



**Promo - LEX**

*Promovarea democrației și a drepturilor omului*

# **Promo-LEX ANALYSIS**

**on eventual jurisdiction conflicts of courts of law in case of electoral  
litigation in parliamentary elections of 24 February 2019**

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#### **I. Context**

After approving and starting the implementation of the Law No 154 of 20 July 2017 Amending the Electoral Code (transition from the proportional representation to elect Members of Parliament to the mixed system), Promo-LEX reported a number of uncertainties that might entail problems such as: failure to observe the demographic criterion when establishing single-mandate constituencies (SMCs); ambiguities in the establishment of district electoral councils (DECs); low degree of representativeness in a single round ballot; difficulties in ensuring road interconnection, etc.<sup>1</sup>

An important identified issue referred to at least two confusing situations about the territorial jurisdiction of courts of law in the context of their involvement in the electoral process under new legal provisions: *examining electoral litigation* and *appointing members for DECs*. Over more than one year, in the context of organising parliamentary elections of 24 February 2019, we consider it necessary to get back to this point, *since Promo-LEX believes that both the legislator and the electoral authority did not solve all potential problems*.

According to the structure of the judiciary in the Republic of Moldova, the list of courts of law contains 15 substantive courts<sup>2</sup>. According to provisions of the Electoral Code for the election of MPs of the Republic of Moldova, on single-mandate constituencies, 51 SMCs were set up, of which 2 SMCs - for the localities on the left bank of the Nistru River (which are not controlled by the constitutional authorities) and 3 SMCs - for citizens abroad. Note that about half of the single-mandate constituencies established on the territory of the Republic of Moldova and controlled by the authorities are formed on the basis of at least two ATUs of level II.

#### **II. Types of complaints**

The analysis of legal provisions of Articles 70-71 shows that the Electoral Code highlights the types of complaints, how and when to challenge actions. Respectively:

- a) **Actions/inactions and decisions made by the electoral bureaus of the polling stations (EBPSs)** should be challenged in the first instance court, complying with the previous procedures;
- b) Complaints regarding the exercise of the right to vote and those concerning the election administration **submitted to EBPS on election day** may be challenged directly to the first instance court of law;
- c) **DECs actions / inactions** and decisions should be challenged in the first instance court, complying with the previous procedures;
- d) **Complaints regarding the financing of electoral campaigns** are submitted to the Central Electoral Commission, in the case of electoral contestants in the parliamentary elections;
- e) **Actions and decisions of the Central Electoral Commission (CEC)** should be challenged to Chisinau Court of Appeals, without complying with the previous procedures;

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<sup>1</sup> For more information see: Promo-LEX Analysis on potential problems and possible effects of the establishment of single-mandate constituencies under current legal provisions. <https://is.gd/at6e8k>

<sup>2</sup> List of courts of law. <https://is.gd/cHg1Q2>

- f) **Complaints regarding the coverage of the electoral campaign** by broadcasters under the jurisdiction of the Republic of Moldova shall be examined by the Broadcasting Coordination Council (BCC);
- g) **BCC actions and decisions** should be challenged to Chisinau Court of Appeals, without complying with the previous procedures;
- h) **Complaints concerning written media** shall be examined by the court of law;
- i) **Actions / inactions of electoral contestants** can be challenged directly to the court of law;  
However, according to Article 72 par. (2), in case of **parliamentary elections in single-mandate constituencies, DEC's rulings on complaints concerning actions / inactions of electoral contestants** may be challenged to the court of law in whose jurisdiction the respective council is located.
- j) **Complaints concerning the organization and conduct of elections** shall be examined by the electoral bodies, observing their hierarchy.

### III. Territorial jurisdiction of courts of law

**Article 73 par. (7) of the Electoral Code** provides for '**Complaints filed to courts shall be considered pursuant to the Code of Civil Procedure and the Law on Administrative Jurisdiction**'. Therefore, the rules on the jurisdiction of courts of law to settle electoral litigation are set out in Chapter IV of the Code of Civil Procedure and Chapter III of the Law on Administrative Jurisdiction.

