

OPINION
**on the draft Law amending and
supplementing certain legislative
acts (special rights of diaspora
voters) no. 217 of 26.06.2018**

Promo-LEX Association

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*Promo-LEX Association, pursuant to Law no.239-XVI of 13 November 2008 on transparency in the decision-making process, expresses its interest in participation in the public consultation on the draft Law on amending and supplementing of certain legislative acts (special rights of diaspora voters) no. 217 of 26.06.2018, submitted as a legislative initiative by a group of deputies of the Parliament of the Republic of Moldova and **by this Opinion, sets out its findings, conclusions and recommendations on the given issue.** –*

With reference to the terms for electoral legislation amendment

In the opinion of Promo-LEX Association, in the analysis of the present legislative initiative, account must also be taken of the provisions of the Code of Good Practice in Electoral Matters¹, which specifies an important condition for the implementation of the principles of the European electoral heritage - *stability of electoral law*. It also stipulates that the fundamental elements of electoral law, and in particular the electoral system itself, the composition of electoral commissions and delimitation of constituencies, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.

The Association's recommendations regarding the opportunity to implement the proposed changes will result from the observance of the stated conditions and principles.

With reference to the Draft Law

On the notion of "diaspora voter"

The draft law proposes the introduction of the special notion of "diaspora voter", denoting a citizen of the Republic of Moldova entitled to vote, who lives or is a temporary / permanent resident abroad. It should be mentioned that currently, the Electoral Code defines the notion of "voter" as a citizen of the Republic of Moldova entitled to vote and uses in its text the notion of "citizen of the Republic entitled to vote residing abroad" to identify the voter abroad.

The exercise of the voting right is related to the citizenship of the Republic of Moldova and not to the place, where people are residing. The state guarantees its citizens the expression of their free will by ensuring the exercise of the right to vote, the voting procedure abroad being specific due to the element of extraterritoriality.

It is necessary to mention that the notion of "voter residing abroad" is wider than the notion of "diaspora voter", since people residing abroad also include those on business trips or tourists, who have not settled abroad. Moreover, the notion of "diaspora" **is not regulated by the electoral**

¹ Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report. European Commission for Democracy through Law (p.10, 26). [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-rom](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-rom)

legislation of the Republic of Moldova, and art. 63 para. (2) of the Law no. 100 of 22.12.2017 on normative acts, states that "amendments to the normative act must harmoniously integrate in the respective act, ensuring the **unity of style and terminology**, as well as a natural succession of the structural elements". In this respect, we consider that to guarantee the exercise of the right to vote by the citizens of the Republic of Moldova residing abroad, the notion of "voter residing abroad" is wider and more relevant than that of "diaspora" that rather belongs to the field of sociology.

Considering the use of the term "diaspora voter" in the article under consideration, the authors of the draft law use and refer to the notion of "Moldovan citizen with voting rights residing abroad" in 8 paragraphs of 10 and only in 2 paragraphs, they use the notion of "diaspora voter".

Thus, we propose replacing the notion of "diaspora voter" with the notion of "voter residing abroad" and the exclusion of the notion of "diaspora voter" from the wording of the draft law.

On para. (1), art. 13¹²

Art. 13 ¹ paragraph (1) of the draft law provides: "In the case of parliamentary, presidential elections and republican referendum, any Moldovan citizen with the right to vote residing abroad may vote at any polling station, established outside the country, regardless of his/her status in the respective territory."

It should be mentioned that for the parliamentary elections, such a rule is stipulated in art. 93 para. (6) of the Electoral Code "In the uninominal constituencies established abroad, citizens of the Republic of Moldova, who on the election day are abroad and who, for various reasons, have not registered in advance, may exercise their right to vote at any polling station, constituted outside the country, under the conditions set out in the regulation approved by the Central Electoral Commission."

Although for the presidential elections and the Republican referendum there is no similar norm, the Electoral Code provides a general rule in Art. 2 para. (3) that citizens of the Republic of Moldova, who reside outside the country, enjoy full electoral rights under the Electoral Code. Diplomatic missions and consular offices are required to create conditions for citizens to exercise freely their voting rights.

