



# **REPORT no. 1**

## **Observation Mission Parliamentary Elections of February 24, 2019**

Monitoring period: 27 July – 10 December 2018

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*The report is drafted within the 2019 Parliamentary Election Observation Mission, carried out by the Promo-LEX Association with the financial support of the US Agency for International Development (USAID) through the Democracy, Transparency and Responsibility Program; the British Embassy in Chisinau through the project for Strengthening Democratic Accountability in Moldova; Soros-Moldova Foundation through the projects Strengthening the Platform for the Development of Activism and Education of Human Rights in the Republic of Moldova and Monitoring Electoral Rolls and Litigation in the 2018 Parliamentary Elections; the Council of Europe through the Support for the Monitoring of the 2018 Parliamentary Elections project.*

*The responsibility for the opinions expressed in this report lies with the Promo-LEX Association and does not necessarily reflect the position of the donors.*

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## EXECUTIVE SUMMARY

**Political context.** The parliamentary elections are very important for the quality, content and direction of the Moldovan decision-making process, especially considering the predominantly parliamentary political regime. Namely, it is the parliamentary majority that decides on the country's development vector.

Surveys conducted during the pre-election period reveal that the population has a negative perception of the quality of the decision-making process in the society, as well as of the free and fair character of the parliamentary elections to be held. In the pre-electoral period, the proportion of citizens who avoid publicly expressing their political preferences has considerably grown.

A distinctive feature of the current legislature was the large number of MPs who changed their political affiliation - about 38%. There are reasonable suspicions, fueled by the specificity of implementing the mixed voting system in societies with unconsolidated democracy, that changing the electoral system from that of proportional representation to the mixed one would further favor the migration of independent MPs or those in the opposition to the "party in power".

**Legal framework.** With regard to the modification of the electoral legislation, a negative aspect in this respect is the fact that the Parliament of the Republic of Moldova ignored the Opinions of the Constitutional Court, formulated after the presidential elections to improve the electoral legislation.

Since the last parliamentary elections, the legal framework regulating the parliamentary elections in the Republic of Moldova has undergone substantial changes, considering that the fundamental element of electoral law, namely the electoral system itself, has been modified. The change of the electoral system and the delimitation of constituencies were made more than one year before the elections, in line with the recommendations of the Venice Commission.

However, most of the technical recommendations formulated by the Commission's experts that directly relate to the draft law changing the electoral system have been neglected and only 12 out of 32 recommendations have been implemented. The Moldovan Parliament, on principle, ignored the main recommendation of the Commission - not to modify the law or adopt the mixed electoral system. Promo-LEX shares the view that the mixed voting system should not have been implemented in the context of the parliamentary elections of February 24, 2019.

Most of the changes made to the electoral and related legislation to ensure the transition to the mixed electoral system were technical. Some of them can be welcomed as they derive from the recommendations made by Promo-LEX, such as lowering the ceilings for donations made by individuals and legal entities to the Electoral Fund account; motivating women's involvement in the elections; the need to collect signatures on the subscription lists for parties and blocs, not just for independent candidates, etc.

At the same time, we draw the reader's attention to some legal provisions that contain a substantial potential to affect the international principles and standards in electoral matters. For example, the principle of equal suffrage is limited by: defying the equality of voting - not all voters are ensured the right to vote with the same number of ballots, including those who do not have a place of domicile or residence; non-observance of equality of electoral power - there are substantial differences going beyond the margin allowed by the law with regard to the number of voters in the single member constituency (SMC) and the possibility of considerable differences between the number of votes for a candidate on the national list and the one in single member constituency; the possibility of affecting equal opportunities - uncertainties regarding the use of the integrity certificate, provided that the information contained in this certificate will determine the registration or non-registration and the eligibility of candidates.

Analyzing the changes introduced into the Electoral Code and the related legal framework in the year before the elections, we found that the principle of stability of electoral law seems to have been violated with the amendments providing for the organization of the referendum on the same day with the parliamentary elections, as well as in the case of removal of campaigning restriction on the day of election and the day preceding the election, with the removal of the campaigning restriction within 100m from the polling station, keeping the restriction only for the premises of the polling stations and the entrance to the polling stations.

Promo-LEX OM considers that the organization of the consultative referendum on the day of parliamentary elections of February 24, 2019 is based on a legal framework that has been hastily approved at the end of the pre-electoral period, without consulting the public opinion. It received a negative opinion of the Constitutional Court. It will unduly increase the costs of the suffrage and will substantially complicate the organization and conduct of the elections, as well as create unfair conditions for competitors / participants.

With regard to the issues subjected to the referendum, we remind the reader that one of them - the revocation of MPs - is unconstitutional, since it appears to be in contradiction with international practices and is technically impossible to implement under the current electoral system. The Promo-LEX OM expresses its concern with regard to the fact that authorities entitled to refer the Parliament's ruling to the Constitutional Court did not undertake any action. Moreover, the OM notes that the High Court has to verify the legal merits of organizing the referendum on an *ex ante* rather than *ex post* basis, since in the case of an *ex post* verification, the consequences could be unpredictable.

The Promo-LEX OM notes that compared to 2014, of the total of 21 recommendations made by the Mission on the improvement of the legal framework for the organization and conduct of parliamentary elections, 14 were implemented in full or in part.

**CEC's decisions.** In the opinion of the Promo-LEX OM, during the monitored period, the CEC sporadically took account of the stages of decision-making transparency, publishing for public consultations certain draft decisions on amending its regulations and instructions, or adopting new normative acts. We appreciate that, as a result of continued insistence, Promo-LEX is now informed about the content of the public consultation process.

At the same time, there were enough examples, both during 2018 and in the pre-election period, which demonstrate CEC's lack of sustainability in ensuring decision-making transparency. A good example of this is the adoption of amendments to the Regulation on Observer's Rights and Obligations, when a draft was proposed for consultation, but a different one was voted in the hearing. Another example is the Regulation on the Financing of Electoral Campaigns and the Regulation on the Financing of Initiative Groups, the modifications of which have not even been subject to public consultations. The CEC Decision on the video recording system in the polling stations in the parliamentary elections of February 24 2019, which approved the technical characteristics of the video recording system to be installed in the polling stations, is another example in this respect. This decision was passed before the approval of the draft amendments to the normative acts on the operation of such a video recording system. By the time this Report was published, no draft was submitted to public consultations for the adjustment of the normative framework.

From the quantitative point of view, we consider that the number of normative acts modified or approved by the CEC during the pre-election period is relatively large, which does not contribute to increasing confidence in the quality of the institutional decision-making process, because they have been changed too late, considering that electoral law has been modified since July 2017.

By the beginning of the electoral period, the CEC accredited 90 national observers, all of them from the Promo-LEX Association, and 7 international observers.

**The quality of electoral rolls** remains one of the most publicized and widely discussed topics in the public space. The current parliamentary elections are no exception in this respect. The Promo-LEX OM will monitor the work with the State Electoral Register (SER), as well as the content of the electoral rolls to be delivered to the EBPS. The task seems to be difficult and will totally depend on the openness of the electoral authorities and their respect of the observers' rights.

The number of voters in the SER is steadily increasing. According to the data in the SER, at the beginning of the electoral period, on December 10, 2018, there were 3,265,997 voters, which is by 6,972 more than on March 31, 2018. The Promo-LEX OM points out that the continued increase in the number of voters in the SER, given the country's depopulation by emigration and the existence of a negative population growth in 2000, fuels the society's mistrust in the SER's functionality and, implicitly, in the quality of electoral rolls. The difference in the data on the number of voters deducted on the basis of figures provided by different public institutions, such as the Public Services Agency (PSA) or the National Bureau of Statistics (NBS) is puzzling.

Under the electoral law of the Republic of Moldova, citizens that have neither a domicile nor a place of residence seem to be deprived of the opportunity to participate in the voting on equal terms with the others, because the legal framework does not allow them to vote in single member constituencies. We note that the number of voters that fall under this category has increased by 55,207 only in the last 15 months (from September 2017 to December 2018) reaching 210,890 or 6.45% of the total number of voters in the SER.

**Electoral litigation.** Both the presidential elections of October 2016 and the new local elections of May 20, 2018 have demonstrated that, on the one hand, the examination of appeals is a procedure that is not explicitly regulated, especially when it comes to the election day or the post-election period, and on the other, that the court may assume the role of an actor in the electoral process and decide independently on the cases, without being requested by any of the parties to do so.

The modification of the electoral system has also highlighted other vulnerabilities, such as legal uncertainties that could cause conflicts of court jurisdiction in cases of litigation in electoral matters, or the increased risk of invalidating mandates in single member constituencies in acts of voluntary justice.

**Misuse of administrative resources** can be interpreted in the case of two potential competitors: the PDM and the PSRM. In the case of the PDM, Promo-LEX OM identified in the pre-electoral period at least seven cases, where the activities of the potential national electoral competitors contained elements of deviations, such as merging the party with the state, abusive use of administrative resources and bribery of citizens. Additionally, the OM revealed at least four cases that can be qualified as misuse of administrative resources at the level of single member constituency. In the case of the PSRM, we refer to the fact that the party representatives in the Chisinau Municipal Council adopted and implemented projected using the public money.

**Designating candidates ahead of schedule** is another irregularity identified by the Promo-LEX OM. We consider that some of the activities of the PSRM, PPS, PAS and PPPDA can be interpreted as such violations. The PSRM publicly presented party's candidates for 43 of the 46 single member constituencies established on the territory of Moldova (except for the Transnistrian region). The Sor Political Party (PPS) actively promoted its local representatives in the regions, which largely coincides with the single member constituencies. The PAS and PPPDA announced during the pre-election period that they had designated potential candidates to pass the integrity filters, in some cases providing specific names of party representatives.

**Preparation and dissemination of electoral information in the pre-election period**, in the opinion of the Observation Mission, can also be interpreted as beginning of the campaign before the legally stipulated term. In this regard, the actions of the PAS and PPPDA (the current electoral bloc ACUM) fall

under this category which, in the period of 5 November and 10 December 2018, held meetings with citizens and distributed printed materials (the ACUM commitments) in at least 21 districts.

**Monitoring t electoral campaign financing** remains a priority of the Promo-LEX OM. In this regard, we will continue to compare the expenditures reported to the CEC with the activities and expenditures estimated in the course of civic observation. Considering the change of the electoral system, it should be mentioned that the legal amendments to the law on financing of electoral candidates / initiative groups and their financial reporting can be considered a positive trend. In this regard, we refer, in particular, to the lowering of the ceilings for donations made by individuals and legal entities, inclusion in the financial reporting of the services provided for free by individuals and legal entities and all volunteering activities.

Nevertheless, based on previous experience of observing the financing of electoral competitors and the specificity of the mixed voting system, we identified the following challenges: the increase in the number of financial reports submitted to the CEC; unfair electoral conditions due to the misuse of administrative resources; financial support of electoral candidates offered by donors from abroad, provided that citizens working abroad cannot transfer funds to the Electoral Fund account; involvement of foundations associated with political leaders or political parties; insufficient time to effectively monitor the final reports on the financing of electoral campaign, especially considering the cancelation of the day of silence, etc.

**Hate speech.** Starting with the new local elections and the local referendum held in Chisinau in November 2017, the Promo-LEX OM is also monitoring cases of hate speech used by electoral candidates in the elections. We intend to identify the cases and topics of their discourses based on the sources of information subjected to monitoring. We are interested in the subjects that use hatred in electoral messages and those affected by this type of discrimination.

In the context of the Parliamentary Elections of February 24, 2019, Promo-LEX will carry out an **Information Campaign** aiming at voter education and apolitical mobilization of Moldovan citizens holding the right to vote, including those from the diaspora. The overall aim of the Campaign is to increase the participation of Moldovan citizens in the parliamentary elections of February 24, 2019.

## INTRODUCTION

Report no. 1 has been developed within the framework of the Promo-LEX Observation Mission (OM) of the parliamentary elections of February 24, 2019 and includes the result of monitoring the pre-election period with an emphasis on the period of July 27, 2018 (public announcement of the election date) to December 10, 2019 (start of the election period).

This report contains the main findings and trends specific to the pre-election period of the parliamentary elections of February 24, 2019. The conclusions and recommendations of the OM in the current report refer to the political and legal context of the forthcoming elections, linking the monitoring experience of the past elections with the socio-political events that might have a potential electoral impact during the pre-election period.

The Promo-LEX OM will present a total of 6 monitoring reports on the parliamentary elections of February 24, 2019. In addition to the current report, another four interim reports will be drafted, two for the period of candidates' nomination and registration, and respectively, two for the competitors' electoral campaigns. The mission of the reports is to diagnose, in real time, the quality of the organization and conduct of elections for a predetermined period of time; to bring to accountability electoral actors; to identify positive and negative trends in the electoral processes. After the election day, a report will be drawn up, providing a synthesis of the main aspects of the organization and conduct of the voting (e.g. opening and closing of the PSs, number and type of incidents); the results of the parallel vote tabulation (PVT) and their comparison with the official results. The final report of the OM will be submitted on March 28, 2019.

The monitoring reports are prepared by the central team of the Promo-LEX OM, based on the findings reported by the long-term observers (LTOs) within the OM about the activity of all actors involved in the process of organizing and conducting the elections: electoral candidates, public authorities, electoral bodies, political parties, citizens who submit their own candidacy, and the civil society.

During the electoral period, the monitoring of the electoral process is carried out by 48 LTOs, one for each of the 46 single member constituencies (SMC) established on the territory of the Republic of Moldova and controlled by the constitutional authorities, as well as one LTO for the SMC created for the Transnistrian region and the SMC established abroad. On the election day, Promo-LEX will delegate one short-term observer (STO) to each polling station (PS) opened on the territory of the Republic of Moldova. The OM also intends to designate STOs to at least 50 PSs set up abroad for the parliamentary elections of February 24, 2019.

All the observers involved in the monitoring process are trained in the seminars organized by the Promo-LEX Mission and sign the Code of Conduct<sup>1</sup> of the Promo-LEX Independent National Observatory, committing to act in good faith and in a non-partisan way. The activity of all observers is coordinated by the central team of the Association.

The report is drawn up based on the observation reports and the findings of the LTOs introduced into the thematic templates, as well as on official public information reported by Promo-LEX OM observers. Carrying out some planned visits, the observers analyze the information that results from discussions, meetings with officials and consultation of official documents.

