM managed to collect, within 24 hours, about 25499 signatures in 414 settlements, 311 of which were officially governed by PDM mayors (about 75.12%). See the Report No 2 of the Observation Mission for the Presidential Election in the Republic of Republic of Moldova on 30 October 2016. https://promolex.md/wp-content/uploads/2016/09/RAPORT-nr.2_elctoral-14.09.2016.pdf

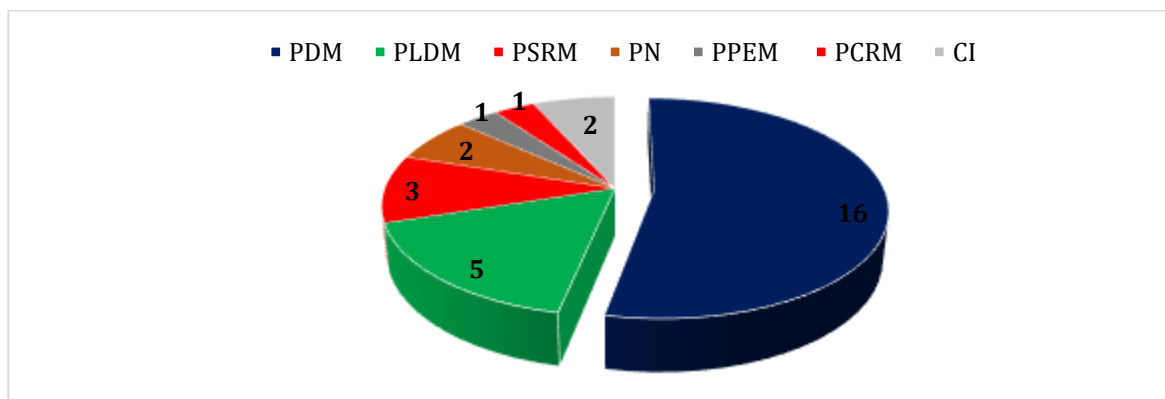
⁶ The calculations made in this study were based on information from open sources and from the field observations of Promo-LEX observers.

- c. **PSRM** owns a share of **over 10%** of the number of mayors in **4 EC** (Briceni, Ocnita, Taraclia, Comrat). In the other cases, the number of mayors is under 10% or there are no mayors in a particular single-member constituency.
- d. At the 2016 presidential elections, **PSRM won in the first round in 16 EC out of the 25 constituency** where PDM owns a majority.

The **political affiliation of district councils** is another relevant aspect in determining the possibility of using administrative resources in the election campaign. Looking at the results of the 2015 general local elections and at the most recent changes noticed by Promo-LEX observers – **the relative majority in the 32 district councils, 2 municipal councils and in the People’s Assembly belongs to the following political forces:**

- a. PDM councillors are the most numerous, in terms of political faction, in 16 of the 35 deliberative authorities (45.71%);
- b. PLDM councillors are the most numerous, in terms of political faction, in 5 of the 35 deliberative authorities (14.29%);
- c. PSRM councillors are the most numerous, in terms of political faction, in 3 of the 35 deliberative authorities (8.57%);
- d. PN councillors are the most numerous, in terms of political faction, in 2 of the 35 deliberative authorities (5.71%). The same percentage is true for independent candidates, which own a majority in 2 deliberative authorities;
- e. PPEM and PCRPM councillors are more numerous in one deliberative authority each (2.86% each);
- f. there are several factions in 5 authorities (with the greatest number of elected officials), having the same number of councillors from parties such as: PLDM (4), PDM (3), PSRM (2), PL and PN (1 from each).

Chart 2. Number of deliberative authorities in which the parties own the most numerous faction (except for 5 authorities where several factions had the same number of councillors)



3. Electoral Projection Aspects

Looking at the geographical apportionment of single-member constituencies, the electoral configuration was analysed on the basis of the presidential election. Alongside the results of the general local elections analysed above, the result of the presidential election will allow us to see a full picture regarding the political views of the voters. Despite certain drawbacks of the presidential election results (in particular, the lack of PDM contenders on the lists), these results were still the most recent ones, so we believe them to be relevant for the current political processes.

Analyzing and projecting the aforementioned results on the map of constituencies the following conclusions can be arrived at:

- a. In **30 EC of 46 (65.22%)**, **Igor Dodon (PSRM) obtained** the most votes in the first round of the presidential election. Remember that in the **first round of the presidential election**, the candidate Igor Dodon obtained a **nationwide average of 47.98%**.
- b. In addition, considering the results of the presidential election, **PSRM** is again the one that has **big changes of winning 2 mandates** in the single-member constituencies in the administrative units on the **left bank of Nistru River**. Hypothetically, taking as a starting point the projection of the presidential election results on the map of single-member constituencies, **32 mandates (66.67%) of the 48** (except for those abroad) **could be won by PSRM**.
- c. Thinking about the results of the first round of the presidential election, the first two candidates had almost the same results in at least 4 EC:

Table 1.

