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Promovarea democrației și a drepturilor omului

Opinion
of Promo-LEX Association

The fact that the application for registration of the Initiative Group for conducting a legislative referendum was rejected, puts in doubt the citizens' right to directly exercise sovereignty

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Promo-LEX Association is alarmed *by the trends that take shape in the society – when certain important national public authorities limit the citizens' right to initiate a referendum, as well as to freely express their opinions in a democratic exercise. We think that such tendencies do not pursue a legitimate aim and are unnecessary in a democratic society. We are concerned that these trends could lead to certain discretionary restrictions of this right. We refer to the fact of compromising the citizens' right to initiate a republican legislative referendum itself – aspects mentioned by the CEC in the body of its decision (Decision No 1344 of 12.01.2018), as well as to the findings of the Constitutional Court in the Decision No 24 of 27.07.2017, which make the citizens' right to initiate any kinds of referenda seem to be expressly limited.*

Promo-LEX Association disapproves ***of the decision of the Central Electoral Commission*** *to reject the registration of the Initiative Group for conducting a republican legislative referendum on repealing Law No 154 of 20 July 2017, which changed the electoral system into the mixed one. We think that the right to organise a referendum is a guaranteed right of the citizens of the Republic of Moldova, naturally fitting in the concept of the rule of law and national sovereignty as the existential foundations of a democracy.*

We regret that in this situation (in comparison with other similar or comparable cases) the citizen-serving public authority took a stand of insisting on emphasising exclusively the letter of the law, while totally and groundlessly ignoring its spirit. ***The Association considers that the procedural grounds*** *invoked by the CEC* ***are of minor legal relevance*** *and are unable to put in question the legality and lawfulness of the created initiative group, as well as of the citizens' right to freely express their opinion in such a democratic exercise as referendum.*

The context in which Law No 154 of 20 July 2017, which stipulates switching to the mixed electoral system, was adopted and the initiative on returning to the proportional electoral system has emerged

Promo-LEX Association, by virtue of its statutory provisions, has been constantly contributing to the improvement of quality and to the increase of citizens' trust in the democratic processes in the Republic of Moldova by monitoring electoral processes, analysing the decision-making process and lobby and advocacy activities in fields relevant to its objectives.

In the context of experience accumulated during the national and international election observation missions since 2009, in its Monitoring Reports the Association has been permanently providing certain general conclusions and recommendations on amending the electoral legislation in order to strengthen democratic processes. This includes the Promo-LEX public appeals, launched after presidential election (also supported by other civil society organisations) on the **need to speed up the procedures of amending electoral legislation**, in strict accordance with the Constitutional Court's formal letters and recommendations of the national and international election observation missions, **on the basis of the existing electoral system.**

At the same time, certain parliamentary political forces (represented in particular by the Democratic Party and later by the Party of the Socialists of the Republic of Moldova) in the first half of 2017 insisted on a fundamental change in the electoral system in the context of 2018 Parliamentary elections, without correcting the shortcomings highlighted by national and international observers, as well as in the formal letters of the Constitutional Court. Promo-LEX Association and other representatives of the civil society believe that we can not consider modifying the electoral system until the fundamental and pressing issues of the electoral legislation (valid for any type of elections) are solved. The Association states that according to the best European practices, in order to avoid any doubts about opportunism and favoritism of the ruling

parties, the electoral system should not be changed for the following election. Therefore, the possibility of changing the electoral system can only be discussed with the 2022 Parliamentary elections in view.

