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INPUTS OF PROMO-LEX ASSOCIATION TO THE JOINT OPINION OF THE VENICE COMMISSION AND OSCE/ODIHR ON THE DRAFT ELECTORAL CODE OF MOLDOVA (LAW NO. 288)

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Introduction

Although assessed by citizen and international observers as sufficient for the conduct of democratic elections, current electoral legal framework and practice in Moldova can still be brought closer in line with international standards and good practice. With this in mind, a comprehensive revision of the Electoral Code is needed. In 2021-2022, both the parliamentary majority and the Central Electoral Commission (CEC) have taken an initiative to improve the electoral legal framework.

On 29 September 2021, the CEC announced the institution's intention to work on the development of a new Electoral Code and invited stakeholders to participate in this process. In this context, Promo-LEX has offered its assistance with the aim to consolidate and support relevant stakeholders' efforts toward developing a new Electoral Code in an inclusive and transparent manner.

In this regard, Promo-LEX hired a national consultant to join the working group established within CEC to offer legal and technical expertise for the development of the first draft of a new Electoral Code. In addition, Promo-LEX engaged a group of national experts to analyze the existing loopholes and problems in the electoral legal framework and practices and propose solutions to those issues, while an international expert reviewed the first draft of the new Electoral Code, as prepared by the CEC, from the perspective of international standards on elections and previous recommendations formulated by international observers. Promo-LEX remains involved through participating in public hearings organized by the Parliament on the draft Electoral Code (Law No. 288) and submitting its recommendations for consideration by lawmakers.

The Joint Opinion of the Council of Europe Venice Commission and OSCE/ODIHR will play a major role in informing the decision-making by the lawmakers in the Republic of Moldova. To aid this process, Promo-LEX is pleased to formally present these inputs towards the Joint Opinion of the Venice Commission and OSCE/ODIHR (inputs to Joint Opinion) and remains available for further consultations.

Scope of comments

These inputs are based on the text of the draft Electoral Code as presented to the public by the Parliament in the Law no. 288. The focus is on key amendments with some of the changes of a more technical nature left outside the scope of review.

It is clear that the key findings of the international and national election observation missions played an important role in identifying the most pressing problems of the electoral process in the Republic of Moldova that need to be addressed by amending the legal framework. In this regard, some of the recommendations formulated by international and citizen observers were taken into account by the CEC when drafting the Law and when consulting it publicly.

However, some of the previous recommendations received less attention. Therefore, they are specifically touched upon in these inputs to Joint Opinion. They include the need to adopt a mechanism for establishing the CEC that eliminates the risk of political control by the majority over the institution, to strengthen the CEC capacities for control of political financing, to lower the electoral threshold for contestants in parliamentary elections to name just a few.

These inputs, while addressed to the Venice Commission and the OSCE/ODIHR, contain recommendations to the lawmakers of the Republic of Moldova, as the key decision-makers at this stage of the electoral reform process. Promo-LEX encourages Venice Commission and OSCE/ODIHR to take note of the analysis, conclusions and recommendations contained in these inputs to Joint Opinion and to utilize them in the discussions and deliberations the organizations may have with the decision-makers in the Republic of Moldova.

Executive summary

Although assessed by citizen and international observers as sufficient for the conduct of democratic elections, current electoral legal framework and practice in Moldova can still by brought closer in line with international standards and good practice. With this in mind, a comprehensive revision of the Electoral Code is needed. In 2021-2022, both the parliamentary majority and the CEC have taken an initiative of improving the electoral legal framework.

Following drafting and public consultations by the CEC, in July 2022 the Parliament registered the draft new Electoral Code as Law No. 288, which was voted in the first reading on 28 July 2022. After that, a request was sent to the Venice Commission and the OSCE/ODIHR to provide a joint opinion on the draft new Electoral Code. It is envisaged that the code will be adopted in October 2022, approximately one year prior to the next planned local elections in October 2023. These inputs aim to inform the Joint Opinion of the Venice Commission and the OSCE/ODIHR, as well as provide specific recommendations to the lawmakers.

Overall, the opinion of Promo-LEX Association is that the adoption of the new Electoral Code will improve the electoral legal framework of the Republic of Moldova. It will implement many previous recommendations of citizen and international election observation missions. Particularly welcome are the improvements to the regulation of the role of CEC in the sphere of political finance oversight, more detailed regulation of preparation and management of voter lists, more detailed provisions regarding complaints and appeals, improvements in the regulation of candidate registration process, as well as further streamlining of the provisions pertaining to specific types of elections.

The process of amending the Electoral Code conducted by the CEC was consultative and inclusive. The presentation and deliberation of proposed amendments were transparent and allowed electoral stakeholders to voice their concerns. Promo-LEX was glad to be able to help organize the consultation process and contribute to it by submitting a number of recommendations.

Amendments introduce some changes to the definitions of terms used in the Electoral Code, as well as the general principles of holding elections. On the latter, the Electoral Code is amended to provide for a possibility of holding elections in over two days in some locations. The grounds for this could be elaborated in more detail.

Proposed amendments concern the establishment, method of composition, term of office of the CEC, number of terms and criteria for the appointment of CEC members. Of particular note is the reduction of the number of CEC members from nine to seven, the change from the proportional appointment of eight out of nine members by the Parliament to the appointment based on institutional quotas. Additional attention is needed to maintaining the principle of stability of election law and ensuring that the CEC is not subject to, even at the level of perception, any doubt of political subordination.

The amendments also touch upon the mandate and responsibilities of the CEC with a particularly welcome amendment aimed at strengthening the mandate of the CEC in the domain of oversight of political finance. However, further regulations may be needed at a sub-legal level.

Proposed amendments also provide for making the operations of the second-level DECs permanent, in the period between the elections. Promo-LEX considers that additional measures are needed to protect the transparency, impartiality and independence of the DECs and their presidents from certain political influences, or subordination/control from the upper electoral body – the CEC.

Amendments concern as well organization of voting abroad, in the Transnistrian region, both highly contentious and politicized topics. While newly introduced methods of decision-making are largely welcome, further recommendations are provided to the lawmakers. The proposed Electoral Code is surprisingly silent about the elections in the Autonomous Territorial Unit of Gagauzia.

In a welcome move, the amendments more explicitly related the regulation to the financing of initiative groups and electoral contestants. Other changes in the regulation of political finance double the ceilings of transfers to the electoral funds, cap the fund of the initiative group, require an elected mayor or president to reimburse the expenses incurred for the elections if they resign from their position within 12 months of being elected, detail the procedure and guarantees related to opening bank accounts, detail the limits on donations from individuals, among other things. Additional important amendments concern the extent of reporting, and strengthen the oversight function of the election administration. While most of these amendments take the legislation in the right direction, some further consideration is needed towards operationalizing specific provisions.

With regard to the voter lists, the amendments improve the feedback loop between the permanent registers and the amendments introduced to them during the elections, amend some of the deadlines and aim to prevent "electoral tourism." However, regulations of access to the voter lists could be improved, to guarantee greater transparency and accountability.

In a long-awaited move, amendments propose to allow signing in support of more than one candidate. Some other aspects of signature collection and verification are also amended with a view of bringing the legislation closer in line with international standards and good practice.

