

REPUBLIC OF MOLDOVA'S 2nd Universal Periodic Review

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INDIVIDUAL SUBMISSION OF PROMO-LEX ASSOCIATION

Limitations to the right to elect and to be elected and on the citizens' political rights

This submission has been prepared by Promo-LEX Association in the UPR process.

Promo-LEX Association – is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society through a strategic mix of legal action, advocacy, research and capacity building. Promo-LEX Association has NGO consultative status with ECOSOC.

Since 2005, Promo-LEX is a member of the national Coalition for Free and Fair Elections. In 2009, Promo-LEX became a member of the European Network of Election Monitoring Organizations (ENEMO). In 2010, Promo-LEX joined the Global Network of Domestic Election Monitors (GNDEM). In 2013, Promo-LEX became a founding member of the European Platform for Democratic Elections (EPDE). During this period, Promo-LEX observers have accumulated extensive international experience in several elections, including the presidential elections in Georgia and Ukraine; parliamentary elections in Norway, Estonia, Ukraine, Germany, Kosovo, and Macedonia; local elections in Romania and Ukraine, as well as a referendum in Romania.

Promo-LEX monitoring activities are neutral and unbiased with regard to all electoral candidates. Before participating in the Monitoring Effort, Promo-LEX observers were trained in election observation, and in demonstrating an unbiased, a-political attitude and maintaining objectivity in the framework of the Monitoring Effort. Each Promo-LEX observer signs a Code of Conduct developed and approved by the GNDEM.

International standards used by Promo-LEX as a basis for the monitoring reports are those elaborated by the Organization of United Nations (International Covenant on Civil and Political Rights, 1966, and the Universal Declaration of Human Rights, 1948); the Council of Europe (European Convention on Human Rights), the European Commission for Democracy Through Law – the Venice Commission (Code of Good Electoral Practices, Guidelines for Political Parties' Finances), the European Union (Charter of Fundamental Rights of the European Union), and the OSCE. Basic principles of the international electoral standards are: universal, equal, free, secret, periodic, correct and direct suffrage (right to elect and be elected).

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I. BACKGROUND

1. During the Republic of Moldova's first Universal Periodic Review (UPR) in 2011, 123 recommendations were made to it by other states. The Republic of Moldova supported 122 of the recommendations and noted one. The issue tackled in the current submission was not raised in the first UPR, but it has a substantial impact on implementing several commitments that the Republic of Moldova undertook in the meantime.
2. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.
3. Moreover, article 25 (15) of the CCPR supports the Declaration by stating that „no person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective”¹.
4. According to IDEA' International Electoral Standards², in order to offer ballot access for both - political parties and candidates, the legal framework should ensure that all political parties and candidates are able to compete in elections on the basis of equitable treatment. In the same time the Parliamentary Assembly of Council of Europe' 1897 (2012) Final Resolution³ stipulates that „domestic electoral legislation in most member States generally offer a good basis to hold “free and fair” elections, but there are recurrent violations, mainly due to a lack of political commitment at the highest level – generally on the part of the ruling political forces – to ensure full and effective implementation of the law and a level playing field to all candidates. Republic of Moldova is currently also failing in enhancing the level playing field that would give all candidates equal chances not only to compete but utterly important, to register in the competition.
5. During the last scrutinies in the Republic of Moldova many instances were found in which there was registered a crass limitation to the right to be elected of either independent candidates. Unequal conditions for the registration of the independent candidates to the electoral race, unequal limits of campaign finance for the independents, lack of incentives for gender balance on the political landscape, lack of public funding for the independents and a substantial shorter period for them to campaign are basic violations of the right to be elected. When the number of candidates who registered for the electoral race in 2014 Parliamentary Elections drastically decreased from 19 in 2010 to currently 4 candidates and we take into consideration the unequal requirements faced by them for registering in the electoral race⁴.
6. Thus, within the election campaigns for 2015 general local elections, the independent candidates are disfavoured if compared with the political parties, since the number of signatures they need to

¹ Article 21 of the universal declaration of Human Rights

http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

² IDEA, International Electoral Standards, *Guidelines for reviewing the legal framework of elections*

http://www.idea.int/publications/ies/upload/electoral_guidelines.pdf

³ Parliamentary Assembly of Council of Europe, Resolution 1897 (2012)1 “Ensuring greater democracy in elections”