	PAS	PSRM
No 25, Chisinau	45.16%	45.74%
No 26, Chisinau	45.83%	45.27%
No 41, Leova	41.00%	42.21%
No 43, Cahul	42.22%	42.19%

4. Territorial and Geographic Issues

Both the Electoral Code and the Regulation on the Activity of the National Commission for the Establishment of Permanent Single-Member Constituencies provide that the Commission will have to take into account the road traffic infrastructure and the historic relations between certain level-one administrative-territorial units to establish single-member constituencies. Promo-LEX observers identified at least the following issues in this regard:

Table 2

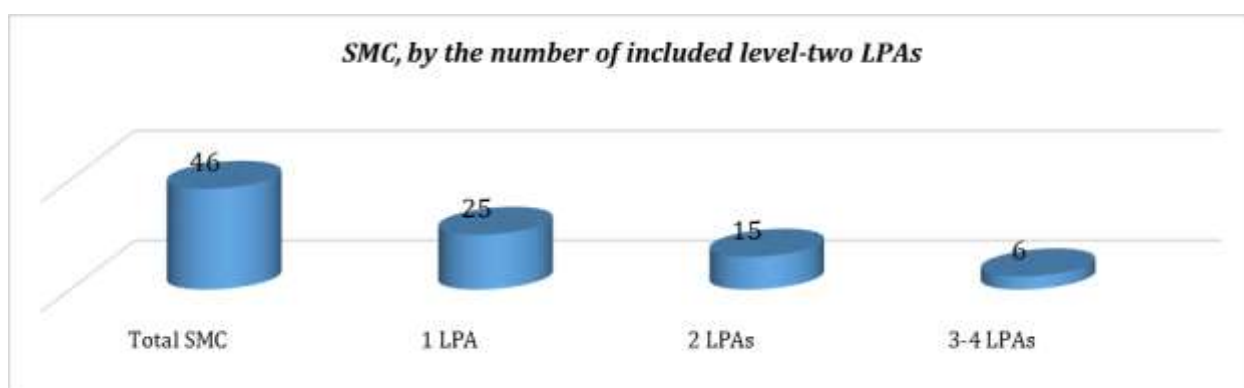
Constituency No	Issues
Single-member constituency No 2, Ocnita t.	1. Horodiste v., Donduseni d., is about 70 km away from Ocnita t. (where the constituency office is based). 2. Scaieni v., Donduseni d., is about 65 km away from Ocnita t. (where the constituency office is based).
Single-member constituency No 12, Singerei t.	Stefanesti EOPS will have to travel 68 km from Stefanesti to Singerei, passing through 3 districts (Floresti – Telenesti – Singerei via M2 and R14), or to travel 51.5 km through Floresti – Balti – Singerei via R18 and R14. This is also true for Ciutulesti and Domulgeni villages.
Single-member constituency No 14, Telenesti t.	The distance between Chipesca, Dobrusa, Gauzeni, Raspopeni villages (all in Straseni d.) to Telenesti is about 80-95 km.
Single-member constituency No 18, Orhei t.	The distance between Orhei t. and Varzarestii Noi v. is: 1 st route – 68.5 km, 2 nd route – 78 km
Single-member constituency No 22, Ialoveni t.	The distance between Ialoveni t. and Buda: 1 st route – 62 km, 2 nd route – 70 km. Ialoveni ECC is at least 70 km away from the furthest settlement. To reach ECC, people from Calarasi d. villages will have to pass through 3 districts (CL-ST-IL).
Single-member constituency No 42, Cantemir t.	Pelinei v., Gavanoasa v. and Burlaceni v. (Cahul d.) are an average distance away from Cantemir t. – 85 km.
Single-member constituency No 45, Ceadir-Lunga t.	Gaidar v. is 10 km away from Ceadir-Lunga t. and 35 km away from Comrat, and should have logically been included in the constituency No 46 from Ceadir-Lunga, not in No 45 as it is right now. This village could have been replaced by other villages closer to Comrat t., such as the Tomai v. (19 km).

5. Uncertainties as to the Establishment of Constituency Councils Determined by the Geographical Location of Single-Member Constituencies

According to the provisions of the Electoral Code, Article 75(6), the constituency councils for parliamentary elections are to be established on the basis of the single-member constituencies and to fulfil their duties within their territorial radius. Paragraph (1) of the same article provides that the Central Electoral Commission is to establish the constituency councils in line with Article 27 of the Electoral Code.

