

INFORMATION NOTE OF PROMO-LEX ASSOCIATION

**on Parliament's Decision No 204 of 4 October
2018 setting up the Inquiry Commission for
elucidating the de facto and de jure circumstances
of the interference by the 'Otwarty Dialog'
Foundation and its founder Ludmila Kozłowska
with Moldova's domestic affairs and financing of
certain political parties**

To the **INQUIRY COMMISSION** for elucidating the de facto and de jure circumstances of the illegal interference by the 'Otwarty Dialog' Foundation (Open Dialogue) and its founder Ludmila Kozłowska with Moldova's domestic affairs and illegal financing of certain political parties from Moldova, actions that threaten the national sovereignty and security of the country

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I. BACKGROUND

On 14 September 2018, a group of MPs tabled the draft Parliament's Decision setting up the 'Inquiry Commission (Commission) for elucidating the de facto and de jure circumstances of the illegal interference by the 'Otwarty Dialog' Foundation (Open Dialogue) and its founder Ludmila Kozłowska with Moldova's domestic affairs and illegal financing of certain political parties from Moldova, actions that threaten the national sovereignty and security of the country' as legislative initiative.

Parliament's Decision No 204 of 4 October 2018 states that the Commission consisting of six MPs, including three MPs from the Democratic Party Parliamentary Faction, two MPs from the Socialist Party of Moldova Faction and one MP from the Group of European People's Party, shall involve in its activity all responsible state authorities, hear the **involved parties and persons** and submit to the Parliament the Report on Circumstance Elucidation within 30 days. Subsequently, Parliament's Decision No 224 of 25 October 2018 modified the 30-day deadline for hearing the involved parties and submitting the report with a 60-day deadline.

II. POSITION OF PROMO-LEX ASSOCIATION on the Inquiry Commission's summons and on the discussion topics

On 2 November 2018, **Promo-LEX Association was informed** by Commission's Chair, Mr Igor Vrenea, via an email, **that on 6 November 2018 the Inquiry Commission was going to organise** at the Parliament of the Republic of Moldova **hearings 'to elucidate the de facto and de jure circumstances of the interference by the 'Otwarty Dialog' Foundation (Open Dialogue) and its founder Ludmila Kozłowska with Moldova's domestic affairs and financing of certain political parties from Moldova'.**

The letter referred to Article 36(2) of the Parliament's Rules of Procedure, and namely that **'At the request of the inquiry commission, any person who knows about an evidence or holds an evidence must submit them to the commission.** The institutions and organisations must, under the law, respond to the inquiry commission's requests.' On 5 November 2018, we were informed that the meeting was postponed to 12 November 2018. Note that Promo-LEX complies with the above mentioned

legal obligation and delegates its representative to answer the questions of the members of the Commission **within the limits of the findings in the Association's public reports.**

At the same time, taking into account the summons sent to the Association and the ambiguity of the topic under discussion, we can deduce two major topics Promo-LEX delegate may be interviewed about and, where appropriate, provide an answer to:

- a) elucidating the de facto and de jure circumstances of the interference by the 'Otwarty Dialog' Foundation (Open Dialogue) and its founder Ludmila Kozłowska with Moldova's domestic affairs and,
- b) financing of political parties from Moldova.

In principle, based on the summons' content, we consider that **Promo-LEX Association cannot be regarded as involved in the investigation of the interference by the 'Otwarty Dialog' Foundation** with Moldova's domestic affairs. Or, from the Association's point of view, such interferences fall within the exclusive competence of law enforcement bodies.

On the other hand, the summons' topic on the financing of political parties from Moldova is an area the Association monitors and reviews. Accordingly, we inform and, as appropriate, remind the Honorable Commission that **Promo-LEX Association**, in accordance with its statutory provisions, **continuously and regularly monitors the finances of political parties and election campaigns** since 2016, **in strict accordance with the approved Methodology**, the latter being also public¹.

According to the Methodology, Promo-LEX reports contain the findings related to the political financing, which were taken from the observations made by the network of national Promo-LEX monitors, **being connected to the data from the annual and half-yearly financial statements submitted** by political factions **to the Central Electoral Commission (CEC)**. In other words, Promo-LEX's civic monitoring is based on the budget lines indicated in the financial statements political parties need to submit to CEC.