The Promo-LEX OM of the parliamentary elections of February 24, 2019 is a project of the Promo-LEX Association carried out within the Civic Coalition for Free and Fair Elections. The Promo-LEX OM is not a political opponent of the competitors involved in the electoral race, it is not an investigative body and does not assume the express obligation to prove the observed findings. However, the observers' reports are accompanied, as far as possible, by photo and video evidence, which can only be made available to law enforcement bodies on the basis of appropriate requests, and in no case, shall it be

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<sup>1</sup> <https://promolex.md/4689-codul-de-conduita-al-observatorilor-electorali-promo-lex/>



provided to electoral competitors. The Promo-LEX mission manages the [www.monitor.md](http://www.monitor.md) web platform, where any citizen can report activities with electoral overtones, the information from observers' reports being stored on the same platform. Citizens' notifications are verified by the Mission Observers during the next scheduled visit to the settlement, where the alert was recorded.

Promo-LEX is a public association that aims at developing democracy in Moldova, including in the Transnistrian region, by promoting and protecting human rights, monitoring democratic processes and strengthening the civil society. The Association organizes Election Observation Missions in the Republic of Moldova since 2009, the current mission being the 17th. Additionally, the employees and members of the Association have extensive international experience and participated in election observations in the International Missions of Armenia, Germany, Georgia, Estonia, Norway, Romania, Sweden, Ukraine etc.

The international standards referred to in this report are those developed by the UN, OSCE, the European Commission for Democracy through Law, the European Union and the Council of Europe. At the end of this report, we formulated preliminary recommendations for public authorities, electoral bodies, electoral candidates / participants in the referendums and other stakeholders to ensure the optimization of the electoral process.

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The opinions expressed in the reports and press releases of the Promo-LEX OM belong to the authors and do not necessarily reflect the position of the donors.

# I. POLITICAL CONTEXT

*The parliamentary elections are very important for the quality, content and direction of the Moldovan decision-making process, especially considering the predominantly parliamentary political regime. Namely, the parliamentary majority decides on the country's development vector.*

*A distinctive feature of the current legislature was the high rate of MPs who changed their political affiliation - about 38%. There are reasonable suspicions, fueled by the specificity of implementing the mixed voting system in societies with unconsolidated democracy, that changing the electoral system from that of proportional representation to the mixed one would further favor the migration of independent MPs or those in the opposition to the "party in power".*

*Surveys conducted during the pre-election period reveal that the population has a negative perception of the quality of the decision-making process in the society, as well as of the free and fair character of the forthcoming parliamentary elections.*

## 1.1. Description of the institutional framework

The Republic of Moldova is a parliamentary republic, in which the executive power is exercised by the Government, headed by the prime-minister, while the legislative power is represented by the Parliament, consisting of 101 members. The Head of State is the President that has some limited powers, including on foreign and national defense policy.

The Parliament is elected by a universal, equal, direct, secret and free suffrage, expressed for a four-year term<sup>2 3</sup>. Therefore, given that the last parliamentary elections were held on November 30, 2014, the current Parliament's mandate expired on November 30, 2018.

The parliamentary elections of February 24, 2019 will be for the first time organized on the basis of a mixed voting system, where MPs will be elected both on the basis of proportional representation in the national constituency and by the majority vote in single member constituencies<sup>4</sup>.

## 1.2. Party switching

A distinctive feature of this legislature (2014-2018) is the fact that during the four years of its activity, the correlation of political forces in its composition has significantly changed (see Chart 1<sup>5</sup> and 2<sup>6</sup>). Towards the end of the legislative period, about 38 members from 101 (37.62%) changed their political affiliation.

*The parliamentary majority, formed by the PDM faction and the PPEM group that has ensured governance since 2016, was the result of political party switching. Of the 38 MPs that left their factions, 23 opted for the PDM and 9 for the PPEM. The most decimated factions are those that have been in the opposition since the parliamentary elections of 2014, or who were in the opposition in certain periods of the Parliament's work. We do not have conclusive evidence that would explain the nature of these mutations, but the fact that MPs switch from the opposition to the ruling party raises suspicions about the probability of political corruption or intimidation.*

Party switching has also characterized the correlation of political forces in the local governments. If in 2015, after the local elections, the PDM - current ruling party - had 287 mayors, in July 2018, the letter addressed to the EU leadership by the representatives of the local governments claiming that they

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<sup>2</sup> Constitution of the Republic of Moldova, art. 61, para. (1), art. 63, para (1) -<https://bit.ly/2E6b3UK>.

<sup>3</sup> Decision of the Constitutional Court no.31 of 10.11.1997 -<https://bit.ly/2QuxEjQ>.

<sup>4</sup> Electoral Code, art. 79, para. (3) -<https://bit.ly/2jcsdy2>.

<sup>5</sup> Composition of the Parliament for the XX-th legislative period, 30.11.2014 - <https://bit.ly/2U3ZyC2>.

<sup>6</sup> Composition of the Parliament for the XX-th legislative period, 30.11.2018 - <https://bit.ly/2SkXRP4>.

were disappointed with the decision to suspend the EU macro-financial assistance to Moldova, a decision strongly criticized by the PDM, was already signed by 713 mayors<sup>7</sup> of a total of 898.

Chart no.1.

Chart no.2

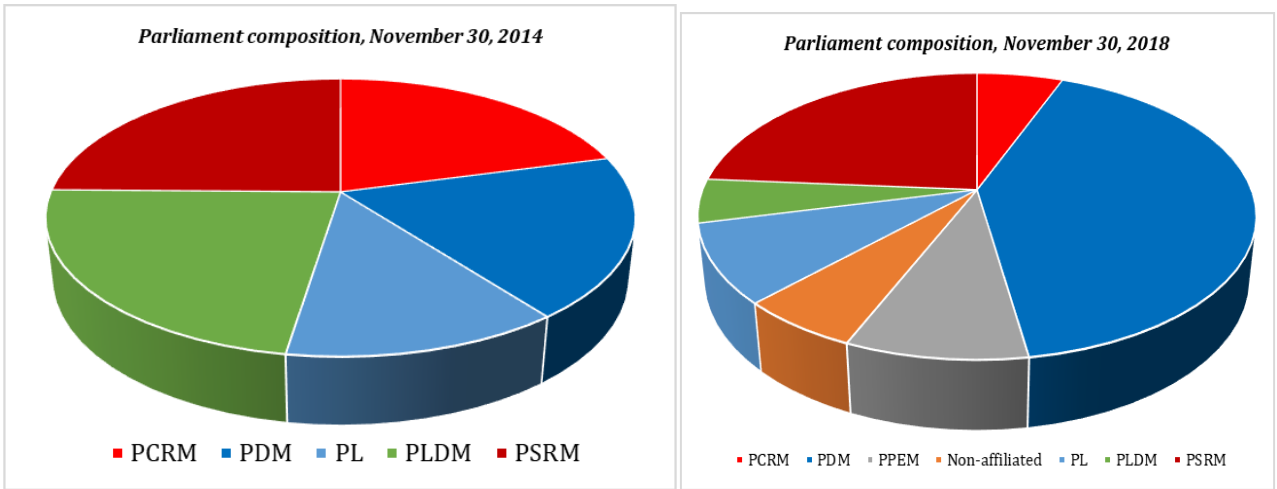
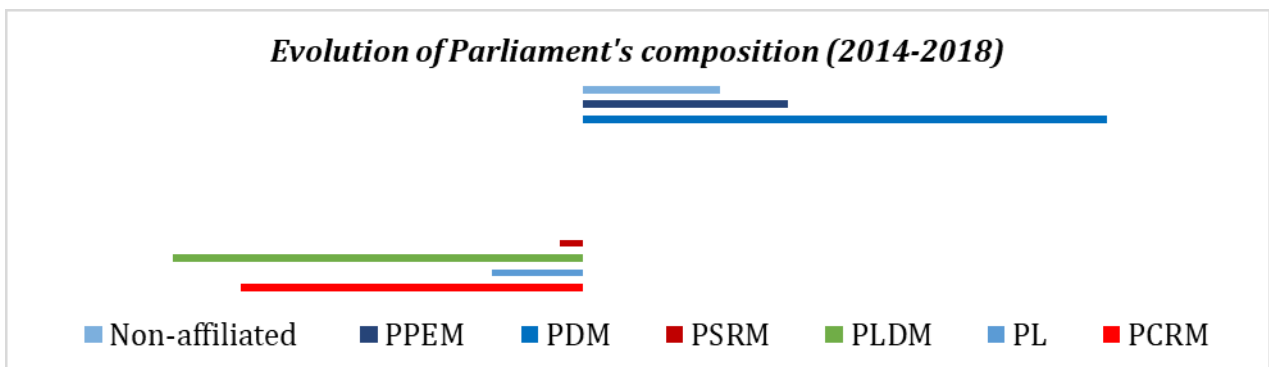


Chart no.3



The trend is also confirmed by Level II elected officials. Thus, at the beginning of 2018, 21% of the total interviewed officials indicated that *physical or mental intimidation and threats are the most common abusive methods of influencing local elected officials*. Account should be taken of the fact that roughly 45% of respondents refused to answer these questions. It is important to note that all local elected officials who complained of intimidation have requested anonymity<sup>8</sup>.

*Considering the transition to the mixed electoral system and its features, as well as the practices of non-consolidated countries such as the Republic of Moldova, the risk of party switching and suspicions of political corruption and intimidation of MPs can increase even more.*

<sup>7</sup> 713 mayors signed an open letter to the EU officials, <https://is.gd/w1lyMB>

<sup>8</sup> Promo-LEX Report no. 2. Monitoring the Transparency of LPA II, <https://is.gd/qQR8zE>

### 1.3. Political intimidation

According to the Promo-LEX OM, the pre-election period can also be characterized by political intimidation of various actors. Moreover, we *consider that we are witnessing the process of transformation of individual cases into a phenomenon.*

The establishment of a parliamentary commission of inquiry into the actions of Otwarty Dialog Foundation during the pre-election period to elucidate the alleged illegal funding of opposition parties the PAS and the PPPDA, potential electoral competitors, in the absence of conclusive evidence, raises reasonable suspicions of intimidation. It should be noted that the parliamentary majority has sufficient leverages to explicitly regulate the funding of parties and to prevent such controversial situations. Unfortunately, they have not been used.

Also, by its public appearances in the pre-election period<sup>9</sup>, the ruling party targets not only political parties, its potential competitors, but also civil society organizations that would "actively and openly engage in unlawful campaigns to promote political candidates to potential electoral competitors, and the worst is that they are financed from external sources." The Promo-LEX OM qualifies these charges as acts of intimidation, as according to the Promo-LEX monitoring reports on party financing, it is not the public associations, but rather the apolitical foundations, including those associated with the PDM, that are most actively involved in political campaigning activities.

### 1.4. Perception of social-political situation

*With regard to the perception of the socio-political situation by Moldovan citizens, we found that, according to the data of the latest public opinion survey conducted by the International Republican Institute (IRI)<sup>10</sup>, 71% of those interviewed believe that the country is going into a wrong direction, and 86% - believe that the state is not governed in the interest of the people, but in the interest of certain groups. As a result, the population's confidence in the state governing bodies is very low: only 6% firmly support the Parliament's activity and only 7% firmly support the Government. As for the parliamentary elections of February 24, 2019, only 8% of the population believe that the elections will be free and fair. The IRI survey confirms, in principle, the results of other periodic surveys conducted in the Republic of Moldova during the pre-election period<sup>11</sup>.*

A retrospective analysis of the IRI survey leads to an important conclusion about the population's perception of the social-political situation: *since the adoption of the mixed voting system, the number of people refusing to publicly express their political preferences has doubled.* Thus, if at the beginning of 2017,<sup>12</sup> on average 4.7% of the IRI survey respondents refused to express their political preferences and 4.6% of the survey carried out in the second semester<sup>13</sup>, then according to the pre-election survey, 8.2% of respondents have refused to publicly express their political preferences.

The current political context shows a high degree of electoral volatility, which is specific to an unstable party system. According to the polls carried out by IRI and Barometer of Public Opinion (BPO) in pre-election period, three of the five parliamentary parties, compared with the 2014 elections, would not reach the new legislature.

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<sup>9</sup> PDM notes the appearance of several skirmishes about the violation of the Law on Political Parties, the Electoral Code and the Audiovisual Code by some parties and civic organizations, <https://is.gd/DWHdDd>

<sup>10</sup> Study of public opinion: residents of Moldova (11.09.2018 - 16.10.2018), <https://bit.ly/2U8LdEy>

<sup>11</sup> Barometer of Public Opinion, November 2018, <https://bit.ly/2rjM9Zr>

<sup>12</sup> Study of public opinion: residents of Moldova (13.02.2017 - 17.03.2017), <https://bit.ly/2w9uUvg>

<sup>13</sup> Study of public opinion: residents of Moldova (23.09.2017 - 17.10.2017), <https://bit.ly/2rL3Pxb>

Table no.1. Volatility of electoral preferences (2014-2018)

No.	Political parties	Elections 2014	Polls 2018	
			BPO <sup>14</sup>	IRI <sup>15</sup>
1.	Party of Socialists of the Republic of Moldova	20.51%	23.00%	32.00%
2.	Liberal Democratic Party of Moldova	20.16%	0.50%	<1.00%
3.	Party of Communists of the Republic of Moldova	17.48%	1.70%	4.00%
4.	Democratic Party of Moldova	15.80%	7.60%	12.00%
5.	Liberal Party	9.67%	0.80%	1.00%
6.	Reformist Communist Party of Moldova	4.92%	–	–
7.	Moldova's Choice - Customs Union, Electoral Block	3.45%	–	–
8.	People's Anti-Mafia Movement	1.74%	–	–
9.	Liberal Reformist Party	1.56%	–	–
10.	Action and Solidarity Party	It did not exist	7.40%	12.00%
11.	Platform of Dignity and Truth, Political Party <sup>16*</sup>	0,73%	5.00%	12.00%
12.	Sor Political Party	N / A	3.00%	4.00%
13.	Our Party	N / A	1.20%	2.00%

The parliamentary elections of February 24, 2019 are the 9th parliamentary elections organized in the Republic of Moldova since the declaration of independence in 1991<sup>17</sup>.

<sup>14</sup> Barometer of Public Opinion, November 2018, p. 53, <https://bit.ly/2Boh8s7>

<sup>15</sup> Study of Public Opinion: residents of Moldova (11.09.2018 - 16.10.2018), p. 40, <https://bit.ly/2U8LdEy>

<sup>16</sup> In 2014 – People's Force Party

<sup>17</sup> The History and evolution of the Parliament, <https://bit.ly/2Q1qnIR>.