However, the Parliament of the Republic of Moldova, exercising its constitutional law-making powers, has changed the method of MPs' election by approving Law No 154 of 20 July 2017 on the Amendment of the Electoral Code. Thus, Moldova switched from the proportional electoral system to the mixed one, which means that 51 of 101 MPs will be elected in the single-member constituencies, and the remaining 50 – in the single nationwide constituency. This step was made by taking into account neither the results of the public opinion polls (according to which the country's citizens want the mixed system the least), nor the opinion of several civil society organisations operating in the fields of elections, democratization and human rights. Worse still, the electoral legislation was amended with **disregard for the main recommendations of the Venice Commission, which stated that the switch from the proportional voting system to the mixed one was not advisable for the Republic of Moldova.** The Venice Commission also specified a fundamental condition of legitimacy of such processes in its opinion – existence of a national consensus. The aforesaid shows, however, that such national consensus was and still is missing. The same can be concluded from the electoral debates organised by the Association, which demonstrated some deep divisions over this issue in the society.

At the same time, note that when the amendments to the electoral legislation were approved, Promo-LEX Association identified and pinpointed several legal gaps and issues in the implementation of the mixed-member electoral system, which, as Promo-LEX believes, must be tackled immediately. These include: reduced representativeness of the Parliament, if the MPs are elected in single-member constituencies in one single round; necessity to clarify the situation of a candidate from the national list of the party, who is, at the same time, an independent candidate in a single-member district; legal aspects of student voting; interpretability of and failure to observe the demographic criterion for distribution used for the establishment of constituencies, etc. **We wish to stress that despite the obligation of the Government of the Republic of Moldova (by virtue of final provisions of Law No 154 of 20 July 2017) to make suggestions on amendment and adjustment of the legal framework till 20 October 2017, none of the aforesaid issues was examined.**

In the context of the aforesaid, we think that **modification of the electoral system is one of the society's and state's major issues, which according to the legal provisions may be subject to referendum.** It is worth noting that the society started discussing the need of popular consultations and approval of the changes in the electoral system by means of a referendum back in spring–autumn 2017 – at the stage of public discussions in the Parliament of the Republic of Moldova.

On 5 September 2017 a group of Liberal Party MPs lodged an application to the Constitutional Court, requesting to check the constitutionality of Law No 154 of 20 July 2017. Note that as of the publishing of this this opinion, the Court had not disclosed the application examination results, which once again confirms the complexity and importance of the electoral system modification.

Analysis of procedural grounds invoked by CEC in its decision to reject the registration of the Initiative Group

The Constitution states that national sovereignty is an absolute and perpetual power of people, who shall exercise it through the state power representative bodies and sovereignly own it. Thus, the national sovereignty is inalienable, since the representative bodies only exercise it. **People directly exercise sovereignty by participating in referenda** and elections, as well as by directly making decisions (CCD No 16 of 19.03.2001).

At the constitutional level, referendum was designed as a way for the people to directly exercise national sovereignty, expressing their will regarding issues of general interest or that of particular importance for the state's life. In this respect Article 75 of the Constitution states that problems of utmost importance confronting the society and State shall be resolved by referendum, while the decisions adopted according to the results of the republican referendum shall have supreme legal power.

The citizens' right to initiate a republican referendum is guaranteed by Article 155(1)(a) and Article 163 of the Electoral Code.

Thus, a founding meeting of an initiative group (IG) was held on 17 December 2017. On 29 December 2017 an application was filed to the Central Electoral Commission, requesting registration of the group in order to conduct a legislative republican referendum. It is worth noting that a Promo-LEX representative was duly invited to the IG founding meeting, who attended it as an observer. The essence and purpose of creating an IG was to conduct a legislative republican referendum proposing to adopt a law that would repeal the amendments and addenda adopted by Law No 154 of 20 July 2017 on Amendments and Addenda to Some Legal Acts (published in the Official Gazette No 253-264, Article 422).

When examining the application for group registration in a public meeting, CEC discussed the conditions of holding the IG founding meeting and eventually adopted a Decision, rejecting the application for registration of the IG for conducting a legislative republican referendum.

After analysing the issues identified by CEC and set out in the Decision, Promo-LEX Association offers its own stand on each issue under consideration and on the situation in general.

a. Article 163(1) of the Electoral Code states that the initiators shall notify in writing the local public administration authority on the territory of which the meeting is to be held, about its time, place and purpose, no later than 10 days before the meeting.