Hence, given the de facto circumstances created and building on Association's mission to contribute to quality improvement and increase of citizens' trust in the democratic processes of Moldova, **Promo-LEX is ready to inform the members of the Parliament of the Republic of Moldova about the main concerns, conclusions and recommendations of the Reports on the political party financing in the Republic of Moldova.**

III. FINDINGS OF REPORTS ON THE INTERFERENCE BY NON-COMMERCIAL ORGANISATIONS WITH PARTIES' POLITICAL ACTIVITY

We inform the Honorable Commission that the Reports on political party finances for 2017 and semester I of 2018, developed by Promo-LEX following the civic monitoring of party finances and cross-checking of collected data with those indicated in the financial statements submitted to CEC, **do not contain any information about the 'Otwarty Dialog' Foundation (Open Dialogue) and its founder Ludmila Kozłowska.**

In addition, as regards the transfer of image from non-commercial philanthropic organisations associated with politicians to political parties, **Promo-LEX monitors identified a number of other non-commercial organisations**, working according to the legislation of Republic of Moldova and whose

¹See, for instance, Report. Political party financing in the Republic of Moldova. Semester I, 2018. p. 3. <https://is.gd/5Ndfw1>

activity, which by definition must be apolitical, could have a **pretty big impact on forming voters' opinion**.

On the basis of the findings from the monitoring reports, we'd like to draw the attention of the Honorable Commission on the following foundations: **'Din Suflet' [From the Bottom of one's Heart] benevolent foundation under the patronage of the First Lady of the Republic of Moldova, Galina Dodon; Vlad Plahotniuc's Foundation 'EDELWEISS'; 'Renato Usatii' Foundation, 'Solutia' [Solution] Foundation, and the Association for Orhei (founded by Social Stores LLC).**

For instance, for the first semester of 2018, the **activity with potential electoral impact of foundations**, which may be associated with political parties or politicians in the Republic of Moldova, reached about **95 cases with estimated expense of at least MDL 2 480 000²**.

Their concerns consisted predominantly in the provision of material aid to seniors, young mothers and children, sponsoring social campaigns, national holidays; offering free medical consultations, arranging children's playgrounds and equipping them with slides, benches and necessary infrastructure, financial donations, offering scholarships to students, sanitation events, activities for seniors, offering support for elderly homes, etc.

At the same time, we reiterate that according to the law the foundation is a not-for-profit apolitical organisation, which does not provide any political/electoral support to any candidate or political stakeholder. Or, using the image transfer tool³, foundations, as well as commercial entities, in the name of which there are names of politicians or which are associated with certain politicians (political parties) get indirectly involved in political party campaigning for which they do not bear expenses, which implies non-transparent financing of political parties.

In addition, using the opportunity offered by the Commission to inform the Members of the Parliament of the Republic of Moldova about the recommendations of Promo-LEX Association on other problematic issues related to party financing, **we consider it judicious to also highlight the following sensitive, disputable, interpretative and public issues.**

IV. OTHER ISSUES FOUND following the civic monitoring of political party finances

4.1. Poor reporting by political parties of the expenses for trips abroad

We draw attention to the large amounts of money that parties, in the Association's opinion, fail to report for trips abroad. Also, the presence of a single budget line in CEC Statements for *Trips Across and Outside the Country*, minimises reporting transparency. In addition, the coverage of expenses for trips abroad by organisers, including by the entities registered not in the Republic of Moldova, is also a potential issue which must be clearly regulated by the legislator⁴.

² Promo-LEX Report. Political party financing in the Republic of Moldova. Semester I, 2018, p. 34, <https://bit.ly/2zsjiaCs>

³ Study 'Qualification and investigation of offences and contravention of electoral and political funding specifics', p. 87 <https://is.gd/iuTPcp>

⁴ Opinion of Promo-LEX Association on the draft Law No 251 of 12 July 2018 amending and supplementing the Law No 294 of 21 December 2007 on political parties

According to Promo-LEX Association Monitoring Reports, in 2017, the Moldovan political parties made at least 45 travels abroad in the interest of the party⁵. In semester I of 2018⁶, five political parties from the Republic of Moldova made at least 18 travels abroad in the interest of the party.