## II. LEGAL FRAMEWORK

*The legal framework regulating the parliamentary elections in the Republic of Moldova has undergone substantial changes since the last parliamentary elections, considering that the fundamental element of electoral law, namely the electoral system properly, has been modified. The change of the electoral system and the delimitation of constituencies were made more than one year before the elections, in line with the recommendations of the Venice Commission. However, in the opinion of Promo-LEX, most of the recommendations made by the Commission's experts on the draft law that changed the electoral system were neglected, only 12 out of 32 recommendations being implemented.*

*The Moldovan Parliament, on principle, ignored the main recommendation of the Commission - not to modify the law or adopt the mixed electoral system. Promo-LEX shares the view that the mixed voting system should not have been implemented in the context of the parliamentary elections of February 24, 2019.*

*Most of the changes made to the electoral and related legislation to ensure the transition to the mixed electoral system were technical. Some of the changes can be welcomed as they derive from the recommendations made by Promo-LEX, such as lowering the ceilings for donations of individuals and legal entities to the Electoral Fund account; motivating women's involvement in the elections; the need to collect signatures on the subscription lists for parties and blocks, not just for independent candidates, etc.*

*At the same time, we draw the reader's attention to some legal provisions that contain a substantial potential to affect the international principles and standards in electoral matters. For example, the principle of equal suffrage is limited by: defying the equality of voting - not all voters are ensured the right to vote with the same number of ballots, including those who do not have a place of domicile or residence; non-observance of equality of electoral power - there are substantial differences going beyond the margin allowed by the law with regard to the number of voters in the single member constituency (SMC) and the possibility of considerable differences between the number of votes for a candidate on the national list and the one in the single member constituency; the possibility of affecting equal opportunities - uncertainties regarding the use of the integrity certificate, provided that the information contained in this certificate will determine the registration or non-registration and the eligibility of candidates.*

*Another negative aspect from the perspective of the modification of electoral legislation refers to the fact that the Parliament of the Republic of Moldova ignored the opinions of the Constitutional Court that were formulated after the presidential elections with a view of improving the electoral legislation.*

*Analyzing the changes introduced into the Electoral Code and the related legal framework in the last year before the elections, we found that the principle of stability of electoral law seems to have been violated with the amendments providing for the organization of the referendum on the same day with the parliamentary elections, as well as in the case of removal of campaigning restriction on the day of election and the day preceding the election, with the removal of the campaigning restriction within 100 m from the polling station, keeping the restriction only for the premises of the polling stations and the entrance to the polling stations.*

*Promo-LEX OM notes that compared to 2014, of the total of 21 recommendations made by the Mission on the improvement of the legal framework for the organization and conduct of parliamentary elections, 14 were implemented in full or in part.*

## 2.1. Modification of the electoral system by Law no. 154 for amending and completing some legislative acts

Following the presidential election of November 30, 2016, the Constitutional Court formulated 6 *addresses<sup>18</sup> to the Parliament of the Republic of Moldova that have not been examined*, contrary to the provisions of art. 28 <sup>1</sup> of the Law on Constitutional Court, which provides for a maximum of 3 months to examine the Court's observations (findings) and to inform it of the results of the examination.

Thus, before the holding of the next national elections, the Moldovan Parliament did not find solutions to the problems identified by the judges of the Court in the presidential elections, such as *explicit regulation of the examination of the electoral appeals filed on the day of election and after the day of election; Parliament's express regulation of prompt and immediate sanctioning mechanisms, including criminal liability, for any attempt to involve religious cults in electoral campaigns; amending the legislation on the liability of broadcasters during electoral campaigns and establishing effective mechanisms that would allow the responsible authorities to apply immediate and dissuasive sanctions*, such as suspension of the broadcasting right for the entire period of electoral campaign to those media institutions that violate the obligation of impartiality during the electoral period.

On July 20, 2017, the Parliament of the Republic of Moldova adopted Law no. 154 for amending and completing certain legislative acts, in particular the Electoral Code and Law no. 39/1994 on the statute of the Parliament Members. By adopting Law no. 154 of 20.07.2017, the country passed from the electoral system of proportional representation to the mixed voting system. Thus, the legal framework provides that the parliamentary elections are made on the basis of a mixed (proportional and majoritarian) voting system in a national constituency and in 51 single member constituencies. Accordingly, 50 MPs are elected in the national constituency on the basis of the proportionate representation, and 51 -in the single member constituencies elected based on the majority vote, one for each constituency.

We draw the reader's attention to the fact that *the Venice Commission in its opinion noted that the modification of the electoral system in the Republic of Moldova is not advisable<sup>19</sup>. The Promo-LEX Association also opposed the modification of the electoral system, in the absence of a national consensus on this issue*, as well as considering that the implementation of the new electoral system should be postponed to the elections to be held over a legislative mandate. However, there are suspicions that the mixed system implemented in the elections of February 2019 could bring benefits to the parties that voted for it<sup>20</sup>.

Following the change of the electoral system, other amendments to the normative acts have been made in order to adapt the legal framework to the mixed electoral system. By Government Decision no. 970 of 15.11.2017, permanent single member constituencies were approved, of which 46 constituencies on the territory of the Republic of Moldova under the control of the constitutional state authorities, 2 constituencies - on the territory of the Republic of Moldova on the left bank of the Dniester (Transnistria), temporarily outside the control of the constitutional authorities of the state and 3 constituencies – beyond the territory of the Republic of Moldova.

According to Promo-LEX, the establishment of single member constituencies was a process characterized by: *limited transparency of the decision-making process, ignoring of international standards, violation of the legal framework with regard to the criteria used for the establishment of the*

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<sup>18</sup> Decision No. 34 of 13.12.2016 on the confirmation of the election results and the validation of the mandate of the President of the Republic of Moldova (notification No. 139e / 2016)

<sup>19</sup> Opinion of the Promo-LEX Association: Only 12 of the 32 European recommendations on the mixed electoral system have been met, <https://is.gd/7dfZX4>

<sup>20</sup> Statement on the modification of the parliamentary electoral system, <https://is.gd/EppRUP>

*constituencies, and ignoring the special criteria for calculating the number of constituencies to be established in the Transnistrian region and abroad*<sup>21</sup>.

Following the change of the electoral system from the proportional representation to a mixed one, the provisions of the Electoral Code on the parliamentary elections were substantially modified. Generally speaking, *a number of technical changes are to ensure the implementation of the new voting system:*

- the notion of single member constituency (SMC) and other special provisions resulting from the election of MPs in single member constituencies were introduced;
- initiative groups (IGs) obtained rights and obligations on financing and reporting on their activity equal to those of electoral competitors;
- new sanctions that can be applied by the CEC and the CC to the initiative groups or electoral competitors for violation of electoral legislation have been introduced;
- the thresholds of donations to the Electoral Fund accounts have been reduced from 200 average monthly salaries to 50 for individuals and from 400 to 100 for legal entities;
- the possibility to run both on party lists for national constituency and on single member constituency has been introduced, the latter being a priority if the candidate is elected in both constituencies;
- the voter has been given the right to vote with two ballots in the parliamentary elections: one for the national constituency and one for the single member constituency;
- new criteria have been introduced for the opening of polling stations abroad; the maximum number of ballot papers that can be sent to polling stations abroad has been increased from 3000 to 5000;
- it has been provided for the establishment of constituency councils (CC) for the polling stations based abroad and for the settlements in the Transnistrian region, including the establishment and functioning of the PS and the EBPS in the Transnistrian region;
- special provisions have been introduced to increase the budget support to political parties that will respect the quota of at least 40% of women candidates submitted to single member constituencies;
- new provisions have been introduced for the organization and holding of partial elections in single member constituencies that failed to elect an MP or have a vacant position of an MP elected in the single member constituency.

*The Promo-LEX OM draws the reader's attention to the changes that go beyond the limits of some technical amendments and can substantially affect the quality of electoral process:*

- the introduction of integrity certificate as a document necessary for the registration of candidates has raised suspicions about the limited access to the electoral process and the breach of principle of equal opportunities. The information contained in this certificate is likely to determine the registration or non-registration and the eligibility of candidates for parliamentary elections<sup>22</sup>, even if such limitation is not expressly provided for in the Electoral Code;
- uncertainties about contesting the actions / inactions of electoral competitors. Thus, according to this law, the actions / inactions of electoral candidates are challenged directly with the court, although prior to this change, they could be appealed to the electoral body. However, following the changes made, in parliamentary elections carried out in single member constituencies, the decisions of the electoral councils on the appeals concerning the actions / inactions of electoral candidates may be appealed to the court, in whose territorial jurisdiction the respective council is located. Thus, these

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<sup>21</sup> Public Appeal with Regard to Limited Transparency and Deficiencies in the Adoption of the Draft Decision on the Establishment of Single member Constituencies, <https://is.gd/enxaii>

<sup>22</sup> Article 82 of the Electoral Code, art. 2 para. (61) Law on the Statute of MP.



provisions show a certain degree of uncertainty regarding the place where complaints about the actions / inactions of electoral candidates in single member constituencies<sup>23</sup> should be examined;

- the election of MPs in a single round will lead to a lower representation of the Parliament, compared with the elections of the President and the mayors, which take place in two rounds;
- the principle of equality of electoral power of an MP mandate is very likely to be violated. Thus, the minimum threshold for accession to the Parliament on the basis of party lists in the national constituency will be higher than that registered in certain SMCs. There are substantial differences exceeding the limits imposed by the legal framework, as well as there are differences between the number of voters in different constituencies<sup>24</sup>;
- affecting the principle of equal suffrage. There are suspicions with regard to the right to vote with the same number of ballots for voters, who do not have their domicile and residence. The situation with the students' voting right also falls under this category, as there are numerous uncertainties in this respect<sup>25</sup>.

## 2.2. Amending electoral laws within one year before the elections

*The principle of stability of electoral law states that the fundamental elements of electoral law, and in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.*<sup>26</sup> In this respect, it should be mentioned that in the last year before the parliamentary elections, the Electoral Code was modified seven times at the initiative of the Moldovan Parliament, following the decision of the Constitutional Court:

- 1) Law no. 74 of 26.04.2018 amended the article on the status of CEC members, which stipulates that among other eligibility criteria, CEC members should not have the prohibition to hold public office or an office of public dignity deriving from an act of finding of the National Integrity Authority (NIA).
- 2) Law no. 79 of 24.05.2018 amended Art. 22 by which the Public Services Agency (PSA) replaced the Ministry of Information Technologies and Communications (MITC) in the CEC's list of co-responsibilities to ensure voter record keeping.
- 3) Law no. 172 of 27.07.2018 made changes to the provisions related to the financing of the CEC, the expenses for the preparation and conduct of the elections.
- 4) The Constitutional Court Decision no. 25 of 11.10.2018 on the objection of unconstitutionality of art. 13 para. (1) clause b) of the Electoral Code declared unconstitutional the provision on the deprivation of the right to elect persons "who, by the final decision of a court, are recognized as incapable" and concluded that this provision is contrary to art. 38 of the Constitution. The prohibition on the exercise of the voting right was automatically and indiscriminately applied in the old legislation, in the absence of a substantiated assessment of a court on the ability to vote of persons with mental disabilities.
- 5) Law no. 271 of 23.11.2018 replaced the term "premium" by the term "indemnity" in the article which provides for the remuneration of permanent employees of the CEC.
- 6) Law no. 302 of 30.11.2018 introduced amendments with regard to the calculation of compensations for the civil servants of the constituency council and relieved officials. For the work during the electoral period, including on the election day, the members of non-relieved and non-convened electoral bodies, as well as the officers of electoral bureaus, shall be established an allowance in the amount of 20 percent of the average salary for the previous year.

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<sup>23</sup> Promo-LEX Analysis of eventual jurisdiction conflicts of courts of law in case of electoral litigation in parliamentary elections of 24 February 2019 February 24, 2019, <https://is.gd/3Kh1KX>

<sup>24</sup> Promo-LEX Analysis. Single member constituencies - between political opportunity and legality <https://is.gd/plwamx>

<sup>25</sup> The effects of the mixed voting system. Case Study: the votes of high school and university students can be decisive in some single member constituencies.

<sup>26</sup> Code of Good Practice in Electoral Matters, <https://bit.ly/2QFOFaQ>

7) Law no. 238 of 08.11.2018 (published in the Official Gazette on 30.11.2018) reintroduced the provision of art. Article 13 (1) b) with the following content "b) deprived of the right to vote by the final decision of a court". This law is due to enter into force on 30.12.2018. Accordingly, starting with December 31, 2018, the court will decide on the right to vote when establishing the judicial protection measure, assessing the cumulative meeting of several criteria<sup>27</sup>. Also, by this law, the NIA is obliged to inform the electoral bodies about the existence of the prohibition to occupy public offices and the existence of a criminal record.

*Promo-LEX welcomes the change and alignment of national legal provisions with international standards. However, according to the Code of Good Practice in Electoral Matters, "suspension of a person's political rights may be ordered only by a special decision taken by a court."*

8) Law no. 268 of 23.11.2018 (published in the Official Gazette and entered into force on 14.12.2018) relieved the ban on electoral campaigning on the day of elections and on the day preceding the elections, preserving only the restriction for the premises of the polling stations. In this respect, both the Electoral Code and the Code of Contravention, which provide for sanctions for election campaigning on election day and the day preceding the elections, have been amended.

*Analyzing the amendments made to the Electoral Code and the related legal framework in the year preceding the elections, we found that the principle of stability of electoral law has been breached in the case of relieving the restriction on election campaigning on the election day and the day preceding the elections, preserving it only for the premises of the polling station.*

### **2.3. Adoption and modification of the related legal framework**

The legal framework related to the Electoral Code has also been amended in the year preceding the parliamentary elections. The Law on Political Parties amended<sup>28</sup> art. 11 by replacing the institution empowered to operate the information on political parties, the Ministry of Justice, by the Public Services Agency. The first three paragraphs of art. 11 were excluded. Additionally, if previously, the information on the registration of political parties was included into the Register of Political Parties, now it is contained in the State Register of Legal Entities. Para. (3) of art. 11, which was excluded, provided that information in the Register of Political Parties is of public interest. We regret this change, since the information on political parties that is contained in the State Register of Legal Entities is currently not considered of public interest.