We disregard the legal norm invoked here by CEC, since, on the basis the passage from Article 261(1) of the Civil Code: 'the term begins to run from an event or a moment in time occurring during the course of a day', we can qualify the process of LPA notification as an event itself. Extending this idea, we think that in the absence of an event the running of the term would depend on, the day of notifying the LPA about holding the event should be considered as such. Thus, the 10-day term provided for by the Electoral Code has been met.

At the same time, when adhering to both the letter and the spirit of the law, we find that such term is set in order to notify the LPA about the planned event and to allow it to ensure public order. We think that the period between the date of notification and the event date was long enough, and that the local administration managed to take all measures needed. It was also found out during the CEC public meeting that the Commission did not receive any notifications from Chisinau municipality mayoralty about certain time shortages.

In view of the above, we regard the argument invoked by the CEC as irrelevant and unable to serve as a ground to reject the initiative group registration.

b. As for the number of persons present at the founding meeting, Promo-LEX thinks that the flaw of non-uniformity during vote tabulation was invoked for no good reason. In its decision CEC refers to Article 163(2) of the Electoral Code, which states that **before the meeting**, the participants shall be registered and their last and first names and addresses shall be entered on a list. In the same decision the Commission states that 639 persons were declared present **at the beginning of the meeting** – *two times more than the minimum of 300 persons requested by law (Article 163(1) of the Electoral Code).*

Detailed analysis of this issue shows that the organizers of IG founding meeting have adhered to the letter of the law accurately, since before the meeting has started, more participants than required for the event to take place were registered. Seeing that in the course of the meeting the number of registered persons varied, and namely increased, we can only reiterate the spirit of the law, which stipulates the minimum number of participants, without any other restrictions. **The founding meeting of the initiative group for conducting a referendum was a strictly civic action, based on the civic spirit of those present. Thus, the refusal to register them during the meeting only because the letter of the law stipulates their registration before the event would be a contempt for their constitutional rights.**

Summing up the aforesaid, we consider that the flaw of non-uniformity during vote tabulation was invoked as an argument for not registering the IG for no good reason.

c. The Commission also chose to draw special attention to the detection of certain irregularities in the lists of registration of the participants to the IG founding meeting. In this context we think that the fact that one and the same person was on the lists twice (as stated in the CEC decision), is simply the matter of accuracy of the indicated data in relation to the other participants to the meeting. Note also that such practice is unusual for a signature verification process. In other cases, when examining acts for registration of other IGs (e.g., IG for conducting a constitutional republican referendum amending and supplementing the Constitution of the Republic of Moldova (CEC Decision No 4316 of 21 November 2015)), the Commission simply excluded from the lists those persons, whose data were indicated incorrect, and adopted the decision on the basis of the remaining valid signatures.

For comparison, when an IG was registered for conducting a constitutional republican referendum amending and supplementing the Constitution of the Republic of Moldova (CEC Decision No 4316 of 21 November 2015), the Commission, while examining the application for registration of the group, identified a number of violations in the signatories' lists and **thus cancelled 147 out of 921 presented signatures.** For a clearer picture, let us cite the exact violations identified in the Decision No 4316 of 21 November 2015:

'a) in case of 73 persons the identity details (including signatures) on the list, in the declarations and in the identity card do not match;

b) in 2 cases the data on the list are incomplete;

c) in 3 cases one and the same person signs twice (once at No 550, 222 and 324 and the second time at No 175, 731 and 438);

d) in 5 cases the signature is missing, of which: 3 in the presented list, 2 in declarations;

e) in 7 cases the copies of the identity documents are presented improperly;

f) in 2 cases the identity documents, the copies of which were presented, are expired.

As many as 54 sets of documents (declarations and copies of identity documents) filled in and signed by persons missing from the list of members of the initiative group presented for registration were found.

Thus, 147 persons who signed the declarations can not be registered as members of the initiative group for conducting the referendum, while the remaining 775 persons eligible to vote will be registered as such.'