Article 27(4) provides that for parliamentary elections, presidential elections, republican referenda and general local elections, 2 members in the level-two constituency councils are to be nominated by the court or, as the case may be, by the appellate court, **while 2 other members – by the local level-two councils and by the People's Assembly of Gagauzia**. The other members are to be nominated by the parties and other social-and-political organizations represented in the Parliament on the date that the electoral constituency is established. If there are not enough members, then CEC shall nominate officials from the register of electoral officials to fill in the missing number of members. There is an issue because **21 constituencies out of 46 were established on the basis of at least 2 level-two administrative territorial units**. It is not clear which level-two LPA (district council) will nominate members for ECC in the constituency councils covering several ATUs.

Chart 3. Distribution of single-member constituencies, by number of covered level-two ATUs



Considering the aforementioned, the mixed electoral system implementation mechanism would have been clearer, at least as regards the involvement of level-two LPAs, **after the administrative-territorial reorganization reform would have taken place**.

Following the same line of reasoning regarding the **political parties represented in the Parliament that nominate candidates for electoral councils**, something is not clear about how to interpret the above-mentioned rule.

The Constitutional Court Decision No 29 of 9 December 2014 Confirming the Results of the Parliamentary Elections of Moldova of 30 November 2014 and Validating the Mandates of the Elected Members of Parliament, 5 political formations entered the XXth Parliament. The official web-site of the Parliament says, however, that now there are 4 unaffiliated MPs, 5 factions and 1 parliamentary group in the Parliament (6 parties being represented in the Parliament)⁷. Having left the parties that they entered the Parliament with – which happened in previous legislatures too – some MPs chose to identify with various political parties that did not even reach the electoral threshold or that did not even exist during the electoral period.

⁷ <http://parlament.md/StructuraParlamentului/Fractiuniparlamentare/tabid/83/language/ro-RO/Default.aspx>

Because of such practices, we believe it necessary to reword Article 27(4) of the Electoral Code, so as for **the members of electoral councils to be nominated by the parties that gained their access in the Parliament** following parliamentary elections conducted in line with the electoral legislation and the mandates of which were validated by the Constitutional Court.

6. Unclear Territorial Jurisdiction of Courts as Regards Their Involvement in the Electoral Process Pursuant to the New Legal Provisions

According to the structure and composition of the judiciary system of the Republic of Moldova, the list of the courts contains 15 substantive courts, the territorial jurisdiction of which extends over 48 single-member constituencies established on the territory of the Republic of Moldova, 21 of which are established on the basis of at least 2 level-two ATUs, while other 2 are not even controlled by the constitutional authorities⁸. Looking at the maps, we can see there'll be at least 2 problematic situations in terms of the court, the territorial jurisdiction of which will extend over:

- a. **the establishment of constituency councils.** This takes us back to Article 27(4), which provides that for parliamentary elections, presidential elections, republican referenda and general local elections, 2 members in the level-two constituency councils are to be nominated by the court or, as the case may be, by the appellate court.
- b. **examining complaints.** Article 65(1) provides that the voters and the election candidates can challenge the action/inaction and decisions of electoral councils and offices and the action/inaction of election candidates. Before submitting a complaint in court, it should be first filed with the body that is hierarchically higher than the one the complaint is against, except for complaints regarding the action/inaction of election candidates, which can be submitted to court directly, and for those regarding the right to vote or regarding election management, which can be filed with the electoral office on the election day. There can be situations when the electoral office is under the territorial jurisdiction of one court, while the constituency council – under that of another court.

Taking into account the above-mentioned and the need to ensure that the mechanism of electing MPs in single-member constituencies will work, Promo-LEX Association developed the following recommendations to the Parliament of the Republic of Moldova:

- amend the Law No 154 of 20 July 2017 in order to implement it beginning with the Parliamentary elections of 2022, the earliest. The may procedure and content flaws identified by Promo-LEX strengthen the idea that it is necessary to discuss the applicability of the new legal provisions for the 2022 elections the earliest;
- amend Article 74(4)(a) of the Electoral Code in order to adapt the number used as a special distribution criterion to the current demographic realities and processes from the Republic of Moldova, consideration given particularly to the number of citizens abroad;
- describe more clearly the situations in which administrative resources may be used during election campaigns, and amend, thus, Article 47(6) of the Electoral Code so that it includes 'forms of pressure and/or threats and/or blackmail on behalf of public authorities onto their staff, biased coverage by the mass-media' after 'public money and goods ...';
- reword Article 27(4) of the Electoral Code, so as for the members of electoral councils to be nominated by the parties that gained their access in the Parliament following parliamentary elections conducted in line with the electoral legislation and the mandates of which were validated by the Constitutional Court;
- amend the electoral legislation to ensure the operability of the electoral councils of single-member constituencies by clarifying what is the territorial jurisdiction of level-two deliberative authorities, as well as that of courts (authorities involved in nominating members to constituency councils) in relation to the borders of the established constituencies.

⁸ <http://www.justice.gov.md/slidepageview.php?l=ro&idc=54&>

Political affiliation of mayors in the 46 SMCs

