



PUBLIC APPEAL

on the urgent need to settle legal issues that may affect the organization and conduct of the presidential elections in the Republic of Moldova in the autumn of 2020

To:

The Central Electoral Commission
President of the Central Electoral Commission
Members of the Central Electoral Commission

Parliament of the Republic of Moldova
Legal Committee for Appointments and Immunities
Faction of the Party of Socialists of the Republic of Moldova
Faction of the Democratic Party of Moldova
Faction of PAS and ACUM Electoral Bloc
Faction of ACUM Electoral Bloc and DA Platform
Faction of Shor Party
PRO Moldova Parliamentary Group

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The Promo-LEX Association appeals to

the Central Electoral Commission, urging it to manifest a proactive and transparent attitude to public consultations and subsequent submission to the Parliament of proposals on the amendment of electoral legislation, prepared at the request of the authority,

to the Parliament of the Republic of Moldova, requesting it to immediately initiate the amendment of electoral legislation regulating the organization and conduct of the presidential elections in the autumn of 2020. To take into account the proposals made at the request of the CEC and involve all the stakeholders in the consultations. The amendment of electoral legislation is to be based on the experience of previous elections, including the reference points mentioned in the referrals to the Constitutional Court and the recommendations of national and international observation missions.

To this end, the Promo-LEX Association:

emphasizes that, contrary to legal provisions, the Parliament has not ruled on three out of six referrals sent by the Constitutional Court immediately after the presidential elections of 30 October (13 November) 2016;

points out that following the presidential elections of 2016, the national and international election observation missions made important recommendations on the modification of the legal framework in the Republic of Moldova, but most of them have not been examined by the Parliament. We also note that the changes in the electoral legislation made in 2016-2020 were not systemic, depending mainly on conjuncture and aiming at eventual achievement of political interest;

highlights that the Central Electoral Commission, contrary to the commitments made to development partners and the representatives of the Coalition for Free and Fair Elections, has neither published the proposals nor started the process of public consultations for the amendment of electoral law and related legal framework, elaborated with the support of development partners.

It should be emphasized that following the presidential elections of 30 October (13 November) 2016, the **Constitutional Court made six referrals to the Parliament of the Republic of Moldova**. Mention should be made that by the time the present Appeal¹ has been launched, contrary to the legal provisions, the Parliament has not taken any decision with regard to three referrals and partial settlements have been provided with regard to the other three. We remind you that art. 28¹ of the Law on the Constitutional Court provides for a period of not more than 3 months for examining the observations (findings) of the Court and informing it about the results of the examination.

Thus, three years later, being already on the threshold of new presidential elections, the Parliament has not yet solved the following problems, identified by the judges of the Court:

- explicit regulation of the examination of electoral complaints filed on Election Day and the days after Election Day;
- explicit regulation by the Parliament of prompt and immediate sanctioning mechanisms, including criminal liability, for any attempt to involve religious cults in electoral campaigns;
- amendment of the laws providing for broadcasters' liability during electoral campaigns, ensuring mechanisms, which would allow the authorities in charge to immediately enforce effective and dissuasive sanctions, such as suspension of broadcasting rights for the entire period of election campaign for the media organizations, which violate the requirement of impartiality during the election period.

The problems revealed by the Constitutional Court, while confirming the election results and validating the mandate of the President of the Republic of Moldova in 2016, can affect the electoral campaign of the 2020 presidential elections. Thus, already at this stage, Promo-LEX monitors reported that in April 2020, some of the priests of the Metropolis of Chisinau and All Moldova received money from the presidency of the Republic of Moldova. Considering the pre-election context, these "donations" may be viewed as means to create a positive attitude among the servants of the religious cults in the forthcoming election campaign, given that the current President has the right to run for this office again.

We highlight the fact that up to now, following those seven observation missions organized since 2016, that is, since the last presidential elections, **Promo-LEX has developed a series of recommendations, aimed at solving various legislative electoral problems²**. They mainly concern legal issues that "migrate" from one election to another, being systemic deficiencies that affect and have the potential to seriously damage the free and fair nature of elections.

In addition to the referrals issued by the Constitutional Court that are still unsettled, we emphasize the following recommendations that need, without any delay, to be debated by the Parliament of the Republic of Moldova to improve the electoral legislation:

- explicit and full legal definition of administrative resources in accordance with the international standards and establishment of appropriate sanctions (with immediate, preventive and dissuasive effect) for their misuse;
- explicit definition in the Electoral Code of organized transportation of voters as a violation of electoral legislation, stipulating the exact sanctions, considering the risk of potential voter fraud, the fact that a part of voters live in the territory that is not controlled by public authorities, as well as the interests of diaspora;
- ensuring the quality of electoral lists under efficient and transparent management of the State Register of Voters;

¹ Decision no. 34 of 13.12.2016 on the confirmation of election results and validation of the mandate of President of the Republic of Moldova. <https://bit.ly/2za1iUd>

² The full list of recommendations can be found in the reports drafted by the Promo-LEX Association, following the election observation missions in the presidential elections of 30 November 2016 (<https://bit.ly/35v8Tcc>), parliamentary elections of 28 February 2019 (the <http://bit.ly/2JEmk0k>), local elections and new parliamentary elections of 20 October 2019 (<http://bit.ly/2xiLU1>), and new parliamentary elections of 15 March 2020 (<https://bit.ly/2xAY7Vg>).