**Article 38 of the Code of Civil Procedure (CCP)** provides for the general territorial jurisdiction of courts of law, namely: 'The claimant **may bring an action in any of the offices of the court** in whose territorial jurisdiction the defendant resides. An action against a legal entity shall be brought in one of the offices of the court in whose territorial jurisdiction the registered office of the legal entity is situated'. For the purpose of this rule, the action shall be brought in the court (in any of the court's offices) in whose jurisdiction the defendant's domicile / registered office is located.

Another rule regulating the place of challenging electoral contestants' actions / inactions is provided for in paragraph 4 of the **CEC Regulation** on the procedure for the examination and resolution of complaints by electoral bodies during the electoral period. It stipulates that '**complaints regarding actions / inactions of the electoral contestant shall be filed directly with the court in whose territorial jurisdiction the electoral body that registered the contestant is located.**'

**Promo-LEX Association states that such a rule would solve potential conflicts of jurisdiction if it were to be found in an organic law (Electoral Code / Code of Civil Procedure).** A rule on the jurisdiction of courts to resolve electoral disputes cannot be approved by a decision of the Central Electoral Commission, all the more as a rule contrary to the provisions of Article 71 par. (1), Article 72 par. (2) of the Electoral Code and Article 38 of the Code of Civil Procedure is concerned. Thus, we do not agree with the assumption that the electoral authority by making amendments to the said Regulation would solve the conflicts of territorial jurisdiction of courts of law.

Taking into account the fact that electoral litigation in the parliamentary elections in single-mandate constituencies are closely linked to the territory in which elections for a single mandate of Member in Parliament are held, **electoral litigation occurring in the single-mandate constituency should be settled by the court that is competent from a territorial point of view to resolve this action.** According to Article 25 of the Law on Judicial Organization of 6 July 1995, the courts of law operate in sectors established by law. The courts and localities within their area of activity are established in accordance with Annex 2 to the aforementioned law.

#### **IV. Single-mandate constituencies *versus* territorial jurisdiction of courts of law**

Overlapping the courts and localities within their area of activity (Annex 2 of the Law on Judicial Organization<sup>3</sup>), with the localities in single-mandate constituencies (Annex 1 to the Government Decision no.970 of 15.11.2017), it is noted that localities of the same single-mandate constituencies are assigned to 2 or even 3 different courts of law.

Conflicts of territorial jurisdiction may arise in the case of localities assigned to a different court of law than the one where the constituency is located and where the DEC is to be located. Thus:

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<sup>3</sup> When overlapping localities in the constituency of courts, the Law No 76 of 21.04.2016 on the reorganization of the courts was also taken into consideration. According to Article 12 paragraph (6) of the aforementioned law, 'Until conditions for the functioning of the reorganized courts in a single office are created, the action filed by the applicant under Article 38 or 39 of the Code of Civil Procedure shall be examined by the judge or, as the case may be, the panel of judges acting on the court's office.