Amendment to the campaign rules detail the regulations and timelines, but require additional consideration in such aspects as ensuring equal campaign periods for all contestants, and, importantly, regulating the use of specific symbols and other specific campaign methods.

In the sphere of electoral dispute resolution, the amendments aim to prevent formalism in consideration of complaints, but further attention is needed to ensure that all definitions are precise and uniform, and procedures are not excessively burdensome for the complainants. Removing Polling Boards from the consideration of complaints is a welcome idea, but would need to be considered additionally from the perspective of retaining an easy way for stakeholders to officially voice their grievances.

Amendments to the regulations of ballot paper format should be considered additionally to ensure equal treatment of all citizens.

Changes pertaining to the accreditation and role of observers could also undergo additional scrutiny to ensure greatest transparency possible and to maintain the ability of all stakeholders to follow the process.

With regard to specific types of elections, the streamlining of regulations between general and specific parts of the Electoral Code is welcome, but additional attention could be given to bringing the eligibility requirements closer in line with international standards. Signature requirements for national and local referendums could also be discussed additionally.

Promo-LEX calls on the lawmakers to consider further a number of important issues that remain to be addressed. Priority recommendations contained in these inputs to the Joint Opinion of the Venice Commission and OSCE/ODIHR call on the lawmakers to:

1. Ensure that the proposed changes to the composition of the CEC are implemented at least one year before the next scheduled elections
2. Adopt such a mechanism for the creation of CEC, including the selection of the representatives of the Government, that would pose no doubt or risk of political control over the institution by an established majority
3. Consider mechanisms to ensure political impartiality and independence of second-level DEC chairpersons, both during the appointment and in the period when they exercise their duties
4. Address the elections in the Autonomous Territorial Unit of Gagauzia either by providing regulations in the code or mentioning a stand-alone law on the matter
5. Oblige the CEC to enfranchise the voters in the Transnistrian region, leaving only the modalities of organizing polling stations there at the discretion of the CEC
6. Reconsider doubling of ceilings for transfers to the electoral funds
7. Consider additionally regulating campaign activities of the third parties
8. Reconsider penalizing the president and mayors for resignation from their duties early in the mandate
9. Ensure that the Electoral Code guarantees a meaningful mechanism for ensuring access of all election stakeholders to the voters' lists, including, possibly under the protection of a signed privacy statement, on election day
10. Consider imposing the procedure of signatures collection for both independent candidates and parties that do not have representation, in all type of elections
11. Reconsider the requirement to submit the evidence along with the complaint, at least for the complaints by voters, as a means to ease access to effective remedy
12. Provide a closed list of grounds for the inadmissibility of complaints
13. Retain the function of receiving complaints with the PEBs, stripping them of the function of considering the complaints, but obliging the PEBs to convey the complaints promptly to the DECs who would be responsible for resolving them
14. Oblige the electoral bodies to prepare ballot papers both in Romanian language and in major minority languages
15. Reconsider the introduction of the higher education requirement for the candidates for President and bring the length of residence requirement in line with international standards
16. Retain the powers of validation of local elections with the courts
17. Further decrease the number of voter signatures required to initiate a republican referendum
18. Further clarify at the level of the law the application of campaign rules to referendums

The inputs to the Joint Opinion also include other recommendations, including on what the CEC could regulate further on a sub-legal level through its instructions and decisions following the adoption of the new Electoral Code.

Promo-LEX remains available to provide its inputs and recommendations to the Venice Commission and the OSCE/ODIHR, as well as national electoral stakeholders.

Analysis and recommendations

The procedure of preparation of amendments

Following the initiative taken in September 2021 to amend the electoral legislation, the CEC presented on 3 February 2022 the concept of amending the electoral and related legislation. Based on this document both relevant stakeholders and the society were invited to debate and discuss the proposed provisions.

During March-April 2022, CEC in partnership with Promo-LEX organized eight discussion workshops with the purpose to encourage all relevant stakeholders to engage actively in the review of the subject-matter law.

In the meantime, the CEC through its platform collected and analyzed 419 recommendations during the stage of public consultations. Of these, 278 (66 per cent) were presented by Promo-LEX, and about 55% of them were partially or fully accepted. The recommendations submitted by Promo-LEX were developed based on the experience gained in 23 national election observation missions organized in the more than 13 years of activity in the field.

On 25 May 2022, in the context of the above-mentioned efforts toward revision of the electoral framework, CEC presented at an ample conference the draft Electoral Code and the proposals for amending the related legislation. The event was organized with the support of Promo-LEX Association. Later on, on 13 July 2022, the draft of the new Electoral Code was registered in Parliament as Law No. 288.

Prom-LEX remains actively engaged in the preparation of the new Electoral Code by participating in public hearings organized by the Parliament where Promo-LEX has submitted about 70 recommendations for examination, highlighting the most stringent issues to be addressed. The Legal Committee for Appointments and Immunities organized on 26 July 2022 the first round of public hearings.

The process of amending the Electoral Code conducted by the CEC was consultative and inclusive when addressing the general provisions stated in the new Code. However, not all provisions were publicly and broadly consulted, in particular those related to definitions, and chapters referring to specific types of elections. In general, the presentation and consultation process of the new Electoral Code carried out by the CEC was transparent and in line with the legally prescribed steps, procedures and timelines for public consultation. A series of discussions on the draft law (public events, discussion workshops) that the CEC organized in partnership with Promo-LEX involved representatives of political parties, central and local public administration authorities, civil society, electoral experts, and development partners. The consultation process in the Parliament is still ongoing and will be assessed at a later stage.

Substantive issues

General terms and principles

Article 8 of the Electoral Code is amended to provide for a possibility of holding elections in “some constituencies or polling stations’ over two days based on ‘objective reasons’ to be outlined in the decision of the Central Election Commission at least 25 days before election day. While multiple-day

voting may give opportunities to more people to cast ballots, this approach should be considered in connection with the challenges it creates and risks it poses to the integrity of the process. Secure overnight storage of polling materials would be one of key consideration.

It is recommended that the proposed amendment be clarified further to provide what are the specific "objective reasons" that may necessitate voting over several days.

Additionally, the amendment needs to be considered from the perspective of principles of equality of the vote. If voters in only some constituencies or polling stations are provided an opportunity to vote over more than two days, this would *de facto* constitute an unequal treatment of the voters. Indeed, equality of the vote should be considered not only from the perspective of "one person – one vote" or "equal weight of the votes",[1] but also from the perspective of equal opportunities to cast ballots, especially since Article 25 of the ICCPR specifically mentions not only the right but also the opportunity to vote.

It is recommended that if there is a need to extend voting to more than one day such provisions are applied to all polling stations and constituencies in the given elections so that to ensure equal opportunities to all eligible voters to exercise their rights.

Electoral bodies

Proposed amendments concern the establishment, method of composition and term of office of the Central Election Commission (CEC) (Article 20). Whereas currently the CEC is comprised of nine members, of whom only three (Chairperson, Deputy Chairperson and Secretary) serve as full-time members, the amendments to Article 16.4 propose to have all members serve on a permanent basis. This is a welcome change that brings the law closer in line with international good practice,[2] can help professionalize the work of the CEC and, through better distribution of duties among the members, improve the oversight of the electoral process.