To standardize the legal framework, we propose that the right to vote of the persons residing abroad should be expressly stipulated in art. 2 of the Electoral Code. Thus, we propose that para. (3) art. 2 of the Electoral Code be set out in the following wording:

"(3) Citizens of the Republic of Moldova, who are outside the country, shall enjoy full electoral rights under this Code, including the right to vote at any polling station established abroad. Diplomatic missions and consular offices are required to create conditions for citizens to freely exercise their voting right."

The existence of a general rule in art. 2 of the Electoral Code, which would expressly stipulate the exercise of the right to vote of the persons residing abroad at any polling station established outside the country would exclude the necessity of keeping the norm stipulated in art. 93 para. (6) and additional regulation for the presidential elections and republican referendum.

In addition, we also specify that point 5 of the Regulation on the voting of citizens of the Republic of Moldova residing abroad, approved by the Decision of the CEC no.1732 of 03 July 2018 states that "any citizen of the Republic of Moldova with the right to vote, residing abroad, may vote at a single polling station established outside the country, regardless of the status of his / her placement on the territory of the respective state." Also, point 6 of the Regulation on prior registration, approved by the CEC

² The Opinion analyzes Article 13¹ proposed by the draft law on amending and completing some legislative acts for completing the Electoral Code.

Decision no. 1568 of 24 April 2018 provides (...) citizens, who on election day, are abroad and who, for various reasons, have not registered beforehand, may exercise their right to vote by presenting themselves at any polling station, constituted outside the country. These voters will be included in additional electoral registers. Both regulations mentioned above refer to parliamentary, presidential elections and republican referendum.

On para. (2) art. 13 ¹

Paragraph (2) extends the list of identity documents, allowing the participation in elections outside the Republic of Moldova, adding the identity card of the citizen of the Republic of Moldova and the provisional identity card, but excluding the seaman's card from this list.

It should be mentioned that currently, the Electoral Code provides in art. 58 para. (3) that voting is carried out based on the following **identity documents**:

- a) identity card of the citizen of the Republic of Moldova, with the supplementary sheet, confirming the voter's domicile or residence within the territory of the polling station;
- b) provisional identity card with the mention of the citizenship of the Republic of Moldova and domicile of the holder;
- c) foreign passport, seaman's card, **in the case of parliamentary, presidential elections and republican referendum, presented in the polling stations established outside the Republic of Moldova**;
- d) service card for the military, military card issued by the Civil Service Center to persons, who are assigned for civil (alternative) service.

It is important to note that art. 1 para. (1) of the Law no. 273 of 09.11.1994 on identity documents of the national passport system provides that identity documents of the national passport system are: all types of passports, identity cards, residence permits, travel documents of the stateless persons, refugees and beneficiaries of humanitarian protection, and article 5 of Law no. 1024 of 02.06.2000 on the citizenship of the Republic of Moldova provides that citizenship of the Republic of Moldova is proven based on identity card, passport, birth certificate in the case of a child, or a certificate issued by the competent authorities of the Republic of Moldova.

Since the right to vote is linked to the citizenship, we consider it judicious that voters can vote with identity documents that provide proof of citizenship, namely their identity card, passport or certificate issued by the competent authorities of the Republic of Moldova, no matter where they vote.

On the basis of the above, we conclude that the seaman's card, the service card for the military, the military card issued by the Civil Service Center to the persons assigned for civil service are neither identity documents, nor proof of citizenship of the Republic of Moldova.

In this respect, we support the introduction of amendments to the Electoral Code allowing for the participation in elections outside the Republic of Moldova with any identity document that confirms the status of citizen of the Republic of Moldova, i.e. both on the basis of the passport and on the identity card.

Also, paragraph 2 proposes voting based on expired identity documents, including. In this respect, we consider that, currently, voters cannot exercise their right to vote based on this type of documents, since in accordance with Law no. 273 of 09.11.1994, art. 5 para. (1) clause d), expired identity documents are considered invalid and the use of invalid identity documents is a breach of this law, according to art. 9 par. (1) clause. i).