<i>SMC</i>	<i>LPA 2</i>	<i>Localities</i>	<i>Court of law</i>	<i>Court of Appeal</i>
<b>SMC no. 4</b>	Rascani	<b>Riscani</b> , Alexandresti, Borosenii Noi, Duruitoarea Noua, Grinauti, Hiliuti, Horodiste, Mihaileni, Nihoreni, Pirjota, Pociumbaut, Pociumbeni, Recea, Sturzeni, Saptebani, Sumna, Vasileuti, Varatic, Zaicani	Drochia	Balti
	Drochia	Antoneuca, Fintinita, Hasnasenii Noi, Miciurin, Ochiul Alb, Pelinia, Pervomaiscoe, Tarigrad		
	Donduseni	Baraboi, Frasin, Târnova	Edinet	
<b>SMC no. 6</b>	Drochia	<b>Drochia</b> , Baroncea, Chetrosu, Cotova, Dominteni, Drochia v., Gribova, Hasnasenii Mari, Maramonovca, Mindic, Moara de Piatra, Palanca, Petreni, Popestii de Jos, Popestii de Sus, Sofia, Salvirii Vechi, Suri, Zgurita	Drochia	Balti
	Donduseni	Criscauti, Teleseuca	Edinet	
	Soroca	Badiceni, Baxani, Cremenciug, Darcauti, Holosnita, Iarova, Oclanda, Rudi, Septelici, Solcani, Tatarauca Veche, Visoca	Soroca	
<b>SMC no. 12</b>	Sangerei	<b>Singerei</b> , Balasesti, Biliceni Noi, Biliceni Vechi, Bursuceni, Chiscareni, Ciuciuleni, Copaceni, Coscodeni, Cotiujenii Mici, Draganesti, Dumbravita, Grigorauca, Iezarenii Vechi, Izvoare, Pepeni, Prepelita, Radoaia, Taura Veche	Balti	Balti
	Floresti	Casunca, Ciutulesti, Domulgeni, Nicolaevca, Prodanesti, Stefanesti	Soroca	
<b>SMC no. 15</b>	Calarasi	<b>Calarasi</b> , Bahmut, Cabaiesti, Dereneu, Hirova, Hirjauca, Hoginesti, Meleseni, Niscani, Oniscani, Peticeni, Radeni, Sipoteni, Telemeuti, Tibirca, Valcinet	Straseni	Chisinau
	Ungheni	Agronomovca, Alexeevca, Boghenii Noi, Bumbata, Busila, Condratesti, Cornesti town, Cornesti village, Cornova, Hircesti, Magurele, Napadeni, Negurenii Vechi, Pirlita, Radenii Vechi, Sinesti, Tescoreni	Ungheni	Balti
<b>SMC no. 17</b>	Nisporeni	<b>Nisporeni</b> , Balanesti, Balauresti, Barboieni, Bolduresti, Boltun, Bratuleni, Bursuc, Calimanesti, Cioresti, Ciutesti, Cristesti, Grozesti, Iurceni, Marinici, Milesti, Seliste, Siscani, Soltanesti, Valea- Trestieni, Varzaresti, Vinatori, Zberoaia	Ungheni	Balti
	Straseni	Dolna, Lozova, Micleuseni,	Straseni	Chisinau
<b>SMC no. 18</b>	Orhei	<b>Orhei</b> , Braviceni, Cucuruzeni, Ghetlova, Isacova, Malaiesti, Mitoc, Morozeni, Pelivan, Neculaieuca, Putintei, Seliste, Vatici, Zorile	Orhei	Chisinau
	Calarasi	Bravicea, Frumoasa, Paulesti, Pitusca, Raciula, Saseni, Varzarestii Noi	Straseni	
<b>SMC no. 19</b>	Orhei	Berzlogi, Biesti, Bolohan, Bulaiesti, Chiperceni, Crihana, <b>Ivancea</b> , Jora de Mijloc, Mirzesti, Piatra, Podgoreni, Pohorniceni, Pohrebenei, Step-Soci, Susleni, Trebujeni, Viscauti, Zahoreni	Orhei	Chisinau
	Rezina	Busauca, Cuizauca, Ghiduleni, Lalova, Otac, Pereni		
	Dubasari	Cocieri, Corjova, Holercani, Marcauti, Molovata, Molovata Noua, Oxentea, Ustia	Criuleni	