The Code of Contravention has also been amended<sup>29</sup> as regards the function of the Central Electoral Commission to find infringements and draw up records, thus extending its scope of competence to establishing contraventions under Article 48, Article 48<sup>1</sup> paragraph (4), art. 48<sup>2</sup>, 51 and 53 of the Code of Contravention.

The Regulation on Issuance of Certificates of Integrity has been developed<sup>30</sup>, which established the order for its request and issuance, including by MP candidates. According to the Regulation, the certificate of integrity shall be made in two copies, one of which is issued to the applicant and the other shall be stored by the integrity authority, having a term of validity of three months. It should be noted that the Regulation does not provide for the repeated issuance of a certificate of integrity for one and the same period. However, according to art. 49 para. (1), art. 85 para. (1), (3), (6), the person who will be included on the list for the national constituency and will run in a single member constituency has

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<sup>27</sup> Art. 308<sup>11</sup> para. (2), (3) Code of Civil Procedure

<sup>28</sup> By Law no. 31 of 16.03.2018, in force as of 20.04.2018

<sup>29</sup> Law no. 159 of 12.10.2018 on the amendment of some legislative acts

<sup>30</sup> The Order of the National Integrity Authority, the Public Services Agency and the National Probation Inspectorate no. 90/653/07 of 09.10.2018

to submit the set of documents necessary for the registration by both the CEC and the CC, while the certificate of integrity is issued in a single copy.

The certificate of integrity is issued in a term of 15 days. Such a long term effectively deprives political parties of the right to change the candidates on the list by replacement within 14 days before the election day. To respect all the terms and legal provisions, political parties, which for some reasons decide to replace a candidate, can do it only 29 days before the election day, that is, one day after the deadline for the registration of candidates.

## 2.4. Setting the date of elections

On July 27, 2018, the Moldovan Parliament adopted the Decision no. 197, which established the date of February 24, 2019 for the holding of parliamentary elections. The decision was published in the Official Gazette on August 10, 2018 and entered into force on December 1, 2018. The Parliament of the 20th legislative period ended its legal four-year term on December 1, 2018.

Applying the rule set up in art. 1 of the Electoral Code that defines the electoral period, we can see that the electoral period started on August 10, 2018 (the day when the public was informed of the election date), the term which by far exceeds 90 days.

Taking into consideration the approval of the Law on normative acts no. 100 of 22.12.2017, stipulating in art. 56 that normative acts enter into force one month after the date of their publication in the Official Gazette of the Republic of Moldova, or at the date indicated in the text of the normative act, which cannot be earlier than the date of publication, as well as the tendency of the Parliament of the Republic of Moldova to set the date of elections exceeding the period of 90 days, we *recommend changing the term "electoral period" by the period of time between **the public announcement of the day of elections** and the day when the election results are confirmed by the competent bodies. In this regard, we opt for extending the 90-day term, including by mentioning the authority responsible for setting this term, based on the type of elections (parliamentary, presidential, general local, new local, referendums, etc.).*

*Starting from the principle of predictability and stability, Promo-LEX reiterates its position on the desirability of a longer electoral period which, in the opinion of the Mission, would create more favorable conditions for equal opportunities between potential competitors, and will provide enough time to prepare for the organization and conduct of the elections.*

## 2.5. Organization of the referendum on the same day with the parliamentary elections

To implement the initiative of organizing a consultative referendum on the same day with the parliamentary elections and fit it within the legal limits, the normative framework was adjusted in a non-transparent way, bypassing public consultations. Thus, by Laws no. 238 and 268, the legislator gave the green light to holding a consultative referendum on the day of the elections at the initiative of the PDM. In this respect, the Parliament modified art.156 of the Electoral Code, by which the prohibitive rule of holding the Republican referendum 60 days before and 60 days after the election day became a permissive norm allowing its holding on the same day with the parliamentary, presidential and local elections.

Law no. 238, was registered in the Parliament as draft no. 220 of 26.06.2018<sup>31</sup>, being adopted in the first reading on 27.07.2018 and in the second reading on 08.11.2018. It is mentioned in the informative note to the draft Law that it continues to work for the implementation and honoring the obligations undertaken by the Republic of Moldova by ratifying the UN Convention on the Rights of Persons with Disabilities of 13.12.2006. It is also noted that the draft law was developed to exclude the

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<sup>31</sup> <https://bit.ly/2RA8ldi>

inconsistencies in a series of normative acts, in which aspects related to the legal capacity of the individual are addressed as a secondary issue.

On 24.10.2018, the MP Sergiu Sirbu submitted to the Commission for Social Protection, Health and Family the amendment to the draft law, which, besides the proposals to amend the Electoral Code related to the purpose of the law, also proposed the modification of art. 156 para. (2) by replacing the text "as well as on the day of another Republican referendum" "unless it is held on the same day" and completing the clause with the sentence "Two republican referendums cannot be held on the same day." Explaining the necessity of the amendment, the MP declared that it is "necessary for the execution of the Opinion of the Constitutional Court no. 1 of 22.09.2014 and the Address of the Constitutional Court no. PCC-01 / 48c of 22.09.2014, which requested the Parliament to remove the ambiguities of the Electoral Code on the possibility of joining the elections and the referendum."

It should be noted that the Opinion of the Constitutional Court referred to the organization of constitutional referendum, while in the above address, the Court claimed that "if the conduct of a referendum is prohibited 60 days before and after the day of election to avoid confusion, it *a fortiori* may not be held on that day. This reason is dictated by the need to avoid confusion in the implementation of two different democratic exercises. Thus, taking into account the necessity of observing the 6-month term for the revision of the Constitution, the ambiguities in the Electoral Code on the possibility of joining the elections and the referendum are to be removed by legislative means."

We remind the reader that the Constitutional Court has previously expressed its opinion on the joining the referendum with the elections and interpreting this rule in the old version, saying that a republican referendum could not be organized on the same day with the general parliamentary, presidential and local elections. Given that there is a negative opinion of the Constitutional Court with regard to joining the referendum with the elections, it is incomprehensible how the parliamentary opposition failed to notice the unconstitutionality in this case.

Art. 169 para. (1) has also been modified by introducing a special rule governing the formation of constituencies and constituency councils, if a republican referendum is held on the same day with the parliamentary elections.

Law 268 of 23.11.2018 was registered as draft law no. 376 of 05.11.2018<sup>32</sup> at the initiative of the MPs Sergiu Sirbu, Raisa Apolschii, Igor Vremea and was approved in the first reading on 08.11.2018 and in the second reading on 23.11.2018. The informative note to the draft law states that it was drawn up following the recommendations of the Legal Commission on Appointments and Immunities, which on 31.10.2018, approved the Report on the Analysis, Examination and Evaluation of the Electoral Legislation, which underpinned the invalidation of the new local elections in the municipality of Chisinau. The purpose of the draft law was to remove the restrictions on the prohibition of electoral campaigning on the day before the election and on the day of election, except for the premises of the polling stations and in its immediate vicinity.

On 19.11.2018, the MPs Sergiu Sirbu and Valentina Buliga submitted an amendment to the draft law, which, among other things, proposed the completion of art. 169 para. (1) with the sentence: "If the Republican referendum is organized on the same day with parliamentary elections, the constituencies and constituency councils shall be formed according to the same criteria, set in art. 80 and 81 of this Code." Explaining the necessity of the amendment, the MPs said "given the change of the electoral system and the existence of different systems of establishing constituencies and electoral councils for different elections, it is necessary to stipulate the technical norm that will explain that if parliamentary elections take place simultaneously with a Republican referendum, constituency councils will be

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<sup>32</sup> <https://bit.ly/2GrGSci>

formed according to the electoral rules, so there will be no two parallel systems and no mistakes and misinterpretations."

The Parliament Decision no. 332 of 30.11.2018 established that the consultative referendum will be held on February 24, 2019, on the same day with the parliamentary elections. The issues of the reduction of the number of MPs in the Parliament and the revocation of MP's mandates by the people will be put to the referendum.

Promo-LEX expressed its opinion on the possibility and opportunity<sup>33</sup> of this initiative, identifying a range of risks, legal issues and uncertain techniques. The organization and conduct of the referendum complicates the voting process, contrary to the principle of simplicity of voting<sup>34</sup>, mentioning that the issue of the revocation of MPs by the people is unconstitutional.

*It should be mentioned that the amendments on the organization of the referendum on the same day with the parliamentary elections were approved in violation of the transparency principle in the decision-making process, being introduced as amendments to the draft laws in the second reading, which had a different purpose and pursued a different outcome, not the organization of the referendum. These changes were brought to the attention of the public during the electoral period of the parliamentary elections, thus breaching the principle of the stability of electoral law.*

## **2.6. Implementation of the Promo-LEX recommendations included in the final monitoring report of November 30, 2014 parliamentary elections**

Following the monitoring of the parliamentary elections held on November 30, 2014, the Promo-LEX Association has developed a series of recommendations for electoral bodies, public authorities, electoral competitors, law enforcement authorities, media, and Audiovisual Coordination Council to improve the electoral process.

It should be mentioned that of the total of 21 recommendations intended to improve the legal framework relevant to parliamentary elections, 14 have been fully or partially implemented. Most of them are related to the funding of electoral campaigns, others refer to the establishment of PS and CCs for the settlements on the left bank of the Dniester River, conduct of informative and voter education campaigns, regulation on the beginning of electoral campaigns, establishment of gradual sanctions for electoral deviations and creating equal opportunities for independent candidates and political parties. Another 7 recommendations proposed by the Promo-LEX Association have not been implemented and remain valid for the next suffrage:

- Improving the mechanism of control over the financing of electoral campaigns and establishing a uniform mechanism of verification / estimation of undeclared expenses;
- Thorough inquiry into the financial reports, submitted by the electoral competitors and accurate calculation of the amounts qualified as undeclared and / or not included in the financial reports;
- Thorough analysis of the expenses incurred by the electoral competitors abroad and notification of the competent law enforcement bodies of this, in line with the Electoral Code, in order to determine the sources of expenses incurred;
- Exclusion of the Government and MFAEI from the decision-making process with regard to the establishment of PSs outside the country, leaving only their obligation to ensure a smooth conduct of electoral processes in the locations decided exclusively by the CEC;
- Ensuring transparency in determining the locations of polling stations beyond the territory of the RM if that right is preserved;
- Elaborating regulations that would clarify the way in which electoral candidates are provided free of charge airtime on national and public broadcasters.

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<sup>33</sup> <https://bit.ly/2Led0Q1>, Promo-LEX Opinion on the Possibility and the Opportunity of Conducting the Republican Referendum on the same Day with the Parliamentary Elections of February 24, 2019

<sup>34</sup> Code of Good Practice in Electoral Matters, <https://bit.ly/2QFOFaQ>

### III. ELECTORAL BODIES

*In the opinion of the Promo-LEX OM, during the monitored period, the CEC sporadically took account of the stages of decision-making transparency, publishing for public consultations certain draft decisions on amending its regulations and instructions, or adopting new normative acts. We appreciate that at our continued insistence, Promo-LEX is now informed about the content of the public consultation process.*

*At the same time, there were enough examples, both during 2018 and in the pre-election period, which demonstrated the CEC's lack of sustainability in ensuring decision-making transparency. A good example of this is the adoption of amendments to the Regulation on Observer's Rights and Obligations, when a draft was proposed for consultation, but a different one was voted in the hearing.*

*Another example in this respect is the Regulation on the Financing of Electoral Campaigns and the Regulation on the Financing of Initiative Groups, the modifications of which have not even been subject to public consultations. The CEC's Decision on the video recording system in the polling stations in the parliamentary elections of February 24 2019, which approved the technical characteristics of the video recording system to be installed in the polling stations, is another eloquent example. This decision was passed before the approval of the draft amendments to the normative acts on the operation of such a video recording system. By the time this Report was published, no draft was submitted to public consultations for the adjustment of normative framework. From the quantitative point of view, we consider that the number of normative acts modified or approved by the CEC during the pre-election period is relatively large, which does not the changes have been made too late, considering that electoral law has been modified since July 2017.*

*By the beginning of the electoral period, the CEC accredited 90 national observers, all of them representing the Promo-LEX Association, and 7 international observers.*

#### 3.1. CEC's activity and decisions

*On the transparency of the decision-making process. Promo-LEX OM acknowledges the CEC's tendency to take into account the legal provisions on transparency of the decision-making process in 2018 and in the pre-election period. Promo-LEX participated in the public consultations organized, despite the fact that some recommendations were not taken into account by the electoral authority. It is worth mentioning that the CEC's Calendar Program for organizing and holding parliamentary elections in the Republic of Moldova on February 24, 2019 was subject to public consultations.*

*Even if the first impression is moderately positive, a nuanced approach to the decision-making process reveals a much more ambiguous situation. For example, consider the case of modifications to the CEC's Regulation on the Status of Observers and the Procedure for their Accreditation, when the decisional transparency was simulated, since the draft submitted for public consultation had nothing in common with the draft approved by the Commission<sup>35</sup>. The same is true of the changes introduced in the Regulation on the Financing of Electoral Campaigns and the Regulation on the Financing of Initiative Groups, which were not subject to public consultations<sup>36</sup>.*

*Quantitative aspects of changes made to the legal framework. Considering the change of the electoral system by transition from the proportional voting system to a mixed one, starting with July 20, 2017*

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<sup>35</sup> Promo-LEX asks the Central Electoral Commission to waive changes in the regulatory framework that will substantially complicate the process of accrediting national observers, and especially international ones, <https://is.gd/xd1NNy>

<sup>36</sup> Decision of the CEC to amend the Regulation on the Financing of Electoral Campaigns, approved by the Decision of the Central Electoral Commission no. 3352 of May 4, 2015, <https://is.gd/x2nB3H>

(the date of approval of the Law no.154<sup>37</sup>) until July 27, 2018 (the date of the Parliament's Decision no.197<sup>38</sup>), the CEC adopted about 20 decisions relevant to the adaptation to the new amendments to the electoral legislation, of which *18 repeal some CEC regulations and approve new ones* in order to correlate the existing regulatory framework with the new provisions of the Electoral Code, promulgated by Law no.154/2017.

At the same time, during the pre-election period subjected to monitoring, the electoral authority adopted 14 decisions relevant to both the electoral law and the parliamentary elections of February 24, 2019.

Of these, 7 decisions are to amend and approve some CEC's instructions and regulations, 5 decisions are to accredit both national and international observers, 1 decision is to approve the calendar for the organization of parliamentary elections of February 24, 2019 and one decision regards the technical characteristics of the video recording system to be installed in the polling stations in the parliamentary elections of February 24, 2019. The CEC's decision was adopted prior to the approval of the draft amendments to the normative acts on the operation of such a video recording system. By the time this Report was published, no draft regulatory framework adjustment was submitted to public consultations.