Assuming the exclusion of art. 5 para. (1) clause d) of Law no. 273 of 09.11.1994, the use of an expired identity document that would allow identification of a person shall not be considered a violation of this law.

It is worth mentioning that in the voting process, identification of the citizens entitled to vote is made by checking the State Register of Voters, which is a unique integrated information system of records of voters of the Republic of Moldova, made on the basis of the State Register of Population, aimed at collecting, storing, updating and analyzing information about the citizens of the Republic of Moldova, including those from abroad, who have reached the age of 18 years and have no legal bans to vote.

Pursuant to point 5 of the Regulation on the State Register of Voters, approved by the CEC Decision no. 2974 of 19 November 2014 "The Register is the only official source of personal data of the citizens of the Republic of Moldova entitled to vote."

Thus, given the existence of this register and its daily automated updating, taking into consideration the possibility of identifying each voter with the right to vote on the basis of any identity document, issued by the Moldovan authorities, the voting process could not be distorted by presenting an expired identity document.

On para. (3) Art. 13 ¹

Paragraph (3) provides for holding of elections outside the Republic of Moldova for two consecutive days indicated in the act of establishing the elections.

We consider that holding elections in two consecutive days is a judicious proposal given the increased number of voters residing abroad registered in the last elections, the increase of diaspora's potential to vote and the continuous processes of emigration.

At the same time, following Decision no. 34 of 13.12.2016 on the confirmation of election results and validation of the mandate of the President of the Republic of Moldova, the Constitutional Court adopted a referral to the Parliament (2) with a view of changing the voting mechanism abroad and introducing additional criteria for calculating the number and geographical distribution of the polling stations situated abroad.

Thus, we consider that such a provision, together with the increase of the number of ballot papers, is able to change the voting mechanism abroad and to ensure the exercise of the right to vote for a larger number of citizens residing abroad.

Paragraph (3) provides for a derogation from the rule laid down in art. 8 of the Electoral Code, stipulating that the elections take place on a single day, on Sunday or on any other day indicated in the act of establishing the elections. At the same time, to standardize the legal framework, Promo-LEX Association considers it necessary to amend art. 1 of the Electoral Code, namely, the notion of general elections stipulating the organization of elections in one day. It is also necessary to replace the phrase "election day" throughout the text of the Electoral Code with its plural form "election days".

In other words, Promo-LEX believes that organizing two-day elections must be a general rule, applied uniformly to all voters and not just to those from abroad. We believe that this could help to increase the voting presence of both citizens with voting rights abroad and those in the country (students, employees with out-of-home service, voters from the Transnistrian region, etc.).

Respectively, we must draw attention to the fact that all citizens are equal in their right to vote and in order to unify the voting practice, we consider it appropriate to hold the elections in two consecutive days, both for those abroad and for those in the country.

On para. (4) art. 13 ¹

Paragraph (4) provides for establishing of constituency / constituencies for the polling stations situated abroad.

According to art. 80 para. (1) of Electoral Code, the parliamentary elections are organized on the basis of a national constituency, covering the entire territory of the Republic of Moldova and the polling stations abroad, as well as on the basis of 51 uninominal constituencies, including for the settlements on the left bank of the Dniester (Transnistria) and abroad.

Accordingly, point 12 of the Regulation on the voting of citizens of the Republic of Moldova, residing abroad, stipulates that in the case of parliamentary elections, three uninominal constituencies are organized abroad, as provided by art. 80 of the Electoral Code.

We remind you that after the presidential elections of 2016, **Promo-LEX Association recommended** that the extraterritorial polling stations refer to a separate constituency, a proposal, which resulted from the increase of the number of voters residing abroad registered in the last elections, the increase of diaspora's potential to vote and the continuous processes of emigration. We also recommended that a Constituency Council be set up to conduct elections outside the Republic of Moldova.

Thus, we consider that a provision regarding the establishing of a constituency and of separate constituency councils for the polling stations situated abroad is necessary not only for the parliamentary elections, but also in the context of the presidential elections and the republican referendum.