Against this background, the registration issues found in one person out of 639 can not serve as a strong argument for refusal to register the initiative group. Consequently, we see an obvious difference in treatment by CEC and double standards applied to different initiative groups.

d. With regard to failure to submit some acts by the representatives of the initiative group at the time of filing the application to CEC, it is worth noting the following.

- Referring to the decision of the initiative group on the election of its Executive Bureau, we note that although no separate decision was submitted, CEC found by itself in its decision the presence of information on election of the Executive Bureau in the minutes of the meeting.

Having analyzed this topic from the perspective of the letter and spirit of the law, we note that although the Regulation on the Activity of the Initiative Group regarding the Conduct of the Republican Referendum expressly provides for the need of submitting such a decision, the ultimate goal of this requirement is proving, or communicating the Commission that the bureau was elected, and it was carried out in line with the procedures. The election of the Executive Bureau was recorded in the minutes of the founding meeting, which was also stated by CEC in its decision.

Likewise, neither the Electoral Code nor the said Regulation provide for invalidity, or in this case — refusal to register, in case of failure to submit certain acts. **Moreover, CEC is a public institution in the service of the people and we consider as its institutional obligation to collaborate with citizens and groups of citizens, especially considering their guaranteed right to initiate certain democratic electoral processes. The Commission, being a partner in this respect, should collaborate with the citizens even during the examination of actions and compliance with the procedures by them.**

- Referring to the failure to submit the decision of appointing the treasurer in relations with CEC, Promo-LEX underscores the provisions of the Regulation on the Funding of Initiative Groups (adopted by CEC Decision No 114 of 18 August 2016), which are applicable to all initiative groups registered for collecting signatures in support of an elective candidate or for the purposes of initiating a referendum of any level. Thus, according to paragraph 5(b) of the Regulation, **after** registration with CEC or local public authority, or court of law in case of initiating the local referendum, the initiative group shall notify CEC in writing about the person in charge of its finances (treasurer), who will be also responsible for developing cash flow statements, as well as for their submission to the Commission in due time.

To put it differently, *we find a contradiction between CEC Regulations, which apart from misleading the citizens, allow biased interpretations.* In general, the Regulation on the Funding of Initiative Groups was adopted to replace and develop the financial chapter from the Regulation on the Activity of the Initiative Group regarding the Conduct of the Republican Referendum. Accordingly, it was adopted subsequently and so takes priority in case of divergences between the rules.

Summarizing the aforesaid on this topic, we find that it is necessary to formally submit the decision on the election of the Executive Bureau, but we highlight the expression of the participants' will for electing this body, which information was still set forth in the main minutes. Moreover, we consider that it was not necessary to submit the Executive Bureau's decision on the appointment of the treasurer at the time of filing the application for registration of the initiative group, and the relevant CEC request is premature and even abusive.

e. At the same time, Promo-LEX Association believes that CEC argument on the alleged discrepancies between the text of the draft law voted by the participants at the meeting and the one submitted to the Commission can be ignored. It is true that **the members of the Executive Bureau are obliged to strictly promote the will of IG constituents and they can represent them before CEC only with the exact wording of this will. However, reiterating the spirit of the law and of this conditionality in particular, we are convinced that it is the essence, the participants' will put to the vote during the meeting, which matters in this context.**

The textual differences between the draft law title voted by the participants at the meeting and the one submitted to the Commission are not misleading for the participants by submitting to the empowered control body another text than the one examined at the meeting. The submitted text was reformulated and adjusted to the new law-making requirements. On the date when the meeting was held, the Law No 154 of 20 July 2017 was in force and thus the issue put to the vote on 17 December 2017 made sense, and at the time of submitting the application along with the set of documents, the Electoral Code was republished, as a consequence the Law No 154 was automatically repealed, without its provisions being repealed accordingly. We note in this respect that the will and goal of the initiative group were and remained clear - repeal of the legal provisions on the switch from the proportional electoral system of the Members of Parliament to a mixed one. Accordingly, this was possible only by adjusting the text.

