

Promo-LEX Association

OPINION

and Lex ferenda

on the law no. 56 of 18.06.2019 on amendments and additions to the article 20 of the Electoral Code no. 1381-XIII of 21 November 1997

(submitted by the President of the Republic of Moldova to the Parliament on 03.07.2009 for review)

Article 16. Formation of the Central Electoral Commission

(1) The Central Electoral Commission consists of 7 members: 1 member is appointed by the President of the Republic of Moldova, and 2 members by the Parliament, Government and Superior Council of Magistracy. Members appointed by the Parliament should observe a proportional representation of the majority and of the opposition. A member appointed by the Government must represent civil society organizations and a member appointed by the Superior Council of Magistracy must represent a Doctor of Laws. The nominal composition of the Commission is approved by Decision of Parliament with a vote of the majority of elected MPs.

(2) After their confirmation by the Parliament, members of the Central Electoral Commission take the following oath during a parliamentary plenary session: "I swear to observe the Constitution and the laws of the Republic of Moldova, to protect citizens' rights and fundamental freedoms, to fulfil with honour, consciousness and in an impartial way the duties assigned according to my position, and not to make any political statements during my term in office".

(3) The Central Electoral Commission will conduct its activity in compliance with the Constitution, this Code, current legislation and the Commission's regulation, as approved by the Commission.

(4) The Central Electoral Commission is a legal entity, has its own budget, bank account, and seal representing the state emblem.

Article 17. Composition and Term of Office of the Central Electoral Commission

(1) Chairperson, vice-chairperson and secretary of the Central Electoral Commission are elected from Central Electoral Commission members by a majority of votes from the total number of the members thereof for a term of 3 years. If the term of office of a member of the Central Electoral Commission expires, the terms of office of the chairperson, vice-chairperson or secretary shall also expire. The public session where the Central Electoral Commission chairperson, vice-chairperson and secretary are elected will be chaired by two older Central Electoral Commission members charged with supervision of the procedures of debating about candidatures and election by secret ballot of chairperson, vice-chairperson and secretary of the Central Electoral Commission. The two chairs will note the results in the minutes. The session to elect the chairperson, vice-chairperson and secretary of the Central Electoral Commission shall take place no later than 15 days from entry into force of the decision confirming the nominal composition of the majority of the members of the Central Electoral Commission or within 15 days after the occurrence of the vacancy. Recalling members from these positions is provided for by Articles 16, 19 and 20 of this Code, based on the procedures provided herein, by secret ballot.

(2) If a candidate for the position of Chairperson, Vice-Chairperson or Secretary of the Central Electoral Commission does not receive a majority of votes, another round of elections shall be organized on the same day in which the candidates nominated for the same position in the previous round may participate. Repeated voting continues until the election of the leadership of the Central Electoral Commission.

(3) All members of the Central Electoral Commission shall work on a full-time basis. Members of the Central Electoral Commission conduct public functions throughout their appointment and shall be subject to the provisions of the law on the status of persons holding public functions.

(4) Should any of the positions mentioned in paragraph (1) become vacant, it shall be filled pursuant to the same election procedures like the election thereof.

(5) Within two days of the date of its establishment, the Central Electoral Commission shall make public its composition and its contact information.

(6) The mandate of the Central Electoral Commission is not limited. If the mandate of the Central Electoral Commission expires during the electoral period, the mandate is automatically extended until this electoral period ends and until new members occupy their positions, but not for more than 90 days. The term of office of the members of the Central Electoral Commission is 5 years from the date of their approval by Parliament.

Article 18. Meetings and Decisions of the Central Electoral Commission

(1) The meetings of the Central Electoral Commission are deliberative if they are attended by a majority of members.

(2) The Central Electoral Commission adopts decisions by a majority vote of its members. The decisions modifying, amending or abrogating acts adopted earlier by the Central Electoral Commission are made under the same conditions.

(3) Members of the Central Electoral Commission dissenting with adopted decisions have the right to submit a special opinion in written form, which is attached to the decisions thereof.

(4) The decisions of the Central Electoral Commission, approved within the limits of its mandate, are administrative acts with individual or normative character, to be executed by the inferior electoral bodies, by public authorities, enterprises, institutions and organisations, decision-making officials, parties and other sociopolitical organisations and their bodies, as well as by all citizens.

(5) The decisions of the Central Electoral Commission are posted within 24 hours after adoption, on the Central Electoral Commission's official website, while the decisions of a regulatory nature and decisions on financial reporting are published in the Official Gazette of the Republic of Moldova. The decisions adopted during the election campaign shall enter into force upon their approval.

Article 19. The Status of the Central Electoral Commission's Members

(1) Central Electoral Commission members shall be nominated from the persons who hold citizenship of the Republic of Moldova, have their place of residence in the country, enjoy a spotless reputation and professional jurisdictions to carry out electoral activities, are not prohibited from holding a public office or holding a responsible public office under an ascertaining act issued by the National Integrity Authority, and also for the last five years, not having in the register of testing of professional integrity, records concerning negative result of the test of professional integrity for violation of the duty provided for in art.7 para.(2) item a) of the Law no.325 of 23 December 2013 on the assessment of institutional integrity.