On para. (5) Art. 13 ¹

Paragraph (5) establishes that, in addition to diplomatic missions and consular offices, one or more permanent polling stations will be opened.

In this respect, we remind you that para. (2) art. 31 of the Electoral Code expressly states: "In the case of the parliamentary, presidential elections and republican referendum, one or more polling stations for voters, who are abroad at the time of the elections, are set up in addition to the diplomatic missions and consular offices of the Republic of Moldova." Accordingly, the existing legislation provides for the possibility of opening several polling stations within a consular office or a diplomatic mission.

As for the permanence of the polling stations, this is a novelty of the proposed rule, but this element cannot be presented as an imperative norm, as the offices of the diplomatic missions and consular offices themselves cannot be imperatively permanent.

However, *Promo-LEX believes that the idea of ensuring stability of the location of polling stations open abroad, both within the missions / offices and of the additional ones, is welcome and should be taken into account by the legislator and the election authority.* In this case, reasonable circumstances are formed to ensure predictability of the procedures, loyalty and accountability of the voters, who will be able to vote on the basic voters' lists, drawn up according to the previous voting experience at the respective polling station.

On para. (6) and (7) art. 13 ¹

Paragraph (6) provides that, when setting up polling stations abroad, in the cases where such polling stations have previously been opened, account shall be taken, first of all, of the number of voters, who participated in previous elections in the last 4 years, and where more than 1,500 or 2500 voters voted in the previous polling stations, 2 and 3 additional polling stations will be opened in these settlements.

Art.31 para. (3) and (4) of the Electoral Code provide for the establishment of additional polling stations based on several criteria, including the number of voters, who participated in the previous elections.

We consider that none of the above mentioned criteria should be emphasized separately. All the criteria must be taken into account cumulatively, so that the people residing abroad can be guaranteed the right to vote.

Contextually, we reiterate Promo-LEX's position on the need to delegate to the CEC the responsibilities for identifying the number and geographical distribution of polling stations open abroad. The Association proposes that the Government / MFAEI - CEC decision-making direction be a diametrically opposed one. Given the proportional representation of all political forces in the Commission, unlike the Government, which is constituted only on the basis of governing parties, the CEC could ensure a fair, transparent and less politicized decision-making process in determining the number of polling stations to be opened abroad, distribute them by country and determine the number of ballot papers distributed to the polling stations. In its turn, the Government and the MFAEI would have the role of executor in this process and ensure a good implementation of the CEC's decisions, taken in strict compliance with the criteria, provided by the Electoral Code. In addition, both the Government and the MFAEI will provide the CEC with the requested information relevant to ensuring the electoral processes outside the country.

Paragraph (7) provides that, at the request of at least 300 voters, additional polling stations geographically and optimally distributed according to the settlements proposed by applicants, shall be established. *We believe that 300 requests are a reasonable argument for the opening of a polling station, given that inside the country, polling stations are open starting with 30 voters.*

In addition, taking into account the fact that during the last presidential elections, in 13 out of 100 polling stations located abroad, the ballot papers were exhausted prior to the regular closure of the polling stations, *extending the geographical distribution of the polling stations, based on the minimum number of voters/requests to open additional polling stations is a solution to ensure the right to vote of people residing abroad and avoid repeating such situations in the next elections.*

On para. (8) Art. 13 ¹

Paragraph (8) stipulates that in the case of polling stations established outside the Republic of Moldova, no more than 5000 voters could exercise their right to vote in one polling station.

Note that para. (3) of art. 54 provides: "The Central Electoral Commission shall send ballot papers to the Electoral Bureaus of the polling stations, established outside the Republic of Moldova at least 3 days before the election day, (...) no more than 5000 ballot papers for each polling station. "*Thus, we believe that repeating a legal rule in an article on special rights of voters abroad is not necessary.*

On para. (9) art. 13 ¹

Paragraph (9) provides for the right of diaspora voters to lodge appeals, including on-line ones, against electoral violations, administration of election process, insurance and exercise of the voting right.

It should be emphasized that the right to lodge online appeals must also refer to persons, who are abroad on election day, but are not permanently or provisionally residing abroad.