*Thematic Content of Approved Decisions.* The change in the regulatory framework concerned CEC's Regulations and Instructions to be used in the process of organizing and conducting the elections.

Promo-LEX OM considers that the number of decisions on the adaptation of the *regulatory framework adopted by the CEC during the pre-election period is quite large compared to the number of decisions taken in July 2017 - July 2018. According to the Mission, the electoral authority was supposed to adjust the normative framework before the pre-election period.*

### **3.2. Accreditation of national and international observers**

The CEC has examined applications for the accreditation of observers, and in this respect, adopted 5 decisions by which it accredited both national and international observers.

According to the CEC Mail Registry<sup>39</sup>, in the period of August 14, 2018 to December 10, 2018, 48 official requests were sent to inter-parliamentary assemblies, to the international governmental organizations to which Moldova is a party, specialized international institutions (including civic ones), electoral management institutions, diplomatic missions and consular offices accredited in Moldova to delegate representatives to observe the parliamentary elections of February 24, 2019. In this way, CEC manifested its openness in ensuring the transparency of the electoral process in the Republic of Moldova.

At the same time, we remind the reader that for national observers and missions with a large number of observers, the accreditation process was bureaucratized and made more difficult on the eve of the pre-election period by the CEC decision no.1694<sup>40</sup>. Promo-LEX criticized the substantial burdening of the observer accreditation process, expressing public concern in this regard, but the CEC did not take it

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<sup>37</sup> Law no.154 of July 20, 2017 for the amendment and completion of some legislative acts, <https://bit.ly/2QnB1tj>

<sup>38</sup> Parliament Decision no.197 of 27.07.2019 on the date of parliamentary elections, <https://bit.ly/2LcuGLu>

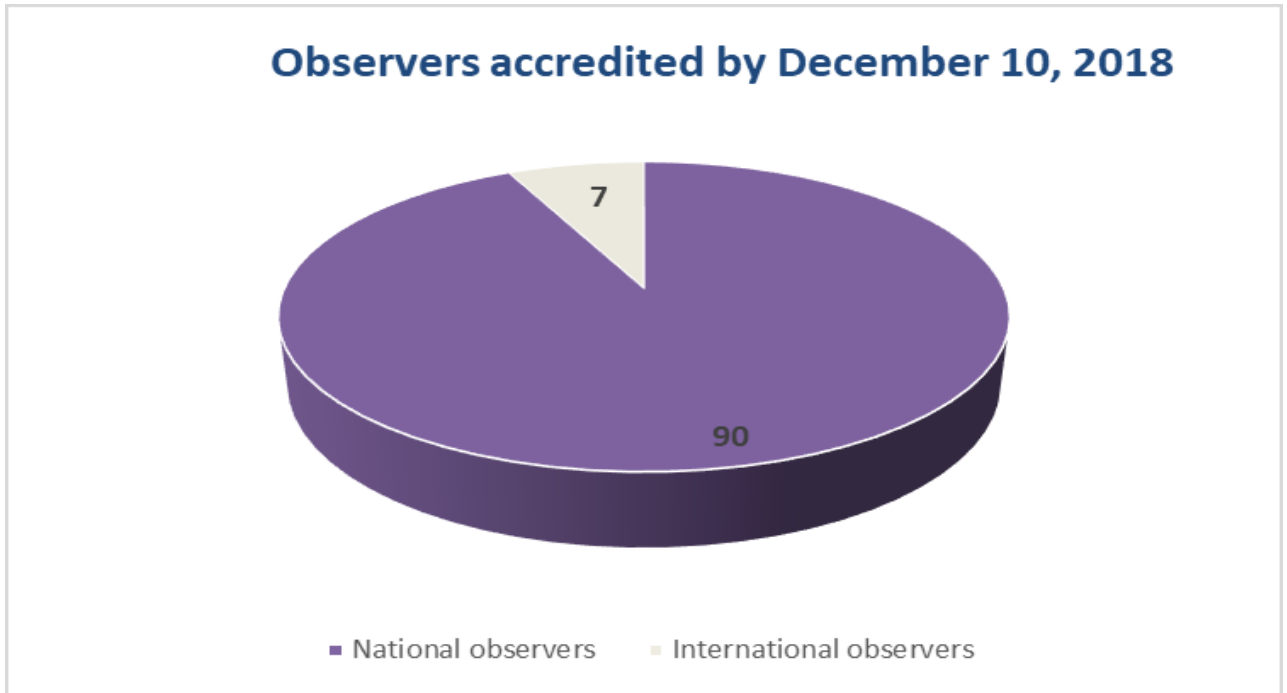
<sup>39</sup> <https://bit.ly/2Uw8JeN>

<sup>40</sup> Decision of the CEC no. 1964 of June 12, 2018 amending and supplementing the Regulation on the Status of Observers and the Procedure for their Accreditation, approved by the Decision of the Central Electoral Commission no. 332 of October 24, 2006, <https://bit.ly/2EdhH19>

into consideration<sup>41</sup>. Nevertheless, the Promo-LEX OM will make every effort to overcome the bureaucratic barriers and accredit a sufficient number of observers to cover all the polling stations on the election day.

By December 10, 2018, the CEC accredited 90 national observers for the monitoring of the parliamentary elections of February 24, 2019, all of them from the Promo-LEX Public Association, as well as 7 international observers, representing the Embassy of French Republic in the Republic of Moldova - 2 person, the Embassy of the State of Qatar in the Republic of Moldova - 2 persons, and the Moldovan Representation of the International Republican Institute- 3 people.

*Chart no.4*



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<sup>41</sup> <https://bit.ly/2BTuPRn>



## **IV. ELECTORAL ROLLS AND STATE ELECTORAL REGISTER**

*The quality of electoral rolls remains one of the most publicized and widely discussed topics in the public space. The current parliamentary elections are no exception in this respect. The Promo-LEX OM will monitor the work with the State Electoral Register (SER), as well as the content of the electoral rolls to be delivered to the EBPS. The task seems to be difficult and will totally depend on the openness of the electoral authorities and their respect of the observers' rights.*

*The number of voters in the SER is steadily increasing. According to the data in the SER, at the beginning of the electoral period, on December 10, 2018, there were 3,265,997 voters, which is by 6,972 more than on March 31, 2018. The Promo-LEX OM points out that the continued increase in the number of voters in the SER, given the country's depopulation by emigration, fuels the society's mistrust in the SER's functionality and, implicitly, in the quality of electoral rolls.*

*Considering the provisions of the electoral law of the Republic of Moldova, citizens that have neither a domicile nor a place of residence seem to be deprived of the opportunity to participate in the voting, on equal terms with the others, because the legal framework does not allow them to vote in single member constituencies. It should be noted that the number of voters that fall under this category has increased by 55,207 only in the last 15 months (from September 2017 to December 2018) reaching 210,890 or 6.45% of the total number of voters in the SER.*

*Finally, the difference in the data on the number of voters deducted on the basis of figures provided by different public institutions, such as the Public Services Agency (PSA) or the National Bureau of Statistics (NBS) is puzzling. A correct and efficient management of population data is required to improve the credibility of electoral process and ensure transparency.*

### **4.1. The need to observe electoral rolls. Methodology aspects**

According to the legislation in force, electoral rolls are drawn up on the basis of the State Electoral Register (SER), which in turn is constituted according to the data of the State Register of Population. The lists shall include all citizens holding the right to vote, domiciled or residing within the territory of a polling station.

The quality of electoral rolls was one of the most discussed topics in the public space, considering the coming elections. With the change of the electoral system, when different rules of organization and conduct of elections are imposed, the problem becomes even more acute. The way in which electoral rolls are managed and their quality are extremely important factors that could directly influence voting results, especially in the conditions of single member constituencies and a single round of voting.

Taking into account the above mentioned, the Promo-LEX OM aims to observe the way of managing the electoral rolls, considering the following indices:

- 1) Observance of the basic stages and procedures in the management of electoral rolls;
- 2) Content of electoral rolls and its quality;
- 3) Accessibility of electoral rolls and their verification;
- 4) Transparency of the process of drafting and rectifying of the rolls.

To achieve the goal set, a series of interviews with the registrars and members of electoral bureaus of the polling stations will be carried out, which will highlight any procedural and applicative deficiencies and will be accompanied by appropriate recommendations.

To ensure the quality of electoral rolls, international standards<sup>42</sup> establish a set of criteria that are required to be respected, such as: maintaining permanent voter registers, their continued publication and updating, the existence of procedures allowing registration, modification and voting on supplementary electoral rolls.

At the same time, according to the latest findings of the Promo-LEX OM (New Local Elections of 2018)<sup>43</sup>, there are deficiencies in the electoral rolls, which are still actual and unaddressed, and the previously proposed recommendations have not been implemented (e.g. insufficient transparency of the voter turnaround mechanism, continued presence of deceased voters in the SER, incompliance of the addresses indicated in the SER with those in the voters' identity cards, address conflicts, etc.).

Promo-LEX reiterates that such issues as the quality of data from the State Electoral Register and the content of electoral rolls remains worrying. In particular, the need to ensure the transparency and accessibility of electoral rolls should be mentioned; otherwise we can face situations, where voter's rights may be limited.

It should be mentioned that failure to include voters in electoral rolls (for example, assigning a voter to a different polling station, which may lead to his/ her referral to a different constituency) may cause loss of citizen's interest in participation in the electoral process, as well loss of confidence in the elections, the electoral and state bodies. Traditionally, presence of deceased individuals in the SER creates suspicions about the correctness of the process. Another issue that Promo-LEX intends to monitor in the parliamentary elections is the phenomenon of "artificial migration", since organized registration of voters' residence in another settlement can distort the outcome of the elections.

In order to reveal this phenomenon, Promo-LEX observers will conduct interviews with registrars and will ask questions about: identifying the number of voters who have registered their domicile or residence visa within their area of responsibility; cases of voter assignment in the SER to a wrong area; voters who were included or excluded from the SER due to the change of their status (for example: reaching the age of 18 years or death). The information obtained in the course of the interviews will also be checked in the electoral rolls.

#### 4.2. Evolution of the data in the State Electoral Register (SER)

To present the number of voters for the parliamentary elections of February 24, 2019, as well as to analyze the evolution of their number, we will use the SER data, since the electoral rolls are still being upgraded. Tables no. 2 and 3 present comparative data on the numerical content of the SER in the period of 2014-2018.

*Table no. 2. Dynamics of voter turnout 2014 - 2018*

Source	Date	Total number of voters	Number of voters without registered domicile / residence	Number of voters in the administrative-territorial units of Transnistrian region and municipality of Bender
State Electoral Register <sup>44</sup>	25.11.2014	3 226 446	171 052	211 329

<sup>42</sup> Code of Good Practice in electoral Matters, <https://bit.ly/2UerOIA> (accessed on 05.12.2018)

<sup>43</sup> See the most recent findings, *Annex no. 4. Deficiencies identified in the electoral rolls, Promo-LEX Final Report. New Election Observation Mission of 20 May (3 June) 2018*, <https://bit.ly/2pnNbmc>

<sup>44</sup> <https://bit.ly/2EcGImU>

State Electoral Register <sup>45</sup>	22.08.2016	3 237 032	161 630	221 600
State Electoral Register <sup>46</sup>	01.09.2017	3,255,361	155 683	225 971
State Electoral Register <sup>47</sup>	31.03.2018	3,259,025	203 368	226 486
State Electoral Register <sup>48</sup>	10.12.2018	3 265 997	210 890	230 233

According to the data in *Table no. 1*, we witness a steady increase in the number of voters in Moldova. There is an increase of 10,636 voters in the number of voters in the SER, including in comparison with September 2017, (an increase of 4,262 voters is noticed in the administrative territorial unit on the left bank of the Dniester and in the municipality of Bender). The Promo-LEX OM points out that the continued increase in the number of voters in the SER, in conditions of country's depopulation by emigration, fuels the society's state of mistrust of the SER and the quality of electoral rolls.

Analyzing the data of the NBS on natural growth in the RM<sup>49</sup> (excluding the population of Transnistrian region and in the municipality of Bender) for 2000, we identify negative values, reflecting a natural decrease in the number of population. Thus, in 2000, the number of live births was 36,939 and the number of deceased was 41,224. Therefore, we can conclude that there are questions with regard to the continued increase in the number of voters registered in the SER, since the difference between the birth rate and the mortality rate in the reference year is negative.

We also consider it necessary to take account of the significant changes in the number of voters who do not have a registered place of domicile or residence. Thus, we notice that between 2014 and 2017, the number of voters without a place of domicile / residence decreased. At the same time, over 15 months (from September 2017 to November 2018), their number increased by 55,207 or 1.67%. The figure of 210,890 non-domiciled/ non-resident voters or 6.45% of the total number of the SER (excluding ATU in Transnistrian region) is an alarming, ever-increasing figure that arouses concerns considering the coming parliamentary elections<sup>50</sup>.

When analyzing the data in *Table no. 2*, we noticed major discrepancies in the number of citizens who have reached the age of 18, reflected by different state institutions (PSA, NBS and CEC).

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<sup>45</sup> <https://bit.ly/2B1ElQo>

<sup>46</sup> <https://bit.ly/2UxYmaf>

<sup>47</sup> <https://bit.ly/2G9LdkO>

<sup>48</sup> <https://bit.ly/2L8YGrG>

<sup>49</sup> Population and demographic processes (births, deaths), <https://bit.ly/2SVAHPG>

<sup>50</sup> *The effects of mixed voting system. Case study: limiting the voters without a place of domicile or residence of their constitutional right to elect*, <https://bit.ly/2RNjkQT>

Table no. 3. Information on citizens with voting rights

Source	Total number of population, including the Transnistrian region and the municipality of Bender	Total number of population without those in the Transnistrian region and the municipality of Bender	The number of voters, including the Transnistrian region and the municipality of Bender	Number of voters without those in the Transnistrian region and the municipality of Bender
<b>SER, CEC</b> 10.12.2018	-	-	3 265 997	3 035 764
<b>PSA<sup>51</sup></b> 01.12.2018	4 001 127	3 686 877	-	-
<b>NBS<sup>52</sup></b> 17.01.2018	-	3 547 539	-	2 871 565

Therefore, the public authorities and actors of the electoral process have to adopt a more transparent behavior with regard to the drawing up and accessibility of electoral rolls. Moreover, the Observation Mission considers that the discrepancy between the data should be explained by absolutely all the entities involved in the process of citizens' and / or voters' registering.