Importantly, the proposed amendments change the method of nomination and composition of CEC members. Instead of relying on proportional appointment of eight out of nine members by the Parliament, as is currently the case, the amendments envisage the appointment of seven members. Of these, one would be appointed by the President, two by the Superior Council of the Magistracy, two by the Government, and two by the Parliament in proportion to the strengths of parliamentary majority and opposition.

However, bearing in mind the principle of stability of the election law with regard to its fundamental elements, such as the membership of electoral commissions,[3] it would be important to specify when the proposed changes regarding the CEC membership are to be implemented. This is especially important given the fact that the next local elections are expected to take place by October 2023.

It is recommended that the lawmakers ensure that the changes to the composition of the CEC be implemented at least one year before the next scheduled elections.

The proposed composition of the CEC corresponds to what is envisaged in the Venice Commission Code of Good Practice in Electoral Matters (Venice Commission Code), which proposes that the CEC includes a representative of the judiciary, of the parliamentary political parties and suggests including a representative of the Government.[4] However, it is important that the proposed amendments open a possibility for the majority of the CEC members to be appointed by the ruling majority if it holds

1 See sections 2.1 and 2.2 of the Venice Commission Code of Good Practice in Electoral Matters.
2 See section 3.1.c of the Venice Commission Code of Good Practice in Electoral Matters.
3 See section 2.b of the Venice Commission Code of Good Practice in Electoral Matters.
4 See section 3.1.d of the Venice Commission Code of Good Practice in Electoral Matters.

both the majority in the Parliament and backs the President who serves at the time of appointing the commission members. This is aided by a small total number of seats and the fact that the two seats on the CEC representing the parliament would by default be divided equally (one each) between the majority and the opposition in the Parliament.

Promo-LEX believes that the new method of establishing the CEC should not present, even at the level of perception, any doubt of political subordination of the institution. For that reason, in the discussions with the Parliament Promo-LEX recommended that one of the candidates nominated by the Government be selected among the civil society organizations, while a representative of the Supreme Council of Magistracy should hold the title of a doctor of law. Other ways of avoiding any potential excessive political influence of a majority on the composition of CEC could be identified.[5]

It is recommended that the lawmakers adopt such a mechanism for the establishment of CEC, including the selection of the representatives of the Government that would pose no doubt or risk of political control over the institution by an established majority.

The amendments propose to change the term of office of the CEC from five to seven years. While there are no specific international standards regarding the term of office of the election management bodies, it is important to consider this proposal from the perspective of the possible changes of political configuration as the result of the elections that would take place during the period in office of the CEC. Transfer of power from the majority to the opposition, and even changes in the composition of the ruling majority, would inevitably create the incentives for the subjects nominating CEC members to replace their representatives. Therefore, it is important to consider additional protection mechanisms that would insulate the CEC members from political changes and protect their mandate.

The law provides for the maximum of two consecutive terms for a member of the CEC. Combined with the relatively long mandate of seven years and appointment by political bodies, this creates incentives for the members of the CEC to secure the continuation of their tenure by affiliating closely with the political office holders. This creates additional risks to the impartiality and independence of the Commission.

It is recommended that the amendments be supplemented by a provision that would provide additional protection to the appointed CEC members, such as, for example, a provision that would prohibit the appointing body from removing the member. At the same time, consideration could be given to limiting the number of terms a member of the CEC can serve to one.

The amendments also touch upon the criteria for appointment of the Commission members. Article 21 of the Electoral Code was amended to provide more details on the criteria that an appointee to the CEC must satisfy. Among the professional qualifications and rules for incompatibility with political activities, which are well justified and adequate criteria, the amendments propose in Article 21.1.c to have "impeccable reputation" as one of the criteria for the appointees. Adherence to such a criterion is difficult to evaluate and opens the door to arbitrary interpretations. Moreover, the lawmakers could additionally evaluate the necessity of this criterion in light of the newly introduced provision in Article 21.1.e concerning the records of professional integrity, which is a much more precise criterion.

It is recommended that the lawmakers reconsider using "impeccable reputation" as a criterion for appointment of the CEC members.

5 Of note is the remark of the Venice Commission that "for reasons connected with the history of the country concerned, it may not always be appropriate to have a representative of the Ministry of the Interior in the commission…" and that "co-operation between the central electoral commission and the Ministry of the Interior is possible if only for practical reasons, e.g. transporting and storing ballot papers and other equipment." The Venice Commission also warned that "the executive power should not be able to influence the membership of the electoral commissions." See Paragraph 76 of the explanatory report of the Venice Commission Code of Good Practice in Electoral Matters.

The amendments also touch upon the mandate and responsibilities of the CEC. Among the key changes are the introduction in Article 25.1.u of a competency of the CEC to apply or request the application of sanctions for violations of regulations on financing of political parties and electoral campaigns. This is supplemented by an introduction of a provision in Article 26.1.g that empowers the CEC to cooperate with other central and local authorities on the enforcement of political party and campaign finance rules. The intention of the lawmakers to strengthen the mandate of the CEC in this domain is welcome, as it may contribute to the implementation of previous recommendations of international observers that highlighted a need for stronger oversight. In a welcome move, the mandate of the CEC is further clarified by an addition of a CEC competency to "analyze" the submitted political party and campaign finance reports in Article 26.1.d on top of the previously held mandate to "collect and systematize" the reports.

Proposed amendments also provide for making the operations of the second-level DECs permanent, which, in the period between the elections, effectively means retaining the president of the second-level DEC who is appointed, according to the amendments in Article 35.3. In a welcome development, Article 37.2 outlines the duties of the president in the period between the elections, some of which go beyond strictly technical and administrative responsibilities. For example, the president of second-level DEC would be expected to contribute to the oversight of political finance by the CEC (Article 37.2.h) and the maintenance of the voter lists (Article 37.2.g). Performance of these tasks requires impartiality and independence of the election commissioner.[6] These principles are addressed in the training provided by the Centre for Continuous Electoral Training (CCET) , and it is important and welcome that the proposed amendments (see Article 35.5 of the Electoral Code) mandate that the members of DECs can only be appointed if they have received appropriate training and hold a valid certificate.

However, such a transformation could present risks of the impossibility of ensuring the transparency, impartiality and independence of the DECs and their presidents from certain political influences, or subordination/control from the upper electoral body – the CEC. To address some of these challenges, in the discussions with the Parliament Promo-LEX recommended the establishment of additional guarantees to ensure the independence and impartiality of the President of DEC II by:

a) limitation of the period for which the President of DEC II is appointed;
b) organization of open, transparent contests, with the publication on the CEC web page of the candidates for the position of President of DEC II;
c) appointment of the president of DEC II by CEC decision, with the vote of 2/3 of CEC members;
d) establishment of special, mandatory conditions that must be met by the President of DEC II, including political impartiality, reflecting the rules applied to the CEC members.

Given the political sensitivity of the duties assigned to the presidents of second-level DECs, the lawmakers should additionally consider mechanisms to ensure their political impartiality and independence, both during the appointment and in the period when they exercise their duties.

Note that one of the sub-national jurisdictions in which elections are conducted is the Autonomous Territorial Unit of Gagauzia. While a stand-alone law governs the elections there, it is worth highlighting that no mentioning of this fact, or of any election management bodies that would be formed in Gagauzia, is contained in the draft Electoral Code. At the same time, Article 246.3 provides that "the formation and operation of electoral bodies not provided by this code are not allowed." This lack of clarity may cause significant legal controversy but can be eliminated by either covering the elections in Gagauzia in the Electoral Code or, at the very least, mentioning of stand-alone regulation on these elections.