	Criuleni	Jevreni, Mascauti, Raculesti		
SMC no. 20	Straseni	Straseni, Chirianca, Codreanca, Galesti, Ghelauza, Greblesti, Micauti, Negresti, Onesti, Panasesti, Radeni, Recea, Romanesti, Roscani, Sireti, Tatrestii, Tiganesti, Voinova, Zubresti	Straseni	Chisinau
	Orhei	Donici, Peresecina, Samananca, Teleseu.	Orhei	
SMC no. 22	Ialoveni	<b>Ialoveni</b> , Danceni, Horodca, Malcoci, Nimoreni, Rusestii Noi, Sociteni, Suruceni, Ulmu, Vasieni	Hancesti	Chisinau
	Straseni	Bucovat, Capriana, Cojuina, Scoreni, Vorniceni	Straseni	
	Calarasi	Buda, Horodiste, Pirjolteni, Sadova, Tuzara		
SMC no. 35	Causeni	<b>Causeni</b> , Baccealia, Chircaiesti, Cirnateni, Coscalia, Firladeni, Grigorievca, Hagimus, Opaci, Plop-Stiubei, Saiti, Salcuta, s. Taraclia, Tanatari, com. Tanatarii Noi, Tocuz, Ucrainca, Ursoaia, Zaim	Causeni	Chisinau
	Anenii- Noi	Harbovat	Anenii- Nou	
SMC no. 37	Ialoveni	Bardar, Costesti, Carbina, Cigirleni, Gangura, Hansca, Horesti, Milestii Mici, Molesti, Pojareni, Puhoi, <b>Razeni</b> , Tipala, Varatic, Zimbreni	Hincesti	Chisinau
	Hancesti	Buteni		
	Causeni	Baimaclia, Cainari, Chircaiestii Noi, Ciuflesti, Cirnatenii Noi, Pervomaisc	Causeni	
SMC no. 39	Hincesti	Bozieni, Caracui, Calmatui, Carpineni, Cioara, Dancu, Firladeni, Leuseni, Mingir, Negrea, Poganesti, <b>Sarata Galbena</b> , Voinescu	Hincesti	Chisinau
	Cimislia	Albina. Gradiste, Gura Galbenei, Hirtop, Ivanovca Noua, Lipoveni, Porumbrei	Cimislia	Comrat
	Leova	Ceadir, Cneazevca, Colibabovca, Covurlui, Orac, Sarata-Razesi, Sarateni, Saratica Noua, Tomai, Tomaiul Nou		
SMC no. 41	Leova	<b>Leova</b> , Iargara, Baius, Bestemac, Borogani, Cazangic, Cupcui, Hanasenii Noi, Romanovca, Sarata Noua, Sirma, Tigheci, Tochile- Raducani, Vozneseni.	Cimislia	Comrat
	Cantemir	Antoneati, Baimaclia, Capaclia, Ciietu, Iirpesti, Cociulia, Enichioi, Haragis, Larguta, Lingura, Pleseni, Porumbesti, Sadic, Samalia, Tartaul, Toceni, Visniovca.	Cahul	Cahul

Overlapping the courts and localities within their area of activity with the localities in the single-mandate constituencies, we might deduce that:

- **in 13 constituencies (28.26%) out of 46<sup>4</sup> territorial jurisdiction conflicts are possible** following the overlapping of courts and localities from their area of activity with localities of the SMCs;

- **in 12 SMCs** out of a total number of 13 constituencies with potential jurisdiction conflicts, **conflicts concern at least 2 substantive courts, and in one case (SMC no. 6) - it is about the territorial jurisdiction of 3 courts of law;**

- **in the case of 4 SMCs (8.70%) conflicts of jurisdiction may also arise at the level of Courts of Appeal** (SMC no. 15, 17, 39, 41)

#### **V. Uncertainties regarding the direct challenge in the court of actions / inactions of electoral contestants in single-mandate constituencies**

Finally, we draw attention to the fact that actions / inactions of electoral contestants in single-mandate constituencies, based on the provisions of the Electoral Code, could be challenged in 2 ways - **either directly in the court of law according to the rules of general territorial jurisdiction or in the DEC, and, subsequently, according to Article 72 par. (2) in the court in whose jurisdiction the respective council is located.**

According to Article 71 par. (1) of the Electoral Code 'submitting the application in the court must be preceded by the prior challenge in the electoral body hierarchically superior to the body whose act is challenged, **except for complaints regarding actions / inactions of electoral contestants filed directly with the court of law**, and complaints which refer to the exercise of the right to vote or to the administration of elections filed with the electoral bureau on election day.'

Simultaneously, the provisions of Article 72 par. (2) points to the possible need for the court referral to be preceded by the examination of complaints in question by DEC: **in the case of parliamentary elections in single-mandate constituencies and of local elections, decisions of electoral councils on complaints concerning actions / inactions of electoral contestants may be** challenged to the court of law in whose jurisdiction the respective council is located.

