

## Promo-LEX OPINION

### With regard to the amendments to the Electoral Code and recommendations proposed for its improvement

#### Electoral bodies:

1. I will begin by **welcoming the initiative to make the activity of electoral bodies**, in this case the Central Election Commission (CEC) and Level II Constituency Electoral Councils (CECE II), **a permanent one**. Moreover, **Promo-LEX supports the idea that the CEC should operate in the composition of 7 members, 2 of which will proportionally represent the parliamentary majority and the opposition**.

2. However, in order to avoid the risk that members of the CEC appointed by the Parliament and the Government represent only the parliamentary majority, we further **reiterate the recommendation that one of the two members to be appointed by the Government represent civil society organizations, as well as one of two members appointed by the Superior Council of Magistracy should represent a doctor of law**.

3. Similarly, given that it is proposed to make the work of the CECE II a permanent one, in fact, we speak of permanent activity of only the President of the CECE II, clear **measures should be taken to prevent risks related to the impossibility of ensuring transparency, impartiality and independence of the electoral body from various influences, including political**.

#### Financing of political parties and electoral contestants:

1. Furthermore, with reference to the Mission of the Central Election Commission ("*providing the citizens of the Republic of Moldova optimal conditions to be able to freely exercise their constitutional right to vote and to be elected in free and fair elections*"), **we appreciate the completion of this clause with provisions that would highlight the role of the CEC in ensuring the correct financing of political parties and election campaigns**.

2. At the same time, **we consider it necessary to detail and explain the main conditions for carrying out the procedures of monitoring and control over the financing of initiative groups and electoral campaigns**. In the opinion of Promo-LEX, it is necessary to clarify the manner and grounds for initiating the monitoring and control procedure, the period of monitoring / supervision; the manner in which data / evidence is collected, including statements of the contestants or initiative groups; documents required at the completion of the monitoring procedure and, if applicable, types of infringements and sanctions applicable in case of finding violations, etc.

3. **In the same context, Promo-LEX appreciates the development by the CEC of the mechanisms to financially support political parties which have set up initiative groups and / or nominated candidates in elections**, in particular, their right to transfer to their special bank accounts the equivalent of no more than 50% of the amounts allocated from the state budget. However, in our opinion, **this provision could be further improved** by explaining whether the ceiling is set cumulatively for initiative groups and for the election campaign, or if the 50% limit is valid for each party or is cumulative for all parties that make part of the given electoral bloc, etc.

4. We also **welcome the extension of the categories of personal data in the financial statements of political parties and electoral contestants to be made public** (the first and last name, place of employment and the public office or dignitary position held where applicable, as well as the date of

the donation, the amount donated and the manner in which the donation was made). Likewise, considering that about 80-85% of the expenses of the electoral contestants account for advertising, ***we appreciate the intention of the CEC to check more closely these costs by requesting the media service providers to present weekly, during the electoral period, information on the revenues obtained from political/ electoral advertising***; we consider it necessary that this information, along with the data on the conditions of providing the advertising spot (including the price / minute) be made public on the CEC's webpage.

5. In the same context, starting from the importance of this issue, ***we recommend completing the powers of the CEC with the possibility of accrediting public associations and mass media to monitor, in the period between elections, the finances of political parties***, thus consolidating efforts to increase transparency of their financing.

#### **Establishment and operation of polling stations:**

1. ***Although, in principle, we support the idea of holding elections within two days, we strongly recommend outlining in the Electoral Code the list of objective reasons for which such a derogation will be allowed.*** We consider that the organization of elections in conditions of transparency and equal opportunities is not a matter of political opportunity. Alternatively, this possibility should be established for all constituencies and polling stations.

2. Regarding the establishment and operation of polling stations abroad, ***we appreciate the intention of the CEC to organize polling stations*** for one or more settlements where, according to the Ministry of Foreign Affairs and European Integration, there are ***at least 500 citizens of the Republic of Moldova with the right to vote***, temporarily or permanently domiciled abroad. We also ***welcome the preservation of the criterion of pre-registration as grounds for setting up polling stations abroad***, but we still find the lack of a formula that will take into account all 3 criteria, including the dynamics of voter turnout at polling stations abroad in the last 3 polls and the information presented by the Ministry of Foreign Affairs and European Integration on the number and location of Moldovan citizens abroad. We hope that these issues will be further detailed in the Regulation on the establishment of polling stations abroad and the Regulation on pre-registration.

3. In the same vein, ***Promo-LEX appreciates the improvement of the mechanism for setting up polling stations for voters in the Transnistrian region*** by comparing the data from the State Register of Voters to the dynamics of participation in the last 3 national elections. However, ***we are categorically against discretion in the organization of elections for the voters of Transnistrian region*** and we consider that it is the duty of the Republic of Moldova as a state to ensure minimum conditions for all its citizens to execute their voting rights.