(2) During their term, the members of the Central Electoral Commission:

- a) may not be members of any political party or other socio-political organisation;
- b) may not engage in the activities of the election campaign or which may be likened to it;
- c) cannot make statements for or against political parties or electoral competitors;
- d) cannot contribute in any way to the activities undertaken by political parties or electoral competitors, except as for the exercise of the powers provided herein;

(3) Before confirmation, the candidates for becoming members of the Central Electoral Commission shall be subject to verifications according to the Law No. 271-XVI of 18 December 2008 on verification of holders and candidates for public functions. The information about the verification results shall be published by both the authority confirming the Commission members and Parliament.

(4) The rights of the members of the Central Electoral Commission are stipulated in the Activity Regulation of the Central Electoral Commission.

Article 20. End of Term of the Central Electoral Commission Member

(1) The term of a Commission member shall terminate in the following circumstances:

- a) expiry of term;
- b) resignation;
- c) dismissal;
- d) incapacity to fulfil the office's responsibilities;
- e) member is deceased.

(2) A member of the Central Electoral Commission is dismissed by the authority that appointed him/her in the following cases:

- a) approval by a court of law of a final decision of conviction of the member for a committing offence;
- b) loss of citizenship of the Republic of Moldova;
- c) establishment of judicial protection measures in the form of guardianship;
- d) determination of serious and apparent professional incompetence of a member/members as a result of the approval of a request submitted by the appointing authority or two members of the Central Electoral Commission;
- e) the occurrence of the finality of the ascertaining act establishing the issuance/approval by the member of an administrative act, direct conclusion or via a third party of a transaction, the adoption or participation to the adoption of a decision contrary to the legal provisions regulating conflict of interest;
- f) state of incompatibility confirmed by a final decision establishing the fact;
- g) failure to submit or refuse to submit the Declaration of property and personal interests pursuant to para. (8) of article 27 of the Law No. 132 of 17 June 2016 on National Integrity Authority;
- h) persistence of an order entered into force by the decision of the court on confiscation of unjustified property.

(3) In case of breach of conditions mentioned in Article 19 paragraph (2) or Article 20 paragraph (2), the members of the Central Electoral Commission can be dismissed. The notification regarding the non-fulfilment of the conditions envisaged in Article 19 paragraph (2) or Article 20 paragraph (2) shall be lodged by at least two members of the Central Electoral Commission with the authority appointing them. The notification or self-referral of the authority appointing the member of the Central Electoral Commission regarding the non-fulfilment of the conditions envisaged in Article 19 paragraph (2) or Article 20 paragraph (2), shall be considered by a special commission and approved or rejected by the authority appointing the member thereof. Rejection of the notification or self-referral is not subject to challenge.

(4) The approved notification and attached documents of dismissal shall be submitted to Parliament for consideration in a public session, within no more than three days by the authority appointing the members of the Central Electoral Commission. The notification is considered by Parliament within 5 days of its receipt. Dismissal of a member of the Central Electoral Commission in case of non-compliance with the conditions set forth in art. 19 para. (2) or art. 20 para. (2), shall be adopted by three fifths of the votes of the deputies elected to the Parliament of the Republic of Moldova.

(5) Parliament's decision on dismissal may be appealed in the Chisinau Court of Appeal by the dismissed member or by any member of the Central Electoral Commission no later than 5 working days after the approval thereof.

(6) Within three days of delivery, an appeal may be lodged against the decision of the Chisinau Court of Appeal. The appeal shall be examined by the Supreme Court within not more than 5 days from the adoption of the decision of the Chisinau Court of Appeal.

(7) Based on Parliament's decision or, as the case may be, based on an irrevocable court decision on dismissal and/or the termination of Central Electoral Commission membership prior to the expiration of the original term, the authority thereof, within no more than 30 days shall nominate and the Parliament shall approve no later than 10 days, a new member for a period of 5 years.

Article 21. Remuneration

During the election campaign period (parliamentary elections, presidential elections, General Local Elections, new elections or national referendum), members of the Central Electoral Commission are paid 35 percent of the average salary.

Final and Transitional Provision

(1) The Central Electoral Commission shall continue its activities in the composition existing at the time of entry into force of the law hereof - until the expiration of the 5-year term of office of its members.

(2) In the event of a vacancy for the position of a member of the Central Electoral Commission appointed and proposed by Parliament under the legal provisions no longer in force, the vacant positions will be filled accordingly by the Government, then by the Supreme Council of Magistracy and, ultimately, by Parliament.

(3) Provisions of para. (3) art.17 of the Law hereof shall enter into effect on the day of its publication.