We believe that invoking such a text discrepancy as a ground to refuse the registration of the initiative group is biased and does not fall within the spirit of the law.

Summarizing the aforesaid, Promo-LEX Association notes that there are minor procedural deviations committed by the participants and the persons appointed by them. At the same time, the Association considers that the grounds invoked by CEC are irrelevant, insignificant and unable to put in question the intentions, legality and lawfulness of the created initiative group.

In addition, in support of the above thesis, we note the Regulation on the Activity of the Initiative Group regarding the Conduct of the Republican Referendum, which lays down in the final provisions that in case of failure to comply with the regulation, as well in case of **serious deviations** from the provisions of the Electoral Code, the Commission's regulations and instructions, as well as in case of repeated warning for the same deviation, the Central Electoral Commission may cancel the registration of the initiative group and reject the initiative for conducting the referendum. By applying the above-cited provisions to the registration of the initiative group, **we conclude that the deviations to refuse the registration of the initiative group should have been repetitive, of major importance and serious compared to those found by CEC - that is insignificant and related to procedural issues.**

Moreover, as regards the argument invoked by the Commission that a possible repeal of the Law No 154 of 20 July 2017 would create a legal vacuum, and some legal rules declared invalid shall be restored only by their reinstatement, followed by the amendment of the text in force, it is worth recalling the Constitutional Court Decision No 7 of 4 March 2016. By the cited decision, *the Constitutional Court ordered that some previously revised rules shall be restored and reintroduced into the operative fund of the law on the date when the judgment is pronounced.*

Article 1(3) of the Constitution envisages that the Republic of Moldova is a democratic State, governed by the rule of law, in which the dignity of people, their rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed.

Developing the concept of rule of law, the fundamental law provides for in Article 2(1) that national sovereignty resides with the Republic of Moldova people, who shall directly and through its representative bodies exercise it in the manners provided for by the Constitution.

National sovereignty consists in the right of people to decide unconditionally upon their interests and to promote them in the forms established by the Supreme Law. Therefore, if through the elections the people participate in exercising the state power by the appointment of some representatives, who are decision makers on behalf of the whole people during the given mandate, in the second form - the referendum, the state power holder exercises directly the sovereignty through an effective way of consulting the people's will on essential issues.

In other words, **the referendum is an instrument of direct democracy, through which citizens express their opinion on issues of national interest** (CCD No 24 of 27.07.2017).

The Constitution of the Republic of Moldova contains several rules on the referendum. For a better understanding of the message we want to convey, we will briefly comment each reference to referenda in the fundamental law:

- thus, Article 66(b) of the Constitution lists among the basic duties of the Parliament the holding of referenda as well:

  'The Parliament [...] declares the holding of referenda';

- Article 72(3)b) lays down the areas governed by the organic law, including the organisation and conduct of the referendum:

  'The organic law shall govern: [...]
  b) organisation and carrying out of referendum.';

- Article 75 cited at the beginning of this document provides for:

  (1) Problems of utmost importance con-fronting the Moldovan society and State shall be resolved by referendum.
  (2) The decisions adopted according to the results of the republican referendum shall have supreme legal power.';

- Article 88 lists the duties regarding the President of the Republic of Moldova, and the letter b) stipulates that the President:

  '[...] may request the people to express their will on matters of national interest by way of referendum';

- Article 89(3), which covers the suspension from office of the President of the Republic of Moldova, stipulates:

  'If the motion requesting suspension from office meets with approval, a national referendum shall be organized within 30 days to remove the President from office.'

- finally, Article 142(1) which makes reference to the limits of revision of the Constitution states:

  '(1) The provisions regarding the sovereignty, independence and unity of the state, as well as those regarding the permanent neutrality of the State may be revised only by referendum with the vote of the majority of the registered citizens with voting rights.'