Thus, hypothetically, an action of an electoral contestant (with domicile / registered office in the village of Ustia, Criuleni district) in the single-mandate constituency no. 19, committed in the village of Ustia, Criuleni district, could be challenged directly in Criuleni court or in DEC located in Ivancea township, Orhei district and later in Orhei court of law. Thus, **we conclude that the provisions of Article 71 par. (1) regarding actions / inactions of electoral contestants and Article 72 par. (2) creates a situation of legal uncertainty and might lead to a potential conflict of jurisdiction between the courts, whether positive or negative.**

Although CCP provides for a solution to this situation, referred to in Article 44 of the CPC - Solving conflicts of jurisdiction, however, this procedure involves additional court proceedings and the suspension of proceedings, which can lead to undue delay of the process. We draw attention to the fact that according to Article 73 par. (2), (4) and (5), the examination and settlement of electoral litigation takes place in shorter terms of 3-5 calendar days or the same day, when the complaints was filed on election day, and the court program is organized in such a way so that complaints can be lodged and examined without delay.

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<sup>4</sup> Except for 2 constituencies established for localities on the left bank of Nistru River that are not under the control of constitutional authorities and 3 constituencies established for Moldovan citizens abroad.

At the same time, in the absence of a proper treatment of this issue, any part of the litigation could contest the judgment of a court that violated jurisdiction, and according to Article 388 par. (1) lit. i) of the CCP, the court of appeal is obliged to set aside the judgment irrespective of the parties' arguments if it has been considered contrary to jurisdiction.

#### **VI. Confusion about the designation of DEC members by the courts of law**

In addition, we also refer to the designation of DEC members by the courts. According to the provisions of Article 28 par. (5) of the Electoral Code and point 7 of the CEC Regulation on the activity of the district electoral council, to establish the district electoral council, **two members shall be submitted to the Central Electoral Commission by the court or, as the case may be, by the Court of Appeal (...).**

Since in the case of 13 single-mandate constituencies, localities in the same single-mandate constituency are assigned to 2 or even 3 different courts of law, the application according to point 7 becomes difficult, the said rules lacking the necessary clarity and foreseeability.

We underline that in the case of members designated by the local public authority, the same point 7 of the Regulation is more explicit and specifies that 2 members are appointed by the **local council of the second level within the administrative territorial unit where the district electoral council and the People's Assembly of Gagauzia will have its office.**

#### **VII. Conclusions and Recommendations**

**In conclusion**, even if more than one year has passed since the legal framework on the system of election of MPs of the Republic of Moldova has been changed, Promo-LEX Association still notes the existence of legal uncertainties that might cause conflicts of jurisdiction of courts of law in the case of electoral litigation in parliamentary elections of 24 February 2019, namely:

- **in the case of 13 single-mandate constituencies, conflicts of territorial jurisdiction between courts of law are possible**, while in the case of 4 single-mandate constituencies conflicts of jurisdiction can arise between the courts of appeal;
- the procedure for settling conflicts of jurisdiction would lead to an **unjustified delay in the process** of examining electoral litigation that should take place in short terms of 1-5 days;
- examination of the litigation in violation of jurisdiction, may lead to the **court ruling being set aside.**

In order to avoid conflicts of jurisdiction, **we recommend** a clear regulation of rules governing the territorial jurisdiction of courts of law in the case of electoral litigation, namely:

- urgently amending the legal framework, in order to eliminate the possibility of double interpretation of legal rules on the jurisdiction of courts of law in the settlement of electoral litigation, as well as to avoid the unjustified delay in the process of settling conflicts of jurisdiction and to cancel court decisions as a result of the examination of the litigation contrary to the jurisdiction;
- amending Article 72 paragraph (2) of the *Electoral Code* as follows: 'Complaints regarding actions / inactions of electoral contestants shall be filed with the court of law within whose territorial jurisdiction the electoral body that registered the contestant is located';
- supplementing Article 40 of the *Code of Civil Procedure* with a new paragraph with the text 'In electoral cases where actions / inactions of the electoral contestant are challenged, the application

shall be submitted to the court within whose territorial jurisdiction the electoral body that registered the contestant is located’;

- supplementing the norms provided for in Article 28 par. (5) of the Electoral Code and point 7 of the *CEC Regulation on the procedure for the examination and resolution of complaints* by the electoral bodies during the electoral period, by introducing, after the words ‘the court of appeal’, the text ‘in the territorial jurisdiction, where the district electoral council will have its office’. This will solve the uncertainty regarding the designation of DEC members by the courts of law.