#### 4.3. Assisted verification in the State Electoral Register (SER)

Considering the necessity to observe the quality of electoral rolls in the parliamentary elections of February 24, 2019, the Promo-LEX Association sent a letter to the CEC requesting that the observers of the association be assisted in their random verification of about 600 persons in the SER, without indicating the specific category of these voters, only mentioning that these persons should not be included in the SER.

In the CEC's reply no. CEC 8/2929 of 05.12.2018, the Authority requested information on "the necessity and legal purpose of processing the requested data, as well as the consent of the subjects concerned granted to Promo-LEX, by which they accepted their data to be processed."

Following this response, Promo-LEX filed a referral to the CEC President, bringing arguments that condemned the denial of assistance in the verification of the SER. The need for verification was based on the necessity to verify the quality of electoral rolls, considering that the SER is the only source that draws up electoral lists and only by analyzing the way the SER (and the entire data circuit) is maintained, managed and operated, some conclusions and recommendations can be made. The association reiterated its intention to make public the information on the functionality of the system and identify the existing deficiencies, as well as to inform the CEC about its findings. The purpose of the request was to verify the functioning of the SER through the entitled registrar (by the commission), which will ensure that the personal data protection legislation is not infringed. From the viewpoint of the observers, verifying whether a person is enrolled in the SER is an operation expressly provided by electoral legislation that has a direct connection with the verification of the quality of electoral rolls. Therefore, any impediments to the exercise of the rights under the Electoral Code (Article 68) constitute an infringement.

<sup>51</sup> <http://www.asp.gov.md/ro/date-statistic>, (accessed on 06.12.2018)

<sup>52</sup> <https://bit.ly/2QGrz3K>

Finally, on 18.12.2018, after the amendment informing about the category of voters to be checked was drafted<sup>53</sup>, Promo-LEX observers were able, with the assistance of CEC employees, to verify a number of people in the SER. The Promo-LEX presented to the CEC the corresponding list of people, which included the persons who either obtained, renounced or regained the citizenship of the Republic of Moldova in 2018, the information being taken from the Decrees of the President of the Republic of Moldova. A list of 697 people was drafted to verify whether they were included in the SER. Therefore, out of 697 people, 63 persons were randomly selected and screened (every 11th person, as included in the 2018 Official Gazette).

Following the above-mentioned exercise, Promo-LEX observers found that in the sample of 53 persons, who renounced the citizenship of the RM, no deficiencies were found. That is, all the persons who lost their Moldovan citizenship were included in a special category under the heading "Status - other citizenship" and therefore, according to the verbal statements of the CEC's employees, will not be included in the electoral rolls in the coming parliamentary selections. As regards the granting and regaining of citizenship, it was found that in 7 out of 10 cases verified, the persons do not appear in the SER, although they should theoretically appear as voters.

The competent authorities considered it appropriate to verify the results obtained in the above exercise, in particular, to identify the reasons and causes of these inconsistencies. Subsequently, after the assisted verification, on December 19, 2018 the observers were informed by the CEC's President in a telephone conversation that they carried out detailed inquiries into each case, establishing that the persons missing in the SER had not yet followed the appropriate oath-taking procedures and had not obtained their ID to be included in the SER.

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<sup>53</sup> The amendment was formulated within the CEC immediately prior to the assisted verification.

## V. ELECTORAL LITIGATION

*Both the presidential elections of October 2016 and the new local elections of May 20, 2018 have demonstrated that, on the one hand, the examination of appeals is a procedure that is not explicitly regulated, especially when it comes to the election day or the post-election period, and on the other hand, that the court may assume the role of an actor in the electoral process and decide independently on the cases, without being requested by any of the parties to do so.*

*The modification of the electoral system has also highlighted other vulnerabilities, such as legal uncertainties that could cause conflicts of court jurisdiction in cases of litigation in electoral matters, or the increased risk of invalidating mandates in single member constituencies in acts of voluntary justice.*

### 5.1. The need to monitor electoral litigation

Throughout 2018, the courts have issued several rulings on electoral disputes that have sparked dissensions in the society. The most relevant case was the invalidation of the mayoral mandate in the new local elections of May 20, 2018<sup>54</sup>.

Promo-LEX Association<sup>55</sup>, as well as several legal experts, considered these judgments to be arbitrary and unjustified. Thus, we consider that monitoring the legal disputes and informing the public about them will make the parties involved in litigation more responsible on the one hand, and on the other, it will give uninitiated people a better understanding of how decisions have been taken. Therefore, electoral litigation monitoring by civil society organizations is necessary and beneficial in virtue of the overall mission to improve the quality of electoral litigation examination and resolution processes.

The parliamentary elections of February 24, 2019 will be carried out based on a new electoral system. This also poses a challenge for both the litigants and the courts, which will examine the disputes that have arisen in a new legal framework. Given the complexity of the mixed voting system and the nature of the disputes that may arise, there is a risk that the electoral legislation will be applied unevenly by the courts of different constituencies and electoral bodies.

Monitoring of electoral litigation has a specific character, both because of limited terms and due to the essence of the dispute. In particular, electoral litigation is determined by:

- Short limitation periods for filing appeals - 3 calendar days from the date of the action or identification of inaction, or from the adoption of the decision, and then one day after the decision has been pronounced for the contestation of the judgments or decisions of the courts;
- Examination and resolution of electoral litigation within a limited period of 3-5 days,
- Impact of court rulings on the electoral process on the whole and, in particular, on confirming or invalidating the legality of elections and validating or invalidating the mandates of MPs by the Constitutional Court.

At the same time, the resolution of electoral litigation also determines the emergence of certain risks generated by both the lacunar and ambiguous legal framework and the non-uniform practice of electoral bodies and the judiciary system:

- different appreciation and qualification of violations of the Electoral Code, which are likely to influence the results of the elections;

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<sup>54</sup> Final Report. Promo-LEX observation mission of the new local elections of May 20, 2018. <https://is.gd/odsRtO>

<sup>55</sup> Informative note of the Promo-LEX Association on the request of the Legal Commission, Appointments and Immunities, Parliament of the Republic of Moldova dated 31 July 2018, <https://is.gd/gqksb3>

- electoral bodies are excessively denied their competence to settle appeals in electoral matters;
- invalidation of elections in no more than 1/3 of the single member constituencies without holding new elections at national level, which accounts for mandates of a maximum of 17 MPs. Therefore, there is a risk of canceling the citizens' votes in 17 single member constituencies.
- limited access to justice and effective judicial control in electoral matters for voters and electoral candidates in single member constituencies located abroad and those in the Transnistrian region.
- initiative groups are deprived of the possibility of being subject of an appeal, or part of a contestation, according to point 3 of the Regulation on the Procedure for Examination and Solving of Appeals by the Electoral Bodies during the Electoral Period. "In electoral cases examined by the electoral bodies, the voter, electoral competitors or the electoral body, whose actions / inactions and decisions are challenged, or as the case may be, participants in the referendum, may be part of the contestation." Thus, the initiative group cannot be part of an appeal, while the District Electoral Commission and Constituency Council may impose sanctions on the initiative group.

In addition, 18 months after the modification of the legislation, we still witness some uncertainties about the application of the legal norm. We ascertain the existence of legal uncertainties that could cause conflicts of jurisdiction of courts in case of electoral disputes in the parliamentary elections of February 24, 2019<sup>56</sup>.

## **5.2. Methodology aspects**

The Promo-LEX OM will monitor the electoral contestations, both those examined by electoral bodies, and those examined by judicial means - electoral disputes that will be filed with the courts of all levels of jurisdiction, requests to defend the honor and dignity of electoral competitors, criminal or ongoing criminal cases that may be related to the electoral campaign and other causes that may be tangential to the electoral campaign, being exempt from monitoring.

Therefore, the objectives of electoral litigation monitoring are: investigating and evaluating the manner of examining and solving electoral complaints, identifying cases of misinterpretation and misapplication of substantive and procedural rules, as well as formulating conclusions and recommendations to electoral authorities or courts, as appropriate, on the uniformity of practices.

Monitoring of out-of-court complaints examined by electoral bodies (EBPS, CC and CEC) will be carried out by the long-term observers (LTO). An LTO will work in each SMC and will visit the electoral bureau during the planned visits, monitoring on a weekly basis the activity of the CC.

Additionally, 19 court monitors will observe and, as appropriate, participate in court hearings, where electoral disputes will be settled, and long-term observers will collect information (copies of complaints and copies of the registry of complaints of lower electoral bodies). After the monitoring, court monitors and long-term observers will complete a form for each litigation, which will be subsequently processed and analyzed.

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## VI. ELECTORAL CANDIDATES

*In the pre-election period, the Promo-LEX OM identified a number of actions of potential electoral candidates that could be qualified as early campaigning and misuse of administrative resources.*

*Misuse of administrative resources can be interpreted in the case of two potential competitors: the PDM and the PSRM. In the case of the PDM, Promo-LEX OM identified in the pre-electoral period at least seven cases, where the activities of the potential national electoral competitors contained elements of deviations, such as merging the party with the state, misuse of administrative resources and bribery of citizens. Additionally, the OM revealed at least four cases that can be qualified as misuse of administrative resources at the level of single member constituency. According to the Promo-LEX OM, the PSRM can be accused of misuse of administrative resources, we refer to the fact that the party representatives in the Chisinau Municipal Council adopted and implemented projects using the public money. Designating candidates ahead of schedule is another irregularity identified by the Promo-LEX OM. We consider that the activities of the PSRM, PPS, PAS and PPPDA can be interpreted as such violations. In the case of the PSRM, we witnessed a public presentation of its candidates in the period of 8 September – 3 November, 2018, when it presented candidates for 43 of the 46 single member constituencies established on the territory of Moldova (except for the Transnistrian region). The Sor Political Party (PPS) actively promoted its local representatives in the regions, which largely coincides with the single member constituencies. The PAS and PPPDA announced during the pre-election period that they had designated potential candidates to pass the integrity filters, in some cases providing specific names of party representatives.*

*In the opinion of the Observation Mission, preparation and dissemination of electoral information in the pre-election period can also be interpreted as beginning of the campaign before the legally stipulated term. In this regard, the actions of the PAS and PPPDA (the current electoral bloc ACUM) fall under this category which, in the period of 5 November and 10 December 2018, held meetings with citizens in at least 21 districts and distributed printed materials (the ACUM commitments).*

*Promo-LEX OM points out that it is very complicated to delimit the current activities of a public authority, the activities of formal nomination of candidates and dissemination of electoral information or political campaigning, considering that the Constitution guarantees freedom of expression and the right to obtain information. In this context, Promo-LEX considers that the bans applied during the electoral period, as well as its duration, have to be reviewed by the legislative body.*

### **6.1. Activities that can be qualified as a pre-term electoral campaign**

According to art. 91 of the Electoral Code, the electoral campaign for the parliamentary elections shall start not earlier than 30 days before the election day. According to the CEC Calendar Plan, the electoral campaign of registered competitors will start on January 25, 2019.

The Promo-LEX OM considers it necessary to draw attention to the behavior of potential electoral candidates who in the pre-election period carried out activities that could be qualified as campaign activities.

#### *6.1.1. Activities that can be interpreted as candidate nomination*

According to the provisions of art. 1 of the Electoral Code, the *nomination of candidates* is the procedure of adoption by parties, electoral blocs and other socio-political organizations of the decisions on the candidates for elective positions, held during the meetings of their governing bodies, after the announcement of election date. The process of candidate nomination takes 30 days, the deadline being 30 days before the election day.



According to the CEC Calendar Program<sup>57</sup>, candidates are to be nominated between 26 December 2018 and 24 January 2019.

In the context of the above, it should be mentioned that on September 7, 2018, the PSRM announced on its official page about the organization of assemblies throughout the country in the form of rallies, starting with September 8, 2018<sup>58</sup>. In these meetings, held between 8 September and 3 November, the PSRM publicly presented the party's candidates for 43 of the 46 single member constituencies established on the territory of the Republic of Moldova (except for the Transnistrian region). Thus, we found that candidates have not been submitted only for 3 single member constituencies: no. 6 (Drochia), no. 11 (Falesti) and no.44 (Taraclia).

In the above situation, we consider that electoral candidates are in unfair conditions. The PSRM candidates in single member constituencies were *de facto* nominated, without executing the necessary documents, including the internal ones *de jure* and thus have an advantage of four months (depending on the date of their nomination) over the candidates to be nominated by other parties.

In the same vein, we noticed activities that would fall within the *de facto* nomination before the legal term in the case of the PAS and PPPDA. In line with the commitment to join the future electoral bloc, candidates would have to pass "integrity filters"<sup>59</sup>. However, on November 6, 2018,<sup>60</sup> the PAS leader stated that all the potential candidates of the PAS had already applied for integrity check and assessment.

According to the Promo-LEX OM, there was a *de facto* pre-term appointment of potential candidates during the pre-election period in the case of Sor Party. Starting with June 2018, and later during the pre-election period, the party introduced and developed the institution of "plenipotentiary representatives" of the formation in the regions, organizing public events to present them. Some of the representatives have in their area of responsibility territories that coincide with the boundaries of single member constituencies<sup>61</sup>.

In addition, some isolated cases were reported, in particular by the media, where some persons publicly declared their intention to run in the upcoming elections as independent candidates in certain electoral constituencies, this news being promoted by various media.

#### *6.1.2. Preparation and dissemination of electoral information*

According to art. 52 of the Electoral Code, actions for preparation and dissemination of information aimed at determining the voters to vote for a certain electoral candidate (electoral campaigning) are admitted only after the electoral candidate has been officially registered by the electoral body.

Contrary to what was outlined, on November 5, 2018, the PAS leader<sup>62</sup>, Maia Sandu, posted on her Facebook page, announcement on initiating citizens' information campaign on the commitments of the future bloc ACUM with a view of winning in the parliamentary elections (large mobilization). As a result, in the period of November 5 - December 10, meetings with citizens were held and information materials (the ACUM commitments) were distributed in at least 21 districts (Anenii Noi, Balti, Calarasi, Causeni, Ceadir-Lunga, Comrat, Criuleni, Donduseni, Drochia, Dubasari, Falesti, Floresti, Glodeni, Ialoveni, Orhei, Riscani, Singerei, Soroca, Stefan Voda, Telenesti, Ungheni).