Giving broad consideration to the constitutional provisions, *we note that a guaranteed right of citizens to initiate a referendum is not expressly provided for by the Constitution. Nonetheless, this right is deducted from the constitutional principles and rules cited above. Applying Article 72(3) of the*

Constitution, the direct right of citizens to initiate a referendum has been transposed into an organic law, that is in the Electoral Code.

Thus, pursuant to Article 155 (1) of the Electoral Code, the republican referendum may be initiated by: a) a number of at least 200 000 citizens of the Republic of Moldova who hold the right to vote, and in case of the constitutional referendum, Article 141(1)(a) of the Constitution shall be applied [...]. In order to develop and ensure the transposition of the cited rule to practice, Article 163 of the Code regulates some general procedural conditions and aspects related to the initiation of a republican referendum by the citizens. In addition, CEC also approved certain Regulations that provide some more details about the procedures for registering IG, collecting signatures, funding IG, as well as for cancelling IG registration and rejecting the referendum initiative.

However, Promo-LEX Association draws attention on the fact that some important institutions in the country tends to narrow this right. We are concerned about the fact that this tendency may lead to some discretionary restrictions on the right of citizens to freely initiate a referendum, precisely because this right does not currently have a solid foundation in the Constitution.

And here we start from the Constitutional Court Decision No 24 of 27 July 2017 on the Constitutional Review of the Decree of the President of the Republic of Moldova No 105-VIII of 28 March 2017 on Holding a Consultative Republican Referendum on Issues of National Interest. **We certainly accept and appreciate the Court's findings on the development of the rule of law concept, the primordial role of the people as the holder of national sovereignty and the importance of referenda as an instrument of direct democracy through which citizens exercise their sovereignty directly.**

At the same time, it is important to note the Court's findings: '[...] the constitutional right of the President to resort to the referendum cannot confer on him the possibility of lawmaking, since, according to the provisions of the Constitution, the President **cannot initiate a 'legislative referendum'**, but only a 'consultative referendum'. This is clear from Article 60(1) of the Constitution, as the Parliament is the sole legislative authority of the State. Otherwise, this would mean a recognition of the President's legislative competence.'

Based on this reasoning, we tend to believe that this situation may also be reported to citizens, initiative groups to initiate **legislative referenda.** Thus, according to Article 60 of the Constitution, the Parliament is the sole legislative authority and citizens, same as the President, do not have such a prerogative. The Constitutional Court believes that **the permission of initiating a legislative referendum by the citizens, would mean a recognition of the fact that they have the competence of lawmaking.**

Moreover, developing the findings set out above and excluding the possibility of the President of the Republic of Moldova to initiate **any** type of referendum, **especially the legislative one**, the Court found that Article 144(2) of the Election Code contravenes Article 141 of the Constitution.

We note that according to Article 144(2) of the Electoral Code (after republishing the Electoral Code – Article 155(2)), the subjects mentioned in para. (1) of the same article, that is a) **at least 200 000 citizens of the Republic of Moldova eligible to vote**, b) at least one third of the Members of Parliament, c) the President of the Republic of Moldova, and d) the Government, **may initiate any type of referendum provided for in Article 154 (all types).**

This finding determines us think that the Constitutional Court expressly limited the citizens' right to initiate any type of referendum. In part, the freedom of the people to decide on the initiation of any type of referendum was restricted, and, at the same time, the way for subsequent

legal maneuvers was opened in order to prevent the holding of popular referenda. However, although the rule in Article 155(1) of the Code, which grants citizens the right to initiate a republican referendum remains in force, it does not prescribe the types of referendums it refers to, and the Court's findings make it susceptible to interpretation.

We could admit that by saying "in this sense" in paragraph 106 of the Decision, referring to the concrete situation of the President, the Court provided for this limitation only for the head of state. However, the Constitutional Court did not make such a specification either in the substantiating part of the decision or in the operative part of it, ordering the declaration of the rule to be unconstitutional.

Note that neither in the Notice forwarded to the Parliament with the adoption of Decision No 24, the Court elaborated on this subject, communicating only to the legislator the fact of declaring Article 144(2) (Article 155(2) of the Electoral Code after republication) as being **fully** unconstitutional.