Promo-LEX Association welcomes such a rule that facilitates the procedure for submitting appeals. Submitting online appeals will enable voters, who have voted abroad, to report operational and effective violations committed abroad on the election day.

We also remind you that in the presidential elections, the Constitutional Court found several deficiencies in the Electoral Code regarding the examination of appeals, pointing out that the procedure of examining the appeals, formulated on the election day, which could not be filed with the court on the same day, is not clear.

Promo-LEX is aware of the fact that technically, there are many questions about the feasibility of online appeal mechanisms at this stage.

However, we consider that art. 13 par. (9) of the draft law could be complemented by the following: "The voter residing abroad will provide an e-mail address, at which s/he will be informed of the decision of the competent electoral body on the examination of the appeal lodged." As regards the procedures following the examination of the appeal, it should be noted that they cannot be amended and remain respected in the sense established by the legislation in force.

On para. (10) Art. 13 ¹

Paragraph (10) stipulates the right of diaspora voters to finance the activity of political parties, initiative groups and electoral competitors during a year, in the amount not exceeding 5 national average monthly salaries established for that year.

Taking into account that full electoral rights are guaranteed to voters, regardless of their place of residence, we believe that Moldovan citizens, permanently or temporarily residing abroad, should have the right to donate (support) a particular political party, initiative group or competitor in the same way as it is provided for the citizens, who are settled in the Republic of Moldova. This provision becomes even more important given the mixed electoral system, where the people residing abroad will vote for the electoral candidate in a uninominal constituency, established abroad, which will represent them in the parliament.

With regard to the amount of donation that can be granted by Moldovan citizens, permanently or temporarily residing abroad, we believe that it should be equal and uniform with the amount of donations, established for the individuals settled in the country, namely, 3 national average monthly salaries, according to art. 26 para. (4 ¹) Law on political parties.

In addition, in order to ensure the uniformity of the legal framework on the financing of political parties by individuals from abroad, in addition to the proposal to exclude clause c) para. (3) Art. 41 of the Electoral Code and clause b) para. (6) art. 26 of Law no. 294/2007 on political parties, it is necessary to exclude and amend clause b) para. (5) art. 75 of the Electoral Code, providing for the application of the sanction of cancellation of the registration, in the case of the use of financial means by electoral contenders, by completing the text "with exception of donations offered by citizens of the Republic of Moldova with the voting right residing abroad".

Concluding the above,

Promo-LEX Association, in principle, supports any legislative initiative, aimed at ensuring the fullest possible freedom of voters to express their will. We consider that the changes, proposed by the draft law that is subject to consultation, have the mission to ensure the most active and wide involvement of the citizens of the Republic of Moldova entitled to vote, who are on the voting day abroad. We are firmly convinced that the Republic of Moldova must persistently abide by policies of electoral inclusion of diaspora voters.

Promo-LEX Association recommends that the legislator, in the amendment of the electoral legislation, take account of the principle of stability of electoral law, according to which, fundamental changes in the field cannot be implemented one year before the elections. In the opinion of Promo-LEX, of the total amendments proposed, the conduct of the elections in two consecutive days can be considered a fundamental modification. Accordingly, its implementation has to be transferred for the next elections. Regarding the other amendments supported by the Association, we believe that these are of a technical nature and can already be applied for the forthcoming parliamentary elections.

Promo-LEX Association considers that amendments to the electoral legislation must be followed by activities of civic information and education of the citizens entitled to vote, especially those, who will be abroad on the election day. In this way, overcoming possible problems of awareness and acceptance of the proposed and implemented changes.

Promo-LEX Association repeatedly **emphasizes** the imperative nature of the Constitutional Court's referrals, binding and enforceable for the Parliament. We remind you that the Court found it necessary for the Parliament to come up with new regulations in order to modify the mechanisms of voting abroad, as many Moldovans residing abroad could not exercise their voting rights. We believe that the draft law reviewed in this Opinion is a relevant opportunity for the Legislature to effect the Referral in question.

19.07.2018