6 See Section 3.1.b of the Venice Commission Code of Good Practice in Electoral Matters.

It is recommended that the draft Electoral Code addresses the elections in the Autonomous Territorial Unit of Gagauzia either by providing regulations in the code or mentioning a stand-alone law on the matter.

The amendments also introduce changes to the criteria for establishment of polling stations abroad. According to the proposed Article 39, polling stations will be established in localities with at least 500 Moldovan citizens who are residing abroad temporarily or permanently. Combined with the consideration to be given to the turnout in specific localities in the past three elections, this criterion, if supplemented by clarification in sub-legal acts, can address concerns previously raised by international and citizen observers regarding the arbitrariness of decisions to set up polling stations for voters abroad.

It is recommended that the application of combined criteria for establishing polling stations abroad be further clarified in sub-legal regulations of the CEC.

Another traditionally contentious issue that the amendments touch upon is the establishment of polling stations in the Transnistrian region. The amendments propose to apply a similar approach of considering voter turnout in the last three elections in the decision-making process, but leave the ultimate decision on whether to open the polling stations in the hands of the CEC (see Article 40.1). The latter raises a significant concern as to whether it remains an ultimate obligation of the CEC or a matter for its discretion to enfranchise the voters in the Transnistrian region. This provision needs to be considered in connection with the international obligation to provide universal suffrage to all eligible citizens.[7]

It is recommended that the lawmakers provide for an obligation of the CEC to enfranchise the voters in the Transnistrian region, leaving only the modalities of organizing polling stations there at the discretion of the CEC.

Financing of the conduct of elections

The amendments envisage changes in the rules for allocation, use and oversight of resources allocated to the conduct of elections. Separation of the provisions on funding the conduct of elections into a stand-alone chapter is a welcome amendment since these provisions are related to the election administration and not the conduct of electoral campaigns.

Financing of electoral campaigns and initiative groups

The newly compiled Chapter 5 of the Electoral Code provides the principles for financing the electoral competitors and initiative groups. This is a welcome addition, especially as the list of principles of legality, equality of opportunity, transparency, independence and integrity sets the list of criteria based on which the allocation, disclosure, oversight and control of political finance would be performed.

However, some of these criteria would benefit from a critical review and further clarification. For example, the principle of "independence of initiative groups, independent candidates, electoral competitors and referendum participants from donors" (Article 50.1.d) would be difficult to implement in practice and may give rise to considerations of what constitutes a sufficient degree of separation between donors and political actors. Additionally, the concept of "integrity of the election campaign" (Article 50.1.e) is a particularly broad one and may need to be elaborated upon in the sub-legal regulations of the CEC or by the means of additional details in the Electoral Code.

7 See Paragraph 21 of the Universal Declaration of Human Rights, Paragraph 25 of the 1966 ICCPR, Paragraph 7.3 of the OSCE 1990 Copenhagen Document and Section 1 of the Venice Commission Code of Good Practice in Electoral Matters.

Importantly, the amendments more explicitly related the regulation to the financing of initiative groups and electoral contestants. This is a welcome amendment since the initiative groups are actively engaged in the political activities that require financial allocations and sometimes take shape of *de facto* campaigning.[8] Amendments introduce a provision to Article 51.10 that sets a ceiling of 50 per cent for the transfer of funds obtained from the state budget from the political party to the electoral fund and the fund of the initiative group. This is a provision that aims to operationalize the introduced regulation of the initiative group, but may require additional details, such as whether the limits apply to each political party in a possible electoral block and whether the provision applies separately to the fund of initiative group and the electoral fund or cumulatively to both. The lack of clarity in Article 51.10 is not resolved by the provisions of Article 53, which imply that the ceilings for the two funds are calculated separately.

Provisions in Article 53 of the Electoral Code doubled the ceilings of transfers to the electoral fund from 0.05 to 0.1 per cent of the revenues in the state budget for the given year. However, it looks like the doubling of the funding ceiling for the election campaigns and initiative groups conducted at the national level is not fully justified. The ceiling of 0.05 per cent was established in 2019, due to the recommendations to reduce it (the ceiling established until 2019 was far too high compared to the revenues collected by competitors). From 2019 to date, in the national elections, the ceiling of 0.05 per cent has not been reached by any contestant. For example, for the 2021 Parliamentary elections, according to the 2021 budget, based on the 0.05 per cent ceiling, the set ceiling was approximately MDL 21 million. The highest revenue reported in the electoral campaign amounted approximately MDL 14 million. According to the new formula – i.e. the ceiling of 0.1 per cent – an electoral competitor or initiative group would be able to have an income of up to MDL 45 million.

The proposal of doubling the ceilings for transfers to the electoral funds should be reconsidered.

This limit is further detailed by the provision that the fund for the initiative group would be capped based on the maximum number of signatures that the group needs to collect. The allocation of the funds to the specific purpose of collecting signatures highlights the importance (and the difficulty) of ensuring that the prohibition of campaigning during the signature collection is observed.

Additionally, the provision in Article 54.5.c covers both the anonymous donors and those acting on behalf of third parties. With this, the law addresses two issues simultaneously whereas they could be tackled separately, and additional consideration could be given to regulating specifically the activities of the third parties. OSCE/ODIHR and Venice Commission previously noted that the contribution of third parties towards campaigns should be regulated and subject to transparency and accountability.[9]

It is recommended that the lawmakers consider additionally regulating campaign activities of the third parties.

Article 52 of the Electoral Code introduces a provision that would require an elected mayor or president to reimburse the expenses incurred for the elections if they resign from their position within 12 months of being elected. This is an unusual provision that appears to aim to resolve the issue of elected officials not performing their duties once elected. However, the provision raises concerns, as its design to encourage thought-through candidacies may not be fully compliant with the freedom of the elected official to resign from the position in line with the law.[10] Indeed, formally remaining in the position without actually performing the duties may be more detrimental to the public interest than incurring another round of expenses for electing a replacement official. Provisions in Article

8 In 2019, ODIHR final report noted that a large number of initiative groups reported no expenses, which, in view of international observers, "raised concerns about financial transparency of signature collection."

9 OSCE/ODIHR / Venice Commission Guidelines on Political Party Regulation, 2nd edition, CDL-AD(2020)032, para. 255.

10 Paragraph 7.9 of the 1990 OSCE Copenhagen Document contains an obligation to "ensure that candidates who obtain the necessary number of votes required by law are … permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures."

52.2.c allow a waiver based in "other objective circumstances" which leaves possibilities open for circumvention of the sanctions envisaged by this Article.

It is recommended that the lawmakers reconsider penalizing the president and mayors for resignation from their duties early in the mandate.

The amendments extend and lead to more detailed regulation on the position and role of the treasurer (representative on financial matters) of the electoral contestants and initiative groups. The provisions were previously limited to mentioning this position in Article 41.2.a of the current version of the Electoral Code. Now the whole Article 55 is dedicated to the matter and contains provisions related to the necessary qualifications and methods of registering the name of the treasurer with the CEC. This is a welcome addition in light of the concerns previously raised by the political parties about their lack of internal capacity to prepare diligent financial reports and from the perspective of clear accountability for possible violations.