#### **Nomination and registration of candidates:**

1. With regard to the nomination and registration of candidates, ***the Promo-LEX Association welcomes the preservation and the intention to develop the legal norm that obliges candidates to submit asset and interest declarations, as well as maintaining the provisions on the application of the representation quota of at least 40% of candidates for each of the sexes and the formula for listing them.***

2. At the same time, ***the Promo-LEX Association considers it necessary to establish uniform conditions for the collection and submission of subscription lists for all types of ballots.*** Thus, ***we further recommend examining the opportunity to exclude from the submission of subscription lists political parties and electoral blocs consisting of parties that have obtained at least one of the following performances:*** a) obtained representation in Parliament in previous parliamentary elections; b) obtained at least 1% of positions of mayors or district and municipal councilors in the last local general elections; c) obtained at least 0.5% of the positions of local councilors in the last general local elections.

## Legal procedures:

1. As regards the subjects with the right to appeal against electoral violations, **Promo-LEX appreciates the effort to regulate, as comprehensively as possible, the list of these subjects.** However, **we strongly oppose to making the appellant's right to lodge a complaint conditional on the existence of the appellant's injured right,** in particular, taking into account previous practices of inadmissibility of appeals on this ground. We consider that both the legislator and the electoral bodies and the courts must presume that any violation of the rules of the electoral process, affects the right of all citizens to choose and of the contestants / potential contestants to be elected.
2. In the same vein, **we appreciate the inclusion of special provisions for the submission and examination of appeals after the election day.** However, **we are categorically against restricting the right to lodge appeals, by limiting the subject matter of appeals, filed after the election day and making their examination conditional on influencing the voting results by redistributing the seats of elected candidates.** We consider that the time limits set for lodging appeal already exclude from the examination and finding infringements, and the inclusion of these restrictions is also capable of violating the right to an effective remedy.
3. **With regard to the concept of transferring the power to confirm or disprove the results of local elections from courts to the CECE II, we appreciate the intention of the Central Election Commission to facilitate the process of correcting material errors in the validation decisions.** However, we consider that, by analogy with the parliamentary and presidential elections, it is in the jurisdiction of the Constitutional Court to confirm the legality of the election and the validation of mandates, **in the case of local elections, the responsibility for such a decision should be retained for the courts.** We believe that the electoral body that organized the electoral process (CECE II) will tend to confirm the legality and validate the mandates rather than find that possible violations could have influenced the election results and disproved their legality.
4. **Promo-LEX supports and welcomes the adjustment of the procedure for the cancellation of the registration of electoral contestants, in such a manner as to avoid conflicts of rules between the Electoral Code and the Administrative Code.** At the same time, **we insist on the need to rename the sanction of cancellation of the registration of electoral subject in sanction of "exclusion from the electoral ballot"** - this being the appropriate term for the typology of violations provided in art. 75 para. (5), taking into account both the practice of other states and the legal framework in force.

### Initiation and conduct of referendums:

1. Regarding the organization and conduct of the Republican referendum, **the Promo-LEX Association appreciates the fact that the CEC has preserved the idea that the republican referendum cannot take place on the election day or 60 days before and 60 days after the day of parliamentary, presidential and general local elections.** This reason is dictated by the need to avoid confusion in the event of two democratic exercises of a different nature on the same day / in the same period.
2. At the same time, given the depopulation of the Republic of Moldova, **we consider the requirement to collect at least 200,000 signatures for the initiation of a republican referendum exaggerated and recommend the establishment of a number of 50,000 signatures** (about 1.5% of State Register of Voters) for this purpose. We remind you that since the approval of these requirements, no republican referendum has been initiated by the citizens, although there have been initiatives.
3. At the same time, with regard to the conditions for organizing and conducting local referendums, **we strongly recommend extending the list of subjects that can be registered to promote an option in referendums, and offering citizens and civil initiative groups the right to register as participants in the referendum.**

**Accreditation of observers:**

1. And finally, I would like to draw attention to a few issues related to the accreditation of observers for monitoring elections in polling stations. Even if we understand the intention of the CEC to bring more clarity and distinction between the roles of observers and representatives with the right to consultative voting, ***we consider it necessary to preserve the right of electoral contestants to accredit observers.*** Depriving them of such a right could lead to artificial creation of various public associations by representatives of political parties that would accredit observers on election day. This could lead to the risk that parties would evade declaring expenses associated with such observation missions, as well as to the increase in the number of violations admitted by such observers, which will declaratively be independent and neutral, according to the NGO statutes, but in practice, could admit violations.