<http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnceG1sL1hSZWYyVWdJLURXLWV4dHluYXNwP2ZpbGVpZD0xOTEyMSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRClBVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE5MTIx>

⁴ https://promolex.md/upload/publications/en/doc_1424160345.pdf

join the race is much bigger than the number of mandatory signatures for the registration of a political party. Moreover, because of the many signatures they must collect and the limited time to do that, the independent candidates (ICs) are also disfavoured by the shorter time they have to carry out their election campaign. Also, the procedure to establish the ceiling for the financial means that could be transferred on the electoral accounts of the candidates during the 2015 general local elections decreased even more the equality in the chances IC have.

II. SISTEMIC PROBLEMS

A. The electoral threshold for the independent candidates

7. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties⁵. The electoral threshold for entering the parliament is currently set significantly high for the independent candidates, at the level of 2% of the electorate. The findings show that it has a dissenting impact for the recent scrutinies, mainly in the last parliamentary elections where the number of candidates registered in the electoral race decreased to only 4 in comparison to 19 that entered the electoral campaign in 2010. Another example are the 2015 general local elections⁶ where under the same conditions in big districts such as Chisinau and Balti, a total number of 21 independent candidates running for the seat of Municipal Councillor were registered, and no candidate to the Municipal Mayor's seat. From election to election, the situation becomes more and more unfair for independent candidates; in 2011 as many as 37 independent candidates were running for the seat of Municipal Councillor at the general local elections, and one independent candidate was running for the Municipal Mayor's seat. So to speak, the threshold is discouraging candidates to not only make efforts to be registered as electoral candidates but even to consider entering the electoral race. So to speak, the threshold is discouraging candidates to not only make efforts to be registered as electoral candidates but even to consider entering the electoral race.

B. Discriminatory provisions in regards to the registration of political parties and independent candidates

8. The Electoral Code stipulates discriminatory provisions in regards to the registration of political parties and independent candidates in the electoral race – issues related to any type of elections. Therefore a level playing field is not ensured at the registration of the independent candidates as electoral contestants in the context in which the day they want to register is literally the day they are only allowed to start collecting signatures in the amount of a minimum of 2 000 to a maximum of 2 500 signatures of their followers for the parliamentary elections (CEC Regulation no. 2682 of 1 October 2014). On the other hand, political parties can enter the electoral race without any restriction and only by submitting general information about the party and the list of candidates. For this reason, the independent candidates have less time for campaigning and they meet significantly more requirements to only be allowed to participate in the race, not mentioning the unequal time for campaigning in order to get the 2% threshold to the office. So to speak, independent candidates need to meet unfairly more requirements and put more effort to register in the electoral campaign and due to that, they have a time disadvantage for campaigning.

⁵http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.7&Lang=en

⁶https://promolex.md/upload/publications/en/doc_1444721147.pdf

C. The financial ceilings for the independent candidates

9. The financial ceilings (the maximum amount of revenues one is allowed to collect and then spend in the electoral campaign) for the independent candidates at both former scrutinies, was set very low comparing to the candidates coming from the political parties, especially the one set at the General Local Elections 2015 where the number of voters was taken as the basis for establishing the ceiling. The problem being that for the candidates coming from the political parties – the ceiling was established based on the total amount of voters from 1 uninominal constituency – country level. Therefore political parties had an advantage by being able to choose in which of the rayon level constituencies they could spend more on their candidates for either council or mayor and in which less. A completely different situation was for the independent candidates – the ceiling was established based on the total amount of voters from the constituency in which they were racing. So to speak, if two contestants (1 nominated by the party and another independent, compete in one average level constituency, small constituency or big constituency – the independent is limited to collect revenues and then spend only the amount directly related to the number of voters – $k \cdot 25\,000$ voters (rayon/locality constituency level) while the party candidate (if party is focused that this candidate win in that main constituency) can collect and spend up to $k \cdot 2\,700\,000$ voters/country constituency level).