- strengthening the capacity of the Central Electoral Commission as a competent supervisory authority capable to effectively monitor the financing of electoral campaigns;
- establishing legal mechanisms to prevent, combat and sanction hate speech during electoral periods (sexist and homophobic discourses, gender stereotypes, etc.);
- regulating the minimum criteria for finding involvement in political or electoral activity of non-commercial organizations, foundations, charities and penalties imposed for such involvement;
- transparency in setting up polling stations abroad.

The Promo-LEX Association expresses its readiness to involve actively in public consultations on the amendment of electoral legislation, contributing a series of recommendations developed following the observation missions.

We emphasize that International Election Observation Missions also made recommendations on the amendment of the legal framework in the Republic of Moldova. The 2016 presidential elections were observed by two international missions: OSCE / ODIHR³ and ENEMO⁴. International observers made the following general recommendation “legal framework could benefit from a comprehensive review to eliminate inconsistencies, loopholes and ambiguities well in advance of elections, through open and inclusive consultations with all election stakeholders, including experts and civil society, to provide for improved and harmonized electoral legislation.”

Other recommendations of international observers concerned:

- reviewing the bans on the use of state and foreign symbols and involvement of foreign citizens in election campaigns, as they constitute disproportionate restrictions on the right to freedom of expression;
- revising the requirements for collecting signatures in support of candidates, including by reducing the number of signatures required. Thus, giving the voter the opportunity to support more candidates and allowing citizens abroad to sign in support of presidential candidates;
- harmonization of provisions governing student voting in national elections and ensuring that clear information on student voting procedures is available long before the elections;
- the procedures for withdrawal of candidates registered after the printing of ballots must be clearly and comprehensively stipulated in the legislation. To avoid the necessity to change ballots manually, the deadline can be synchronized with the printing of ballots;
- to ensure a fair competition, the authority may consider the amendment of the law ensuring that decisions on candidates’ registration are taken prior to the start of the campaign period, which must start on the same day for all competitors, etc.

Even though at the beginning of 2017, the Central Electoral Commission organized a working group to amend the electoral legislation, necessary due to the problems revealed in the presidential election campaign, the outcome of this activity is unknown, as the proposals have not been debated by the Parliament.

At the same time, we admit that over the past three years, the electoral legislation has been significantly modified. However, in the opinion of Promo-LEX, these changes were primarily aimed at satisfying short-term political interests, and to a lesser degree, were they the result of consistent actions, aimed at improvement and based on open consultation involving all stakeholders.

In particular, we draw the reader's attention to the fact that by the time the present Appeal is issued, and for reasons beyond the understanding of Promo-LEX, **the Central Electoral Commission**, being an interested party, **has not published the proposals for the amendment of electoral legislation** already developed by an expert contracted with the financial support of development partners. Even if in the post-

³ OSCE / ODIHR Election Observation Mission. Final Report. Presidential Elections of 30 October and 13 November 2016. <https://bit.ly/2WqIEAB>

⁴ ENEMO Observation Mission in Moldova, Final Report on the Presidential Election of 30 October and 13 November 2016. <https://bit.ly/3df5P6N>

election public conference, in the meetings with CEC representatives of the members of the Civic Coalition for Free and Fair elections, bilateral meetings with representatives of development partners held in December 2019, the CEC communicated that these proposals would be subject to public debate and approval of the CEC members, this has not been done until the time of publication of this Appeal. **We insist that** these amendment proposals can be useful for resolving legal issues that may arise in the presidential election campaign this year. Additionally, **immediate initiation of public consultations on the proposals can lead to their improvement.**

We remind you that according to art. 22 para. (1) of the Electoral Code, the Central Election Commission, as the authority specialized in elections, is to study the possibility of organizing and conducting elections, in such a way as to improve the electoral legislation and procedures, as well as to make recommendations to the Government and Parliament concerning the timeliness of changes to electoral legislation.

We believe that the CEC has the necessary competence and experience in carrying out its legal duties. Furthermore, reasonable suspicions may arise as to why the authority is evading fulfillment of publicly undertaken commitments.

Considering the above, the Promo-LEX Association urgently requests:

The Central Electoral Commission

- ***to publish and present for public consultations the proposals for the amendment of electoral legislation and related legal framework elaborated with the support of development partners;***
- ***to examine in an open session and submit the amendment proposals to the Parliament for further consideration.***

The Parliament of the Republic of Moldova

- ***to examine the referrals of the Constitutional Court and inform it of the resolutions adopted;***
- ***to promptly initiate the amendment of electoral legislation, involving all stakeholders in the public consultation of draft laws;***
- ***to use the recommendations of national and international election observation missions, in particular those concerning the presidential elections of 30 October (13 November) 2016 as a basis for changing the legal framework.***