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<sup>57</sup> CEC Decision no. 1898 of 05.12.2018 on the approval of the calendar for the organization of parliamentary elections in the Republic of Moldova on February 24, 2019, <https://bit.ly/2zl8PqN>.

<sup>58</sup> <https://bit.ly/2UlmnBx>

<sup>59</sup> Commitment for action and solidarity, <https://bit.ly/2S3VMY1>

<sup>60</sup> <https://bit.ly/2Lp8GgN>

<sup>61</sup> <https://is.gd/msUUdo>; <https://is.gd/2iholB>

<sup>62</sup> <https://bit.ly/2QMaRzZ>

## 6.2. Activities that can be qualified as misuse of administrative resources for electoral purposes

Administrative resources are human, financial, material, *in natura* (benefits from social programs, including goods and resources) and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support<sup>63</sup>.

Through the *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* of June 29, 1990<sup>64</sup>, Member States have been obliged to ensure a **clear demarcation between the state and political parties; in particular, political parties cannot be confused with the state.**

At the same time, it should be mentioned that *offering or giving money, goods, services or other benefits in order to determine the voter to exercise or not to exercise his/her electoral rights during the parliamentary, presidential, local elections or the referendum* is considered an act of **bribery of voters**<sup>65</sup>. In addition to applying a fine of 4,000 to 6,000 conventional units in the event of bribery of voters, the legal person shall be punished either by deprivation of the right to pursue a particular activity or by liquidation.

During the pre-election period<sup>66</sup>, Promo-LEX identified actions that can be qualified as misuse of administrative resources in order to obtain political capital in the activity of the PDM and PSRM (potential electoral candidates). In addition, contrary to the commitments of *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (OSCE)*, cases of assimilation of state / state institutions with the political party were found.

Thus, we found that in 2018, including in the pre-election period, the PDM has been organizing weekly press briefings at the party headquarters, in which it announces the decisions taken in party meetings, which are interpreted as indications for the state decision makers. It should be noted that it may be difficult for voters to differentiate between the efforts and achievements of the party and, respectively, the efforts and achievements of the Government or public authorities. In this way, there is a transfer of image from the party to the public authorities and vice versa.

For example, during the pre-election period, that is from 2 October to 27 November 2018, in its weekly briefings<sup>67</sup>, the PDM announced wage reforms and various allowances to come into force on December 1, 2018, after the expiry of Parliament's mandate.

It should be pointed out that it is the right and obligation of public authorities to improve the socio-economic state of the population. In the opinion of the Promo-LEX OM, the actions in question should not be carried out predominantly at the end of the mandate, during the pre-election and the electoral periods. Account should be taken of the fact that the Parliament's mandate expired on November 30, 2018. As a matter of fact, all wage increases and allowances are expected after this date.

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<sup>63</sup> Report of the Venice Commission on the misuse of administrative resources during electoral processes, <https://bit.ly/2QtIzIS>

<sup>64</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (OSCE) of 29.06.1990, point 5.4, <https://bit.ly/2BTV5ez>

<sup>65</sup> Criminal Code of the Republic of Moldova, art. 181<sup>1</sup> - <https://bit.ly/2LnHJdm>

<sup>66</sup> The definition of the electoral period in the current version was regulated in the Electoral Code on 21 July 2017 - <https://bit.ly/2BExJJi> - with the introduction of the amendments on the mixed voting system. Before this modification, *the electoral period involved the time between informing the public about the date of the elections and the day of the election itself* - <https://bit.ly/2FY0V2a>

<sup>67</sup> PDM briefings - <https://bit.ly/2BbHqxA>, <https://bit.ly/2EpnBqH>, <https://bit.ly/2C61KCa>, <https://bit.ly/2QLUFig>, <https://bit.ly/2zXH6CH>.

In addition, we draw the reader's attention to the fact that these financial measures of social nature were not initially foreseen in the budget for 2018. We express our concern about providing financial resources in addition to those originally planned in the budget during the electoral and pre-electoral period, as they contain a clear electoral connotation and can determine the voters' choice. We note that these reforms were equally necessary both in 2016 and in 2017.

Promo-LEX believes that these actions can be described as misuse of administrative resources aimed at accumulating political capital:

- free distribution of gas detectors to home owners, where gas cylinders are used, to signal gas leaks and to alert special forces on time (briefing of 09.10.2018). Already on October 11, 2018, Prime Minister Pavel Filip asked the Ministry of Economy and Infrastructure to draw up an action plan with regard to this issue<sup>68</sup>. On 19.11.2018 a notice on the elaboration of an action plan was published on the Government website, mentioning that certain issues regarding the use of gas cylinders are to be finalized / regulated in more detail;<sup>69</sup>
- increase of the salaries by 20%, 50% or 90% starting with 01.12.2018 for more than 150 thousand employees engaged in the fields of education, health, social assistance and local public authorities. Subsequently, ensure similar annual increases (briefing of 09.10.2018). The draft legislative act was registered on 13.11.2018, with its adoption in the Parliament's meeting on 27.11.2018<sup>70</sup>;
- increase of the salaries by 20% for doctors and 10% for medical staff from 01.12.2018 (briefing of 13.11.2018)<sup>71</sup>;
- increase of pensions from 01.01.2019 by 10% for the pensioners who receive a pay of up to 1589 lei, in addition to the annual indexation (briefing of 13.11.2018). The draft legislative act was registered on 20.11.2018, and adopted in the Parliament's session on 23.11.2018<sup>72</sup>;
- granting of a single lump sum of - 600 lei in the second half of December to each pensioner (there are over 500 thousand pensioners), who has a pension of less than 2000 lei (briefing of 27.11.2018). The draft legislative act was registered on the same day (27.11.2018), being voted in the Parliament's session of 30.11.2018<sup>73</sup>;
- granting and increasing by 12% the compensations for the cold season of the year not only to families with an income of up to 1600, but also to those with incomes of up to 2000 lei: 350 lei / month for 5 months (briefing of 27.11.2018)
- 35-100% increase of salaries for post office employees (around 4800 postal workers) from 01.12.2018. Inclusion in postal workers 'obligation the delivery of pensioners' pays to their place of residence (briefing of 27.11.2018).

In the context of the above, we found that each political decision taken by the PDM (mentioned above) and publicly communicated by the party representatives was executed, within short terms, by the state institutions using public money that had not been initially planned for the actions decided to be implemented by the authorities.

At the same time, Promo-LEX found that some PDM deputies used administrative resources to accumulate political capital in certain particular constituencies established for the parliamentary elections of February 24, 2019. Thus, for example, Constantin Tutu, on his Facebook page, claimed the merit for several types of work carried out in Durlesti, Bacioi, Truseni, Singera and Codru, which all

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<sup>68</sup> <https://bit.ly/2ECGAOG>.

<sup>69</sup> <https://bit.ly/2ED0kS7>

<sup>70</sup> <https://bit.ly/2S75ZmA>.

<sup>71</sup> ibidem

<sup>72</sup> <https://bit.ly/2rLPEbu>.

<sup>73</sup> <https://bit.ly/2RndwgD>

together constitute single member constituency no. 33<sup>74</sup> (construction of a new post office in the town of Durlesti, street lighting in Durlesti and Bacioi, the reconstruction of some streets in Singera, Truseni, Bacioi, the launch of trolleybus route no. 34 to Truseni, etc.).

Similar situations have been identified in the case of MPs Eugen Nichiforciuc (road repairs in the settlements of constituency no. 8 Floresti)<sup>75</sup> and Oleg Sirbu<sup>76</sup> (repairs of the kindergarten in Goleni, Edinet, opening of pre-hospital emergency medical assistance points) in constituency no.3 Edinet) and Anatolie Zagorodnii<sup>77</sup> (gifts for kindergartens, the promise to repair a kindergarten by including it in the budget plan for 2019, gifts for the library in the village of Balceana, electoral constituency no. 38 Hincesti).

In the case of the PSRM, the misuse of administrative resources was identified when the party claimed the implementation of projects adopted and implemented on the public money by the Municipal Council of Chisinau (planned in the municipal budget for 2018): repairs of kindergartens<sup>78</sup> and schools<sup>79</sup> in the municipality of Chisinau; installation of sports facilities in the municipality of Chisinau (with training equipment)<sup>80</sup>; setting up playgrounds<sup>81</sup> and landscaping of courtyards<sup>82</sup>.

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<sup>74</sup> <https://bit.ly/2Lgnm1O>, <https://bit.ly/2RO7aas>, <https://bit.ly/2EhJuan>, <https://bit.ly/2GcXWmK>, <https://bit.ly/2EfeOGO>, <https://bit.ly/2GcW5yn>, <https://bit.ly/2QMyb0F>

<sup>75</sup> <http://archive.is/g1JyU>, <http://archive.is/2yXcP>

<sup>76</sup> <https://bit.ly/2EiuAAT>, <https://bit.ly/2Bb2bJK>

<sup>77</sup> <https://bit.ly/2BtewsO>, <https://bit.ly/2SXLB7d>, <https://bit.ly/2S3H1EI>.

<sup>78</sup> <http://archive.is/brDKo>

<sup>79</sup> <http://archive.is/IUhIw>

<sup>80</sup> <http://archive.is/8ZmCK>

<sup>81</sup> <http://archive.is/sCDVD>

<sup>82</sup> <http://archive.is/EPQZB>

## VII. FINANCING OF ELECTORAL CAMPAIGNS

*Monitoring the financing of the electoral campaign remains a priority of the Promo-LEX OM. In this regard, we will continue to compare the expenditures reported to the CEC with the activities and expenditures estimated in the course of civic observation. Considering the change of the electoral system, it should be mentioned that the legal amendments to the law on financing of electoral candidates/initiative groups and their financial reporting can be considered a positive trend. In this regard, we refer, in particular, to the lowering of the ceilings for donations made by individuals and legal entities, inclusion in the financial reporting of the services provided for free by individuals and legal entities and all volunteering activities.*

*Nevertheless, based on previous experience of observing the financing of electoral competitors and the specificity of mixed voting system, we identified the following challenges: the increase in the number of financial reports submitted to the CEC; unfair electoral conditions due to the misuse of administrative resources; financial support of electoral candidates offered by donors from abroad, provided that citizens working abroad cannot transfer funds to the Electoral Fund account; involvement of foundations associated with political leaders or political parties; insufficient time to effectively monitor the final reports on the financing of electoral campaign, especially considering the cancelation of the day of silence, etc.*

### **7.1. Methodological terms of reference**

The methodology for monitoring electoral campaign funding consists in observing the activity of the initiative groups (IGs) and that of electoral competitors, considering the financial resources collected and used in the electoral period, during the period of collection of signatures and during the electoral campaign. At the same time, it is important to assess the compliance of the reporting, record keeping and monitoring of electoral actors with the rules in force.

The information presented by the LTOs is analyzed, subsequently, the expenses declared are estimated based on the minimum market price, the financial information submitted by the IGs and electoral candidates to the CEC being compared with the estimates made on the basis of observations. Finally, the findings obtained and reported are checked for conformity with the current legal framework.

### **7.2. Changes in the legal framework**

The financing of electoral campaigns is regulated by the Electoral Code, Law no. 249 on Political Parties, CEC Regulation on the Financing of Electoral Campaigns, adopted by CEC Decision no. 3352 of May 4, 2015 and the Regulation on the Financing of Initiative Groups, approved by the Decision of the Central Electoral Commission no. 114 of 1 August 18, 2016.

The amendments to the electoral legislation made in 2017 to ensure the transition of the electoral system from the proportional representation to the mixed one<sup>83</sup> also include regulations on the funding of electoral candidates / initiative groups and their financial reporting. Altogether, the changes regulating the funding can be positively assessed, for example:

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<sup>83</sup> On July 20, 2017 the Parliament of the Republic of Moldova approved Law no. 154 for modifying and completing some legislative acts, which essentially changed the electoral system by transition from the proportional representation to a mixed one.

- reduction of donation ceilings for electoral campaigns made by individuals and legal entities from 200 and 400 average monthly salaries<sup>84</sup> to 50 and, respectively, 100<sup>85</sup>.
- acceptance of donations, including own funds, during the electoral period only directly to the Electoral Fund account of the political party<sup>86</sup>, provided the financial report presented to the Central Electoral Commission indicates the data provided in art. 43, par.(1)".
- inclusion in the financial reporting of services provided free of charge by individuals and legal entities and volunteering activities<sup>87</sup>.

### **7.3. Problems identified by previous Observation Missions that may have an impact on the current electoral campaign**

#### *7.3.1. Lack of financial transparency in the way electoral competitors reflected expenditure on most budget lines in the Report on Financing of Electoral Campaign*

According to the Promo-LEX OM, in the two national elections, held prior to the monitored period, the reporting of electoral competitors' expenses was deficient. Observers' findings showed there were differences between the estimated data and the data presented in the competitors' financial reports. Thus, in the parliamentary elections of 2014, none of the 24 electoral competitors declared travel expenses and only one reported spending on volunteer rewards. In the presidential elections of 2016, none of the 12 electoral competitors declared spending on remuneration of work or opinion polls. At the same time, only three electoral competitors reported spending on volunteer rewards, consultancy expenses and additional maintenance costs (including telecommunication services).

In the parliamentary elections of 2014, Promo-LEX observers estimated that at least 14,916,866 lei<sup>88</sup> were not reflected in the financial reports. Based on the Promo-LEX estimates, most of undeclared expenses were attributed to the organization of public events - 74.82% of the total undeclared expenditures. As for the presidential elections of 2016, the Promo-LEX OM found that 11 competitors failed to fully reflect the expenditures incurred during the electoral campaign (round I and II) in the amount of at least 7,667,223 lei<sup>89</sup>.

#### *7.3.2. Reducing the transparency of electoral campaign funding and attenuating the effective monitoring of final reports, especially given the cancellation of the day of silence.*

Considering the extension of electoral campaigning period until the election day inclusively, as well as the fact that the examination of contestations regarding the financing of electoral campaigns is not subject to the prescription periods, stipulated in art. 72-74, maintaining the obligation to submit the final report on the financing of the electoral campaign 2 days before the election day remains a limiting measure, aimed at diminishing the financial transparency of electoral competitors.