The amendments also concern the procedure and guarantees related to opening bank accounts for campaign expenses. Particularly important is the introduced obligation of the banks to open the bank accounts for registered contestants, and the three-day deadline for doing so (see Article 56.2). This addresses the concerns previously raised by the international observers that some banks delayed opening the accounts for some candidates in 2020 and 2021, thus delaying their campaign activities.[11]

The amendments also introduce additional regulation of donations in different forms in Article 57. The provisions allow the political parties to transfer funds to the accounts of initiative groups and electoral competitors.

As compared to the current provisions of the Electoral Code, the amendments propose to further detail the limits on donations from individuals, and while keeping the total limits within six average monthly salaries also adding the cap of 30 per cent of the individual's income (see Article 57.4.1). This is an amendment that could address the persistent issue of donations on behalf of third parties, or at least force the wrongdoers to engage more individuals thus increasing the risks of being uncovered.

The amendments remove the cap of three monthly salaries on donations from citizens residing and receiving their income abroad. This is a welcome amendment, which removes the unequal treatment of citizens based on the place of their residence, and addresses the ODIHR recommendation from 2019. Additional consideration is, however, required as to the mechanisms of verifying whether the donations from citizens residing abroad adhere to the cap of 30 per cent of the individual's income since they are not obligated to present income declarations with Moldova authorities. A legally binding self-declaration could be one option. Another option could be to retain a lower donation ceiling for citizens abroad, while not requiring the citizens abroad to provide proof of complying with the 30 per cent income rule.

The amendments also lower the cap for donations in cash from three to one average monthly salary (see Article 57.4.1.e), which is welcome as a step to ensure greater accountability, especially as previous observations show that a large portion of donations are transferred in cash.[12] The Electoral Code leaves it to the CEC to determine the procedure of receiving cash donations.

Lastly, the provisions in Article 57 contain amendments providing for the transfer of all donations made in excess of the ceiling or in contravention of other provisions to the state budget (see Article 57.5). This is an extension of the previously applied provision regarding the donations from foreign entities, and is a welcome amendment that could have a deterring effect.

11 See the 2020 ODIHR final report, p. 16, and the 2021 ODIHR final report, p.15.
12 See the ODIHR 2020 final report.

Amendments to the regulations on reporting on campaign finance were also introduced. Thus, Article 58 of the proposed Electoral Code amends the provisions currently contained in Article 43 of the Electoral Code. The amendments list the data that should be submitted regarding every donor, which is an improvement as compared to the basic provision in Article 43.1.a of the current Electoral Code.

The amendments also concern the extent of reporting with the introduced provisions calling for submission of copies of primary documentation along with the reports (see Article 58.1). This is a welcome amendment, which would strengthen the ability of the CEC to conduct thorough and detailed control of the veracity of submitted reports and not only their compliance with the formal requirements. This provision, when supplemented by the appropriate sub-legal regulations and duly implemented, has a potential of increasing the transparency of political and campaign finance.

The proposed changes also concern the mode of submitting reports – the proposed approach is to report electronically through the SAISE system with paper copies submitted at the CEC request (see Article 58.5). This is a welcome amendment that could pave the way towards greater transparency of the campaign finance by allowing to publish the data contained in the reports (with due consideration given to protection of personal data). It was previously noted that the submission of documents in paper format did not allow their easy publication in a machine-readable format that would be useful for independent scrutiny.

The proposed version of the Electoral Code contains Article 59 that outlines the basic principles for supervision and control of financing of initiative groups and campaigns. Important is that it mentions that the objective of the control is to verify not only whether the submitted information is complete and submitted in the timely manner, but also its veracity, and that the primary documents can be used to do so.

However, Promo-LEX believes that the respective provisions could be further improved by elaborating the rules and basis for initiating the control procedure, the period of the control/supervision procedure, the methods of data/evidence collection, the acts by which a control procedure is completed and, as the case may be, the types of violations and sanctions applicable in case of violations.

The lawmakers should consider detailing the provisions of Article 59 in order to establish comprehensive and foreseeable rules of the financial control exerted by the CEC.

Voter lists

The amendments concerning compilation and maintenance of the voter lists bring the Article on State Register of Voters into the chapter concerning voter lists, which is a welcome change from the perspective of legal drafting.

On substantive matters, the amendments enumerate a greater number of fields to be completed with regard to each voter in the State Register of Voters (see Article 60). The newly introduced fields include the number of the polling station where the voter is assigned and the data on the eligibility and record of the last change in the data. Some other fields are described in more detail in the amended provisions. These are welcome additions as they provide further clarity for the permanent maintenance of the State Register of Voters.

Another amendment (Article 61.8) excluded local elections from and added the national referendum to the list of electoral events for which the voters can declare their temporary place of stay. This is an amendment aimed at preventing "electoral tourism" in the local electoral events where a relatively small number of votes may prove decisive. This amendment is in line with the international good practice that links the eligibility to vote with residence for local elections.[13]

13 See section 1.1.c.iii of the Venice Commission Code of Good Practice in Electoral Matters.

In addition, the amendments to Article 61.9 propose to prepare the voter lists in two stages with the preliminary voter lists extracted from the State Register of Voters 22 days before the elections, posted for scrutiny, and – according to the amendment – redistributed in a version revised in compliance with applications for inclusions and exclusions that may be submitted until 7 days before the elections. This is a welcome amendment, which would increase the accuracy of the voter lists used on election day, but the effectiveness of this innovation would depend significantly on the sub-legal regulations to be issued by the CEC to operationalize these provisions. To ensure that, given the statistics of voters registered on additional lists, and taking into consideration that the registration of voters should not take place at the polling station on election day, the law could be amended to provide that voters can declare their domicile until 7 days before the elections. These measures would contribute to the improvement of the quality of the main voter's lists and reduce the reliance on the supplementary lists.

It is recommended that the lawmakers consider extending the period in which the voters could introduce changes to their domicile, and providing that the corrections introduced to the voter lists as the result of public scrutiny be reflected in the records of the State Register of Voters.

Another amendment (Article 62.3) simplifies the procedure for the registration of a voter who was not registered, which is a necessary and important measure, in line with the international good practice.[14] On the other hand, the procedure of verification of voters' data in the lists seems to be less meaningful as it limits the possibilities of the voters, representatives of electoral competitors, referendum participants and observers to take copies, photographs or videos of the voters' lists.[15] The above presented limitations are even more consolidated in the Article 62.4, which provides that the access to the electoral lists used on the election day shall be granted (only) to the members of the electoral bureau based on a privacy statement. Given the important role of election observers on election day, similar provisions could be put in place for observers to guarantee meaningful scrutiny of the voter lists on election day.

It is recommended that the Electoral Code guarantee a meaningful mechanism for ensuring access of all election stakeholders to the voters' lists, including, possibly under the protection of a signed privacy statement, on election day.

Nomination and registration of candidates

The draft Electoral Code contains several important amendments of procedures for nomination and registration of candidates, including the reduction of the number of signatures required to be collected by the independent candidates in local elections to 1 per cent (see Article 164), in line with the international standards and good practice.

Furthermore, the amendments to Article 65.11 also propose to allow voters to sign in support of more than one prospective candidate. This is a welcome amendment, which brings legislation closer in line with international standards and good practice and helps provide for greater pluralism.[16] This amendment also addresses a long-standing recommendation of the OSCE/ODIHR.