Furthermore, in addition to the above, the Court repeatedly reiterated Article 66(b) of the Constitution, according to which **the Parliament is responsible for declaring the holding of referendum.** As the constituent legislator did not circumscribe the type of referendum declared by the Parliament by the cited constitutional rule, the Court stated that the **provisions of Article 66(b) refers to all types of referendum.**

Moreover, the Court also reiterated Articles 150(2) and 151 of the Electoral Code (after republishing Article 161(2) and 162), according to which the Parliament has the power to adopt resolutions in order to declare the referendum, to reject the proposal for the referendum in the case it is initiated by Members of Parliament, solve issues expected to be subjected to the referendum, without conducting the referendum and establishing the date of the referendum whether it is initiated by citizens or Members of Parliament. In this regard, the Court concluded that the **Parliament, by delivering a decree, declares referendum on all proposals to initiate the referendum by the subjects holding this right.**

Promo-LEX Association asserts *that Parliament's prerogative to declare by decision all proposals to initiate the referendum is excessive and may serve as a tool for potential blockages of popular referendum initiatives. More so because the Court refers to the need to allocate financial means, which is the Parliament's responsibility, with the Government's approval.*

A first official reaction to the Court findings cited above was the adoption by CEC of the Decision No 1344 of 12 January 2018, by which IG registration application for the republican legislative referendum was rejected.

By stating in the first part of the decision the arguments against the registration of GI, in the second part of its decision, the CEC raises certain questions about the uncertainties surrounding the application of some legal norms and requires the Parliament to interpret them. In its notice, the CEC refers to the Constitutional Court's Decision No 24 of 27 July 2017 and **questions the right of citizens to initiate a republican legislative referendum.** On the other hand, the Commission puts forward some plausible arguments in favor of introducing additional filters before submitting a draft law to the popular vote so that it already meets the requirements of the legislative technique.

However, on this occasion, we generally consider the direction of the evolution of things wrong and threatening in relation to the constitutional rights of Moldovan citizens to directly exercise their sovereignty and freely express in a referendum their opinion on an important subject.

In addition, both the Constitutional Court and the CEC's decisions reiterate the recommendation in the Code of Good Practice on Referenda, according to which:

> 'When a text is subjected to the vote at the request of an electorate segment or a public authority other than the Parliament, this one [Parliament] must be able to give its advisory opinion on the text in question. In the case of popular initiatives, it may have the right to oppose a counter-proposal to the proposed text, which is subject to popular vote also. A deadline must be set within which the Parliament will give its advisory opinion; if this term is not observed, the text will be subjected to the vote without the consent of Parliament.'

Promo-LEX points out that in the Good Practices text, the **excerpt referred to above is titled the Parliament's Opinion and not the right to vote of the Parliament,** or this recommendation of the Venice Commission offers the possibility of involving the Parliament in the process of initiating and holding a referendum by citizens, developing an advisory opinion. The same, the Parliament may oppose a counter-proposal to the proposed text, which is also subject to popular vote also, but **in no circumstances decide absolutely on the rejection of the initiative without any alternative.**

Concluding *the above, we must identify certain signs that would point to artificial barriers that are not necessary in a democratic society and which seem to be obstacles in the future to suppress the intentions of direct democracy to be exercised by the people. However, we express the hope that participatory democracy counts and the good faith of public institutions and political stakeholders prevail in the adoption of decisions, and this will be the decisive factor in the evolution of law and jurisprudence in the Republic of Moldova.*

Promo-LEX Association recommends amending the Constitution and related legislation in order to guarantee legal certainty for citizens' right to initiate any referendum and, according to the obligation of public authorities, to allocate the financial resources needed to consult the will of people. This would reduce the room for manoeuvre of public institutions in interpreting constitutional provisions and ensure their execution in accordance with the fundamental right of the people to exercise its sovereignty directly.

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