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<sup>84</sup> The amount of the average monthly salary forecasted for 2018 was set at 6 150 lei. <https://bit.ly/2Pt3hFX>

<sup>85</sup> Art. 41, para. (2), e) of the Electoral Code

<sup>86</sup> Art. 43, para. (7) of the Electoral Code

<sup>87</sup> Art. 43, para. (10) of the Electoral Code states: "All the services and actions provided for in para. (8) rendered free of charge by individuals and legal entities, and all volunteering actions, during the collection of signatures and during the electoral campaign in favor of the candidate or electoral competitor shall be evaluated by the initiative group and the electoral competitor and shall be indicated in the financial reporting in accordance with the procedure established by the regulation approved by the Central Electoral Commission."

<sup>88</sup> Final Report - Monitoring the Parliamentary Elections of November 30, 2014, p. 34, <https://bit.ly/2Equisix>

<sup>89</sup> See Final Report - Election Observation Mission for the Presidential Elections in the Republic of Moldova of October 30, 2016, p. 57, <https://bit.ly/2qVCdTy>

Electoral competitors are forced to avoid declaring election spending and thus, to violate transparency measures. Promo-LEX has repeatedly recommended extending the deadline for submitting final reports so that they be submitted after the election day, not as it is stipulated in the current formula, i.e. 2 days before the election day, according to the Electoral Code.<sup>90</sup>

*Promo-LEX qualifies the failure to adjust the obligation to submit final reports on financing of electoral campaigns to the new deadline for electoral competition<sup>91</sup> as a proof of the hasty change that has been made without a general overview of the legislation. We consider this to be a legislative issue and recommend the introduction of a new deadline for final report submission, i.e. 5 days after election day.*

*7.3.3. Political party's possibility to make a financial transfer to the Electoral Fund account, exceeding the ceiling set for donations of legal entities.*

The Promo-LEX OM still finds uncertain the situation with donations from party's account to the Electoral Fund account, when it comes to qualifying the donor political formation as a legal entity. The legal rule is not explicit in this respect. We remind you that, according to art. 41 para. (2) e) of the Electoral Code, the limits of donations made by legal entities to the Electoral Fund account for an electoral campaign constitute 100 average monthly salaries established for the respective year. Simultaneously, art. 1 para. (1) of the Law on Political Parties states that political parties are voluntary associations with the status of a legal entity. Therefore, the party cannot transfer its own financial means in an amount exceeding 100 monthly average salaries to the Electoral Fund account. The CEC's position, however, differs from the legal logic set out above, considering that the political party would have a special status, that is why we think that the legislature should be unambiguous in this respect.

*7.3.4. Violation of political rights of citizens of the Republic of Moldova who work abroad and cannot financially support a political party / electoral competitor.*

Another issue, noted by Promo-LEX,<sup>92</sup> as well as by the Venice Commission<sup>93</sup>, refers to the impossibility of Moldovan citizens, who are abroad and work there, to make donations to their favorite parties or favorite electoral candidates. Thus, even though the Constitutional Court has maintained the constitutionality of these restrictions, we consider that this violates the political rights of at least 805 509 citizens of the Republic of Moldova,<sup>94</sup> who officially work outside the country but cannot contribute financially to supporting their favorite political party / electoral competitor. The legal reason invoked by the authorities is limited to the fact that only financial resources from work and entrepreneurial, scientific or creative activity on the territory of the Republic of Moldova can be used to finance parties and electoral campaigns. Paradoxically, the Republic of Moldova accepts,<sup>95</sup> without any remorse, quarterly transfers of about 300 million US dollars to the national economy.

*7.3.5. Involvement of foundations associated with political leaders or political parties*

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<sup>90</sup> Para. 6, art. 43 of the Electoral Code stipulates that the reports on the financing of electoral campaigns - Reports on the financing of electoral campaigns for the entire electoral period shall be submitted to the Central Electoral Commission by the registered electoral candidates no later than 2 days before the election day. The reports shall be published on the official website of the Central Electoral Commission within 48 hours of receipt, in compliance with the legislation on the protection of personal data.

<sup>91</sup> Term modified on 23.11.2018, the law abolished the prohibition to carry out electoral campaigning on the election day and the day before the election, keeping the restriction only for the premises of the polling stations and the entrance to the polling stations.

<sup>92</sup> Opinion of the Promo-LEX Association on the draft law for amending and completing some legislative acts (special rights of diaspora voters) no. 217 of 26.06.2018. p. 8, <https://is.gd/ay4x4p>

<sup>93</sup> See: Venice Commission Opinion of December 2017, p. 13, point 51, <https://bit.ly/2NHDzkl>

<sup>94</sup> Promo-LEX analysis on geographical location and number of polling stations set up abroad, p. 5, <https://bit.ly/2SI07ii>

<sup>95</sup> Evolution of financial transfers from abroad, <https://is.gd/CoZDb3>

We remind the reader that art. 41, par. (3), h) of the Electoral Code prohibits financing or material support in any form, direct and / or indirect, [...] of electoral campaigns / electoral competitors by non-commercial associations, trade unions, charitable or religious organizations.

However, in the last presidential elections, two charitable foundations, associated with political leaders, acted in a way that affected the electoral image of two competitors. The entities in question were Vlad Plahotniuc's Foundation "Edelweiss" and "Renato Usatii" Foundation<sup>96</sup>. In principle, a foundation is a non-commercial, non-political organization that does not provide political / electoral assistance to any competitor or political actor. In the given case, using the tool of image transfer, through their activities, the foundations containing names of politicians in their names were indirectly involved in political activities and, in particular, in the electoral campaigns.

#### *7.3.6. Organization of concerts and cultural events as a form of bribery of voters*

Organization of concerts and other cultural events is a commonly used method in electoral campaigns. As a rule, the organization of such cultural events is provided for by electoral competitors, voters being granted free access to the events. In essence, these recreational services represent a form of bribery of voters, as electoral competitors are campaigning in these events, trying to persuade voters to vote for one candidate or another. According to the Promo-LEX observers, in the parliamentary elections of 2014, at least 6 electoral competitors incurred expenses for organizing 181 concerts, 7 discos, 2 campaign launches and 2 concerts outside the country<sup>97</sup>, involving at least 91 artists. In the presidential elections of 2016, both the number of electoral competitors and concerts decreased significantly, accounting only for 11 concerts paid by three electoral competitors. The Promo-LEX OM estimated in both cases much higher costs than those reported, concluding on poor reporting and breach of legislation.

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<sup>96</sup> See Final Report - Election Observation Mission of the presidential election in the Republic of Moldova October 30, 2016, p. 37, <https://bit.ly/2qVCdTy>

<sup>97</sup> Final Report – Monitoring of the parliamentary elections of November 30, 2014, pp. 33, <https://bit.ly/2Equisjx>



## VIII. HATE SPEECH AND DISCRIMINATION

*Starting with the new local elections and the local referendum held in Chisinau in November 2017, the Promo-LEX OM has been monitoring the cases of hate speech used by electoral candidates in their activity. We intend to identify the cases and topics of their discourses based on the sources of information subjected to monitoring. We are interested in the subjects that use hatred in electoral messages and those affected by this type of discrimination.*

Hate speech is a form of spreading public intolerance, discrimination and incitement to violence, which is forbidden by law and is punishable by civil and criminal law. Hate speech may be a form of manipulation of the public and voters in the electoral context, as well as a way of distraction from real issues.

Hate speech is a phenomenon that is growing in scale and intensity in the Republic of Moldova. This is confirmed by the report recently launched by the Promo-LEX Association - "*Hate Speech and Incitement to Discrimination in the Public Space and Mass Media in the Republic of Moldova*", which identified 457 cases of hate speech in 6 months of monitoring<sup>98</sup>. The study conducted by Promo-LEX shows that 42% of cases of hate speech take place in a political context, so politicians are often the main promoters of intolerance in the public space, including in electoral processes.

Given this, the Promo-LEX OM aims at monitoring hate speech in the electoral campaign for the parliamentary elections of February 24, 2019. The monitoring will be carried out on the basis of a special methodology developed by Promo-LEX in consultation with representatives of the Council for the Prevention and Elimination of Discrimination, the Central Electoral Commission, the Audiovisual Coordination Council and media organizations.

The monitoring will be carried out by 5 monitors contracted by Promo-LEX for this activity, using a database and special reporting forms.

The sources of monitoring will be print and online media, TV shows, politicians, religious figures and opinion leaders, information storing and distribution platforms and public events. They will be selected on the basis of Internet traffic indicators and audience surveys, polls conducted by sociological societies on public confidence, as well as on the media presence of politicians, religious figures and opinion leaders.

The monitoring data will be analyzed and presented to the public, authorities and electoral competitors to raise the awareness and prevent the use of hate speech. Following the interpretation of such data, conclusions and recommendations will be formulated for the actors concerned (mass media, political parties and electoral competitors, as well as authorities) to improve the legislative framework, conduct electoral campaigns, cover the issue of hate speech and sanctioning of this type of discourse in the media.

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<sup>98</sup> Report | HATE SPEECH AND INCITEMENT TO DISCRIMINATION in the Public Space and Mass Media in the Republic of Moldova, <https://is.gd/HiYrmV>

## **IX. VOTER EDUCATION CAMPAIGNS**

### **9.1. Voter education campaigns to be carried out by Promo-LEX**

*In the context of the Parliamentary Elections of February 24, 2019, Promo-LEX will carry out an Information Campaign aiming at voter education and apolitical mobilization of Moldovan citizens holding the right to vote, including those from the diaspora. The overall aim of the Campaign is to increase the participation of Moldovan citizens in the parliamentary elections of February 24, 2019.*

The campaign will include the following activities:

- Door-to-door information campaigns, carried out in about 100 settlements in 46 single member constituencies of the Republic of Moldova. The activities will be carried out by a network of 46 local campaign coordinators and over 200 volunteers.
- 10 public election debates will be organized in 10 single member constituencies to facilitate debating between electoral competitors and voters. Additionally, about 40 TV and Radio debates, involving candidates on single member constituency lists, will be organized in partnership with IPNA Teleradio-Moldova.
- To promote conscious voting and apolitical mobilization of voters, 2 informative videos will be made and broadcast on TV, Radio and social networks.
- An online apolitical information and mobilization campaign will be carried out. For the most part, it will target diaspora voters and young people.
- The Promo-LEX Association will also provide 5-6 grants worth 125,000.00 US dollars to non-governmental and media organizations for projects aimed at promoting participation of Moldovan citizens in the parliamentary elections.

### **9.2. The activities of the Electoral Training Center (CICDE) and the CEC**

The range of activities, launched by CEC and CICDE within a broad civic education campaign launched for the 2019 parliamentary elections - the "Democracy counts"<sup>99</sup> campaign - includes several projects implemented to inform all groups of election participants.

For example, in the framework of the project "Strengthening Democracy in Moldova through Inclusive and Transparent Elections", the CEC in partnership with UNDP Moldova has developed and printed the Voter's Guide and the "Easy to Read, Easy to Understand" version in Romanian, Russian and English. The booklet "Democracy Matters - Participate!" has been launched in Braille language and "Democracy is Learned" along with an audio CD. The same brochure was drafted in three languages: Romanian, Russian and Gagauz<sup>100</sup>.

Also, partnerships with ADEPT have been launched within the project "Increasing the Information of Moldovan Citizens from the Diaspora about the 2018 Parliamentary Elections"<sup>101</sup>, and with IREX Moldova within the project "Promoting Electoral Information"<sup>102</sup>. Another information activity was carried out in collaboration with the National Youth Forum of Moldova - Lightroom Conference<sup>103</sup> on information manipulation and psychological violence in elections.

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<sup>99</sup> <https://bit.ly/2Pdx0m5>

<sup>100</sup> <https://bit.ly/2E3snsC>

<sup>101</sup> <https://bit.ly/2QxsT96>

<sup>102</sup> <https://bit.ly/2E22dH4>

<sup>103</sup> <https://bit.ly/2APt7yp>

## **RECOMMENDATIONS**

### **To the Parliament of the Republic of Moldova:**

1. Changing the notion of electoral period and extending the 90-day term, including with the mention of the authority responsible for fixing this term, based on the type of elections (parliamentary, presidential, general local, new local, referendums etc.).
2. Ex-ante verification of the constitutionality and, if necessary, repeal of the Parliament Decision no. 332 of 30.11.2018, which established holding the Republican consultative referendum on February 24, 2019, on the day of parliamentary elections.
3. Revising the deadline for submission of final reports on financing of electoral campaigns, providing for a maximum of 5 days after the election day.
4. Expressly stating that organizing concerts and indirect supporting of political parties by foundations, non-commercial or religious organizations is a form of bribery of voters and is criminally liable.
5. Regulating the financing of political parties, electoral competitors, initiative groups by Moldovan citizens temporarily based abroad by bank transfers and setting verifiable ceilings for such donations. Individuals, Moldovan citizens should have the right to donate (support) the entities mentioned above.

### **To the Central Electoral Commission and the lower electoral bodies**

6. Approving and amending CEC Regulations and Instructions only in compliance with the legal provisions on transparency of the decision-making process.
7. Modifying the Regulation on the procedure for the examination and resolution of contestations by electoral bodies during the electoral period, in order to assign the initiative group (IG) the quality of a part of the contestation.

### **To the National Integrity Authority, the Public Services Agency, the National Probation Inspectorate**

8. Amending the Regulation on the issuance of certificates of integrity, with a view of regulating the possibility of issuing two copies of the Certificate of Integrity to the persons, intending to participate in the parliamentary elections in both national constituency and in single member constituency.

## **LIST OF ABBREVIATIONS**

para. - paragraph

NIA - National Integrity Authority

LPA - local public administration

art. - article

PSA - Public Services Agency

EBPS - electoral bureau of the polling station

NBS - National Bureau of Statistics

CEC - Central Electoral Commission

CC – Constituency Council

CECEM - Constituency Council of the Municipal Electoral District of Chisinau

IC - independent candidate

SMC - single member constituency

EF - event form

VF- visiting form

lit. - letter

m<sup>2</sup> - square meter

OM - Observation mission

mun. - municipality

MITC - Ministry of Information Technologies and Communications

no. - number

OSCE - Organization for Security and Cooperation in Europe

OSCE / ODIHR - OSCE Office for Democratic Institutions and Human Rights

LTO - long-term observer

STO - short-term observer

PAS – Party of Action and Solidarity

p. - point

PDM - Democratic Party of Moldova

PPPDA - The Dignity and Truth Platform Party

PSRM - Party of Socialists of the Republic of Moldova

PPS – Sor Party

REO- Register of Electoral Officers

RM - Republic of Moldova

SER - State Electoral Register

vil. - village

PS - polling station

TV - Television

ATU - administrative-territorial unit

un. - unit

USAID - United States Agency for International Development