Additionally, the amendments to Article 64 provide more clarity with regard to the procedures of registering an electoral block. This is a welcome amendment as it embodies in the law the regulations previously issued by the CEC at a sub-legal level.

14 See section 1.2.iv of the Venice Commission Code of Good Practice in Electoral Matters.

15 See the previous comments on this matter in Paragraph 25 of the 2020 Joint Opinion of the Venice Commission and OSCE/ODIHR on the draft law no. 263.

16 Paragraph 3 of the 1990 OSCE Copenhagen Document states that OSCE participating States "recognize the importance of pluralism with regard to political organizations." Paragraph 96 of the 2020 OSCE/ODIHR and Council of Europe's Venice Commission Guidelines on Political Party Regulation (2nd edition) states that "legislation should not limit a citizen or other individual to signing a supporting list for only one party."

Proposed amendments to Article 65.12 allow collection of signatures anywhere in the country for the parliamentary elections, or – in the case of local elections – in the given district, and retains a requirement for the presidential election to collect signatures from at least half of second-level administrative units. Given the relatively small number of signatures required (15,000 to 25,000), the latter requirement does not appear to be restrictive. However, the amendments propose (see Article 65.13) that the signature lists for the prospective presidential candidates contain signatures only from the same second-level administrative unit. The provision in Article 67.5.d proposes to invalidate the signature if contained in a list other than the one to which the signatory is assigned. While this is better than invalidating the whole list where such a signature might be found, it opens the possibility for not taking into account some of the signatures submitted in good faith. Apart from this provision, the more detailed outline of the criteria for invalidating signatures is a welcome amendment.

Another important aspect of the procedure of signature collection that can be easily observed throughout the Electoral Code is the fact that in parliamentary and local elections only the independent candidates are requested to collect signatures in support of their nomination (which is not the case of presidential elections). Promo-LEX believes that in all type of elections this provision could be unified by providing that all potential candidates that do not have parliamentary or local representation should collect signatures in their support. In practice, only the most marginal parties may have some difficulties in gathering the requisite number of signatures.[17] Moreover, as per Venice Commission Code of Good Practice in Electoral Matters, the parties and candidates should enjoy equality of opportunity and should prompt the state to be impartial towards them and to apply the same law uniformly to all.

It is proposed that the lawmakers consider imposing the procedure of signatures collection for both independent candidates and parties that do not have representation, in all type of elections. In addition, the lawmakers should consult CEC on the possibility of verifying the supporting signatures in such a way that would not make it necessary to invalidate signatures entered on the list in the administrative unit other than where the signatory resides.

Election Campaign

The proposed amendments to the regulations of election campaign concern the duration of the campaign and the possible methods of campaigning. With regard to the official campaign period, the amendment suggests that it commences not only at the moment of candidate registration (as it currently stands) but also "not earlier than 30 days before the day of the vote" (see Article 70.3). The aim of this revision is to provide equal opportunities for the contestants by providing the same period for campaigning. The provisions of the Electoral Code set the deadline for submitting candidate registration documents at 30 days before the elections. Therefore, the equality of the campaign period for all candidates would not be impacted as much by the amendment introduced in Article 70.3 as by when the prospective contestants submit their documents and how long it will take the electoral bodies to register candidates who submit their documents at the end of the period. In other words, all those candidates registered less than 30 days before the elections would have less time for campaigning than the others, which goes against the stated aim of equalizing this time. There could be other ways of providing equal period for campaigning – both by law and in practice – to all registered contestants. One such option could be registering all contestants at the same time. Another option would be separating the deadline for submitting the registration documents from the official start of the campaign by a period of time sufficient for the electoral bodies to process all submitted applications and for the courts to consider possible appeals.

17 See section 1.3.8 of the Venice Commission Code of Good Practice in Electoral Matters

It is recommended that the lawmakers consider additional ways to ensure that all candidates enjoy the same period of campaigning.

The amendments to the chapter on election campaign remove the restrictions on the use of national symbols and images of historic personalities of Moldova in the campaign. The use of such foreign symbols and images of foreign officials remains prohibited. This easing of the restrictions is welcome as it addresses OSCE/ODIHR recommendations from 2015 and 2016, and the remaining prohibitions on the use of foreign symbols appear to be at the discretion of national authorities. At the same time, we invite the Venice Commission and OSCE/ODIHR to check whether the derogation from this rule included in the Article 70.4 (allowing for the use of foreign symbols in cases concerning commitments undertaken by the Republic of Moldova under international agreements concluded with the European Union) are in line with the international standards and practices.

The amendments introduce the explicit prohibition of organized transportation of voters to the polling stations (see Article 70.5), which is a welcome amendment that addressed the recommendation of the OSCE/ODIHR from 2020. The amendments also remove the prohibition on the involvement of foreign nationals in the campaign, and, correspondingly, remove such acts from the grounds for de-registering the candidate.

Resolution of electoral disputes

Proposed amendments concern a number of provisions related to resolution of election disputes. Of particular note is the extension of the list of actors who have the right to submit complaints. Whereas currently the Electoral Code provides such rights to voters and candidates, the revised Article 94.1 extends these rights to initiative groups, prospective candidates, referendum participants and political parties. This is a welcome amendment as it brings the legislation closer in line with international good practice.[18] However, making the complaint dependent on whether the complainant's rights have been injured or not, necessitates further clarification as to how broadly should this notion be interpreted. Previously, OSCE/ODIHR has pointed that election and judicial authorities should refrain from overly formalistic approach to complaint admissibility and assure substantive consideration of complaints[19].

It is recommended that the lawmakers further clarify what constitutes the supposed violation of a complainant's rights and avoid overly formalistic approach to complaint admissibility.

In the revised Article 91.1.d the list of those whose actions can be challenged was also extended to include all those who are registered or are to be registered, accredited or confirmed by the electoral bodies (collectively referred to as "electoral subjects"), which would cover the prospective candidates, candidates, observers and others. This extension could provide for greater accountability in the electoral process if complaints are considered efficiently and duly in practice.

Revised Article 92.2.c provides an important rule according to which the complaint should contain not only the description of facts but also indicate the legal basis and be accompanied by evidence. Revised Article 96 further stipulates that the complainant "establishes the facts on which his claims are based and is responsible for the veracity and quality of the evidence submitted." Not meeting these requirements would deem the complaint inadmissible under provisions of the revised Article 93.2.d. It needs to be highlighted that the requirement to submit evidence along with the complaint may be too burdensome and may limit the ability of those whose rights have been violated to seek remedy.

It is recommended that the lawmakers reconsider the requirement to submit the evidence along with the complaint, at least for the complaints by voters, as a means to ease access to effective remedy.

18 Paragraph 99 of the Venice Commission's Code of Good Practice states that the standing "should be granted as widely as possible."
19 2020 Presidential elections, ODIHR Limited Election Observation Mission Final Report, p. 22

Amendments also introduce Article 93.2 aimed at outlining the inadmissibility grounds of the complaint. While the list of inadmissibility grounds contributes to the predictability of electoral process, this approach should be considered in connection with the challenges it creates and risks it poses over restoring violated rights. Avoiding a formalistic approach and giving substantive consideration to complaints would be one of the key considerations.