According to Promo-LEX estimates, in 2017, [...] **at least eight factions** (PDM, PSRM, PCRM, PAS, PPPDA, PPS, PUN, PN) cumulatively **failed to report** an amount of **at least MDL 39 525 472 for trips outside the country**. In **semester I of 2018**, according to Promo-LEX estimates, **at least four parties** (PSRM, PCRM, PAS, PPS) cumulatively **failed to report** an amount of **at least MDL 333 413 for trips outside the country**⁷.

4.2. Organisation of concerts and cultural demonstrations as a form of voter corruption

The organisation of concerts and other cultural demonstration is a commonly used method during an election campaign, involving the management of cultural events paid by election candidates and free for the voters. In essence, these are recreational services and a form of voter corruption since the election candidates engage in electioneering during these cultural manifestations in order to persuade the electorate to vote for one or another candidate⁸.

For instance, according to Promo-LEX monitors, **in semester I of 2018**, at least **four political parties** (PDM, PPS, PSRM, PN) incurred expenses for **78 concerts and other cultural demonstrations**. When comparing the expenses reported and those estimated, we found that at least **MDL 8 845 270 were not reported**⁹. These included expenses for 56 concerts organised by PDM (MDL 1 514 131); of PPS for at least 20 concerts (MDL 354 186); of PSRM for at least 2 concerts with fireworks (MDL 11 718); of PN for a movie projection (MDL 1 000). The other expenses are strictly related to social campaigns and entertainment activities and amount to MDL 7 374 210.¹⁰

4.3. Violation of political rights of Moldovan citizens who work abroad but who cannot financially support a party/candidate

The impossibility of Moldovan citizens residing and working abroad to donate to their favorite parties or election candidates is another problem noted by Promo-LEX¹¹, as well as by the Venice Commission¹². Thus, even though the Constitutional Court maintained the constitutionality of these restrictions, we consider that we are witnessing **violations of the political rights of at least 805 509 Moldovan citizens**¹³ who officially work abroad but who cannot financially support their favorite political party/election candidate. The legal reason invoked by the authorities is limited to the fact that during the election campaigns it is allowed to use only the financial resources received from the work, entrepreneurial, scientific or creation activity, carried out on the territory of the Republic of Moldova. Paradoxically, the Republic of Moldova accepts without any remorse quarterly transfers of about USD

⁵ Promo-LEX Report. Financing of political parties in the Republic of Moldova. 2017 Retrospective, pp. 62-65, <https://bit.ly/2N3xWIA>.

⁶ Promo-LEX Report. Political party financing in the Republic of Moldova. Semester I, 2018, p. 43, <https://bit.ly/2zsiaCs>.

⁷ The estimates of expenses for trips outside the country include the cost of plane tickets and the minimum protocol cost for accommodation per delegate.

⁸ Study 'Qualification and investigation of offences and contravention of electoral and political funding specifics', p. 30 <https://is.gd/iuTPcp>

⁹ Promo-LEX Report. Political party financing in the Republic of Moldova. Semester I, 2018, p. 46-49, <https://bit.ly/2zsiaCs>

¹⁰ See Table no. 14. Disaggregated spending for other events from Promo-LEX Report. Political party financing in the Republic of Moldova. Semester I, 2018, p. 47. <https://bit.ly/2zsiaCs>

¹¹ Opinion of Promo-LEX Association on the draft Law amending and supplementing certain legislative acts (special rights of diaspora voters) No 217 of 26.06.2018. p. 8 <https://is.gd/ay4x4p>

¹² See: Opinion of the Venice Commission of December 2017, p. 13, item 51 <https://bit.ly/2NHDzkl>

¹³ Promo-LEX analysis of geographic location and number of polling stations established outside the territory of the Republic of Moldova, p. 6, <https://bit.ly/2SJO7ii>.

300 million in the national economy, out of which about 98% are the remittances of Moldovan citizens working abroad¹⁴.

4.4. Unfair conditions of political and electoral competition through the use of administrative resources

Both Promo-LEX Association and the Venice Commission, as well as the OSCE/ODIHR¹⁵, mentioned the abuse of administrative resources as an issue in the Republic of Moldova that significantly affects the electoral and political outcomes and the political rights of the citizens, the latter being subjects of pressure, intimidation, and development of politically-grounded files.