Besides seven grounds of complaints inadmissibility which are specific and precise, the eighth ground that provides for „other cases established by present chapter" (see Article 93.2.h) opens the door to arbitrary interpretations. This provision increases the risk of assessing any deficiency of the complaint as a ground of inadmissibility.

It is recommended that the lawmakers provide a closed list of grounds for the inadmissibility of complaints.

The amendments also concern deadlines for lodging complaints and for considering them. Specifically, the deadlines for lodging complaints have all been changed to three days, and the deadlines for their consideration shortened from five to three days. Specific provisions are in place to ensure that complaints are considered in a timely manner vis-à-vis the election day. The unification of deadlines contributes to the predictability of the electoral process and helps orient the stakeholders. The timeframe for lodging and considering complaints is not subject to legally binding international standards, but the good practice suggests three to five days for both lodging and deciding on the complaints.[20] The timelines set in the amended Electoral Code meet these requirements.

The amendments also introduce special provisions on deadlines and procedures for post-election complaints and appeals. These are welcome amendments, which provide more clarity on the mechanism of lodging and resolving a post-election complaint, and addresses a long-standing recommendation of the OSCE/ODIHR.[21] However, Article 91.9 establishes a limitation of post-election complaints to the specific types of violations (on exercising the right to vote, organizing the electoral procedures on the election day and/or tabulating the election results by the electoral bodies). Additionally, the amendment proposes to make the admissibility of post-election complaint dependent on whether mentioned types of violations have influenced the election results (by redistributing the mandates). These requirements appears to be a significant limitation on the complainer rights and creates risks to leave stakeholders without effective remedy, contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document and international standards[22].

It is recommended that the lawmakers reconsider the impact on the results and the type of violation as specific requirements for the admissibility of post-election complaints.

On a particular note, Article 100.4 establishes the examination of post-election complaints simultaneously with the procedure of tabulation and confirmation of the election results. The amendment needs to be considered from the perspective of body's competence to confirm the election results. For example, parliamentary and presidential election results are confirmed by the Constitutional Court, which effectively leaves no possibility for an appeal against decision on the post-election complaint.

More importantly, the precinct election bureaus (PEBs) were stripped of competencies related to the consideration of complaints, except for the PEBs that serve also as DECs of level I in local elections

20 See Venice Commission Code of Good Practice Paragraph II.3.g, Paragraph 95 in the explanatory report.

21 See the 2020 ODIHR final report, p. 27, and the 2021 ODIHR final report, p.26

22 Paragraph 5.10 of the 1990 OSCE Copenhagen Document states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental human rights and ensure legal integrity". Also, see section II.3.3b of the Code of Good Practice, which recommends that "procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals". See also Article 2 of the ICCPR and Article 13 of the European Convention on Human Rights.

(only in the localities where there is a single polling station). Correspondingly, the DECs and the CEC are granted additional duties with regard to resolving election disputes. This is a welcome amendment taking into consideration the workload of the PEBs on election day. However, this new way of logging complaints may also put at risk the voters' access to an efficient remedy, given the fact that they will be required to travel to the DECs for this purpose. A similar concern should be raised with regard to the out of country voting.[23] The objectives of enabling the submission of possible complaints and ensuring their timely resolution should be reconciled. One possible way for that is to vest the PEBs with the duties of receiving the complaints and conveying them to the DECs who would then resolve them.

It is recommended that the lawmakers retain the function of receiving complaints with the PEBs, stripping them of the function of considering the complaints, but obliging the PEBs to convey the complaints promptly to the DECs who would be responsible for resolving them.

Of note is the mandate of the CEC to consider complaints against "dissemination of false information placed by electoral subjects in the print media or online space" (see Article 97.2.e). Additional efforts would need to be invested in the CEC's ability to operationalize these duties.

Amendments also introduce Article 98 aimed at outlining the jurisdiction of various bodies (EMBs and courts) in the examination of complaints. This is a welcome amendment given the concerns raised previously by election observers.

Adjustments were also made to the sanctions that can be applied with a view to make them more proportional and deterrent. Of note is the removal of some grounds for de-registration of candidates, which is a welcome amendment given that this is a measure that should be applied carefully and for a very narrow set of reasons.

Ballot papers

The amendments concerning ballot papers bring the provisions on design and text of ballot papers for referendum into the chapter concerning ballot papers, which is a welcome change from the perspective of legal drafting.

More importantly, the proposed amendment to Article 73.7 excludes the possibility to provide ballot papers in languages other than Romanian. Whereas Article 53.6 in the current Electoral Code allows preparation of ballot papers in the languages of national minorities, in the context of the repealed Law on the use of languages spoken in the Republic of Moldova, Article 73.7 in the proposed Electoral Code establishes their preparation only in Romanian language. This amendment may limit the ability of voters belonging to national minorities to make an informed choice, especially since international standards and good practices specifically mentions that states should promote free exercise of all political rights for national minorities.[24]

It is recommended that the lawmakers consider obliging the electoral bodies to prepare ballot papers both in Romanian language and in major minority languages.

23 The OSCE/ODIHR recommended in its 2016 final report that „Consideration should be given to establishing clear procedures and jurisdiction for the handling of election-related complaints and appeals in a timely manner, including complaints concerning out of-country voting, and providing an effective mechanism to appeal election results. The CEC could employ measures to inform electoral stakeholders of jurisdiction and avenues for lodging election related complaints."

24 Paragraph 35 of the 1990 OSCE Copenhagen Document states that OSCE participating States "will respect the right of persons belonging to national minorities to effective participation in public affairs." Paragraph 187 of the 2020 OSCE/ODIHR and Council of Europe's Venice Commission Guidelines on Political Party Regulation (2nd edition) states that "measures to help promote adequate national minority representation might include (...) the provision of electoral material, including ballot papers, as well as voter education and campaign materials in minority languages"

Observers and media coverage

The current version of the Electoral Code comprehensively regulates the accreditation procedure and the rights of observers. Even so, the lawmaker proposed in the new electoral code to strengthen the chapter on election monitoring by defining and clarifying more precisely the status of observers, the period of their activity, the incompatibilities of this status, as well as the right of observers to inform about the results monitoring. Most of these proposals are in line with international election observation standards.

At the same time, the draft of the new Electoral Code proposes to exclude electoral competitors from the list of subjects with the right to accredit observers and keeps only their possibility to have representatives with the right to consultative vote within the electoral bodies (see Article 88). However, the Venice Commission Code of Good Practices on Electoral Matters establishes the existence of three distinct categories of observers: national observers who support a particular party or candidate, national observers who do not support a specific party or candidate, and international observers.

We believe that by excluding the possibility of electoral competitors to accredit observers, there could be a risk that some of them may create or benefit from the services of various public associations for the accreditation of observers. Such situations have been previously observed in Moldovan and other elections. They can determine electoral competitors not to declare all expenses associated with such "affiliated" observation missions, as well as come with the risk of having an increased number of violations reported by the given category of observers, who declaratively will be independent, but in practice could act in political interests. In this context, it should be also mentioned that, previously, the international or national election observation missions from the Republic of Moldova failed to formulate any recommendation aimed at limiting the right of electoral contestants to accredit observers.

Additionally, the amendments establish that citizens of the Republic of Moldova can also be registered as international observers (see Article 88.2.b). Although there are no specific international standards regarding the citizenship of international observers, this is an unusual provision for international practice, which may cause confusion in the observer accreditation process.

It is recommended that the amendments be supplemented with a provision that would allow electoral contestants to accredit observers. At the same time, the exclusion of citizens of the Republic of Moldova from the list of persons who can be accredited as international observers should be considered.

Provisions specific to different types of elections

Parliamentary

The proposed amendments concerning parliamentary elections address the issues of the list of candidates and possible amendments to it. Thus, it is proposed that the maximum number of candidates in the list is increased from 103 to 111. In addition, the rules for changing the list of candidates are also subject to an amendment. Thus, whereas Article 87 in the current Electoral Code allows to substitute the candidate until 14 days before the elections, Article 115 in the proposed Electoral Code does not allow this after the commencement of the election campaign. This amendment may help the voters make an informed choice as the new candidates would not appear on the list late in the process. The proposed amendment also extends the time for possible modifications to the list of candidates from 14 to 10 days before the elections. Additionally, the proposed amendments remove the right of the candidate to withdraw his/her own candidacy if the person is running on the list by only allowing the electoral competitors to do that (retaining the possibility for independent candidates). The latter appears to be a significant limitation on the rights of the candidates to stand (or not to stand) in

the elections if, for example, the candidate disagrees with the modification of the party policy in the course of the campaign.

It is recommended that the right of the candidates to remove themselves from the party lists is retained.

Although there are no international standards regarding electoral thresholds, the practice shows us that in most European countries it is around 4-5 per cent. At the same time, it is well known that the Parliamentary Assembly of the Council of Europe, through Resolution 1547 of 2007, opted for a 3 per cent limit of the electoral threshold, albeit with the important reservation that this recommendation applies to "well-established democracies".

Promo-LEX recommended the authorities to reduce the electoral threshold by 1 per cent for political parties, electoral blocs, but also for independent candidates, as compared to what is outlined in Article 122. We estimate that, in the case of independent candidates, the value of 1 per cent mathematically reflects the weight of electoral support of a deputy in a 101-member Parliament.

This proposal represents a balanced solution that, on the one hand, will create conditions for a better representation of citizens and development of the political system, and on the other hand, will keep low the risk of a political fragmentation of the parliament, thus ensuring conditions for the creation of stable governments.

In this context, we would like to recall that the Venice Commission and OSCE/ODIHR have consistently recommended reducing the electoral thresholds in the Republic of Moldova. In its 2014 Opinion, the Venice Commission positively assessed the idea of returning to the 4 per cent threshold for political parties and we hope that the next Opinion of the Commission will reaffirm this recommendation as well.

Presidential

With regard to the presidential elections, the amendments propose that the formation of DECs and PEBs be governed by the general rules rather than a specific provision in the chapter on presidential elections as is now the case. This is a welcome amendment, which would contribute to the consistency in organization of elections.

Additionally, the amendments propose to make having higher education one of the eligibility requirements for the candidacy for president. The requirement of a ten-year permanent residence in Moldova is retained (see Article 136.1). This amendment, as well as remaining length of residence requirement, challenge the principle of universal suffrage.[25] It is worth noting that the length of residence is provided for by the Constitution as an eligibility criterion for the president. In a welcome amendment, however, an amendment is introduced to mandate the CEC to establish a mechanism for verifying the knowledge of the Romanian language, one of the eligibility criteria.

It is recommended that the introduction of the higher education requirement for the candidates for President be reconsidered and the length of residence requirement is brought in line with international standards.

Local

With regard to local elections, an amendment is proposed that the validation of the elections and the mandates be done by the DECs and not the courts (see Article 174). The second-level DECs were

25 Paragraph 15 of the General Comment 25 to Article 25 of the ICCPR provides that "persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or dissent, or by reason of political affiliation."

granted the powers to validate the mandates of local elected officials. Important is that, the competency for validation of elections (and mandates) at the national level remains with the Constitutional Court. It should be noted that the DECs might not necessarily be able to take a fully objective decision on the matter of validity of the elections that they organized.

It is recommended that consideration be given to retaining the powers of validation of local elections with the courts.

An important amendment is to decrease the age requirement for the mayors from 25 to 23 (see Article 161.2). According to international standards, age requirements should reasonable, which this requirement appears to be. However, the amendments also introduce an eligibility requirement of holding at least general secondary education to be elected mayor. As discussed above, educational requirement can be considered discriminatory.

It is recommended that the introduction of at least general secondary education requirement for the candidates for mayors be reconsidered.

The amendments propose to decrease the number of supporting signatures for independent candidates from five to one per cent of the registered voters (with a minimum threshold of 100 signatures), which is a welcome amendment to Article 164 that brings the law closer in line with international standards and good practice.[26]

The amendments also introduce a rule that the voters in local elections should be registered in the constituency concerned for at least three months (see Article 160). This is intended to prevent 'electoral tourism' – a phenomenon of shifting residence with the aim of influencing the outcome of the local vote. This provision should be looked at in conjunction with the general provisions of the Electoral Code on formation and update of the voter lists, as well as from the perspective of guaranteeing suffrage rights to all eligible voters.

It is recommended that additional consideration be given to establishing whether the change of residence in the last three months before local elections is genuine as a means to enfranchise all eligible voters while preventing mass changes in residence that would influence the results of the vote.

National and local referendums

Proposed amendments regarding referendums concern the topics of calling a referendum and some more technical issues. Significant revisions were introduced to the subjects entitled to initiate the referendum. Article 182 in the proposed text of the Electoral Code follows the steps of Article 154 in the current text in terms of defining types of national referendums, but Article 183 distinguishes between which subjects can initiate what types of referendums. It is proposed to decrease the minimum number of citizens who can initiate the referendum from 200,000 to 100,000. This number constitutes approximately 3 per cent of the number of people in the SVR, and is significantly higher than the number of signatures required to nominate a presidential candidate.

The lawmakers could consider further decreasing of the number of voter signatures required to initiate a republican referendum.

In a welcome amendment, the rules for the collection, submission and verification of the supporting signatures were revised to reflect the changes introduced to the same rules applied in the elections (see the section on Candidate Registration).

26 See Paragraph 1.3.iii of the Venice Commission Code of Good Practice in Electoral Matters.

The rules for the conduct of campaign in the national and local referendum (see Article 202 and Article 233) refer to the chapter in the general part of the Electoral Code. In that chapter the term "electoral competitors" is applied, which in the context of a referendum would be replaced by the term "referendum participants." The latter is defined in Article 200 and Article 231 of the proposed Electoral Code and applies to the political parties who can register with the CEC as referendum participants. Of note is the provision of Article 72.1 that provides for the equality of electoral competitors (referendum participants) in the campaign. It remains unclear as to whether in the referendum the principle of equality would be applied to all parties registered as participants individually or cumulatively to the groups of referendum participants standing behind options "yes" and "no." Article 202 and Article 233 provides that this provision would be applied "in an appropriate manner", which leaves it at discretion of the CEC to define this manner further at a sub-legal level.

Given the importance of equality of opportunity in the referendum, it is recommended that the application of campaign rules to referendums be clarified further at the level of the law.

Given the right of the groups of citizens to initiate referendums, it is recommended that the law allows such groups of citizens to register as referendum participants.