By monitoring the use of administrative resources in 2017, Promo-LEX identified, following the interview of party officials, cases that can be classified as abuse of administrative resources in relation to the latter¹⁶. Examples of abusive use of coercive administrative resources include: threats of job loss, criminal and administrative prosecution, physical/psychological intimidation, etc.

4.5. Hiding the data on donor occupation/activity, personal data from the annual reports on the financial management of political parties submitted to CEC

We remind that the civil society organisations in Moldova, the Venice Commission, and the OSCE/ODIHR¹⁷ recommended to the Parliament, for legal clarification, to expressly state in Article 29 of the LPP that information on donor occupation/activity should be published if they are particularly relevant, as they can help to elucidate cases of illicit party financing, for instance where unemployed or low-income individuals make very large (unjustified) donations to political parties, or there are reasonable doubts about the income legality of certain donors, or even about the authenticity of signatures on donation lists. The Venice Commission's reserves were that this should apply only to donations that exceed the amounts above a certain ceiling in order not to discourage citizens who want only to make smaller donations.

V. CONCLUSIONS AND RECOMMENDATIONS:

In conclusion, taking into account the major risk of violating the international principles and standards of equal opportunities in political and electoral competition, by keeping the current legal provisions creating the above-mentioned loopholes, Promo-LEX Association reiterates its appeal to the Moldovan authorities to amend the electoral and related legislation according to the **recommendations made in the monitoring reports, some of which being mentioned below:**

- 1. Separate the category of expenses for trips across and outside the country in two different budget lines** (spending destinations) to provide clarity on these two different types of expenses in terms of costs and additional implications (accommodation, per diem, etc.)
- 2. Categorise the organisation of concerts and support of political parties by foundations as a form of voter corruption**, according to the criminal law.

¹⁴ Money transfers from abroad made in favour of individuals through banks of the Republic of Moldova in the first quarter of 2018 (net settlements) <https://is.gd/CoZDb3>

¹⁵ See: Opinion of the Venice Commission of December 2017, p. 18, item 68 <https://bit.ly/2NHDzkl>

¹⁶ Promo-LEX Report. Financing of political parties in the Republic of Moldova. 2017 Retrospective, pp. 47-48, <https://bit.ly/2N3xWIA>.

¹⁷ See: Opinion of the Venice Commission of December 2017, p. 17, <https://bit.ly/2NHDzkl>

3. Supplement the Electoral Code and the Law on Foundations with a **provision expressly prohibiting the foundations to directly or indirectly fund a political party, election candidate, independent candidate.**

4. **Exempt the trips abroad from the prohibition of financing of** or providing free of charge services or material support in any form, directly and/or indirectly, to political parties by international governmental organisations, as well as to international non-governmental organisations only to those officially associated with political parties from the Republic of Moldova (international political affiliation) as well as those that have opened representative offices (subsidiaries, branches, etc.) registered in the Republic of Moldova and which operate under the legal framework of the Republic of Moldova. This amendment is important when representatives of political parties are invited to participate in meetings held abroad, travel expenses being borne by the organisers. **This type of financing does not imply an unfair competition for the other political parties, does not interfere with the independence and transparency, and cannot be considered as corruption.**

5. Ensure the regulation of political party financing by Moldovan citizens temporarily abroad by bank transfers and by the setting of verifiable ceilings. The **individuals who are Moldovan citizens must be entitled to donate (support) to a political party**, initiative group or election candidate, just like the citizens residing in the Republic of Moldova. We support the setting up of a reasonable maximum ceiling, since the voters are guaranteed full electoral rights regardless of their place of residence. **This type of financing does not imply an unfair competition for the other political parties, does not interfere with the independence and transparency, and cannot be considered as corruption.**

6. **Prohibit and sanction voter corruption and abuse of administrative resources inside and outside the election campaigns** and develop certain punitive mechanisms to prevent and limit the possibility of abuse of official position, of administrative resources for personal interest in general.

7. **Publish the information on donor occupation/activity on CEC's official website.** According to the Venice Commission's recommendations, this could apply only to donations that exceed the amounts above a certain ceiling in order not to discourage citizens who want only to make smaller donations.

Sincerely,

Ion MANOLE / _____ /

Executive Director, Promo-LEX Association

12 November 2018