D. Prohibit parties from receiving donations from moldovan citizens that work abroad

10. The new amendment to the Electoral Code and Law on Political Parties that prohibit parties from receiving donations from moldovan citizens that work abroad is a disfranchisement of a large part of the Moldovans from the possibility to actively participate in the political life of their country. The OSCE/ODIHR observers noted during Moldova's local elections in 2015 that the fact that "citizens cannot donate out-of-country income, may constitute a disproportionate restriction on political participation" and recommended the revision of the ban on donations from out-of-country. Recognizing the reasons for ban of out-of-country donations in Moldova, one needs to appreciate that country's situation, with some 554,000 Moldovans of the population living abroad. In the same time it is a discriminatory provision in relation to these citizens since their in country counterparts can donate an amount of 200 medium salaries per economy in a year (which in 2016 would amount to 1,100,000 MDL or 50 000 EUR) while the out of country Moldovan citizens – 0 MDL.

E. Registration as independent candidates for the Transnistria and mun. Bender

11. Another disadvantage for registration as independent candidates are independent candidates in Transnistria (secessionist part of the Republic of Moldova) and mun. Bender (security zone), because it is impossible to collect signatures and properly authenticate them by the local government in these localities. There were also isolated cases when mayors refused to authenticate subscription lists at the early stages, without any formal reason.

F. Lack of special measures for promotion of gender equality in Moldova

12. The right to vote in all elections and to stand for elections should be granted without any discrimination. Eventhough article 7 of the Convention on the Elimination of All Forms of Discrimination against Women encourage the states to take all appropriate measures to eliminate discrimination against women in the political and public life, in Moldova, despite the intense promotion and support offered by different stakeholders, women continue to be underrepresented in the decision making bodies, including the Parliament. Since its independence, the proportion of women that were elected as MPs didn't exceed about 20%, while at the local level this rate is somewhat better – cca. 22% of mayors and approx. 35% of local councilors are women, according to the results of the 2015 General Local Elections. In the same time, women represent about 52% of the population and cca. 54% of the voters⁷ at the 2015 General Local Elections, for instance.
13. Under these circumstances, despite the ratification of the Convention and constant promisses since 2010 that the Parliament will adopt a 30% or 40% gender quota as temporary special measures (article 4 of the Convention), the situation remain uncertain due to the lack of politica will and continue to infringe the active electoral rights of women.
14. The problem of women engagement in politics in Moldova is also complex due to the lower financial capacities of women to fund their election campaigns. According to the Center Partnership for Development, even if the number of female candidates for the 2014 parliamentary race constituted 30.5 per cent of all candidates, their revenues amounted only to 8.1 per cent of the total amount of candidates' declared revenues. That's why they are put on a disadvantaged position when it comes to access to the campaign funds. A possible solution to this problem was identified and proposed to the Government and legislators during the elaboration of the law on election campaign and political parties' funding, which envisaged in the draft version that the political parties should get financial incentives - 20% yearly of the total amount from the state budget designed for the parties who would be sensitive to gender issues. Consideration could be given to introducing temporary special legislative measures to promote women candidates. Political parties could consider ways to further increase gender balance on their electoral lists. Unfortunately, nor the gender quota and nor other measures meant to ensure the gender balance in politics were adopted so far.

III. RECOMMENDATIONS FOR ACTION BY THE REPUBLIC OF MOLDOVA

- 1) The legislator should consider amending the Electoral Code with the provision of changing the electoral threshold for the independent candidates from „2%” to „a maximum of 1%” of the electorate.
- 2) The Parliament is recommended to amend the Electoral Coder in order to ensure equal chances for independent candidates and political parties during the registration process, specifically with regard to collection of signatures and term of registration of the candidates.

⁷ <http://www.cec.md/index.php?pag=news&id=1042&rid=13204&l=ro>

- 3) The legislator should consider amending the Electoral Code with the provisions to ensure a fair treatment of independent candidates when collecting signatures in subscription lists.
- 4) CEC should establish a single financial ceiling for all election candidates (independent candidates and candidates appointed by the political parties) at every electoral constituency levels, as well as establish the obligation of drafting financial reports for each electoral constituency in particular.
- 5) The legislator may wish to examine legal possibilities that would allow Moldovans living abroad to support financially political parties of their choice, without risk of exposing Moldovan political landscape to an improper foreign influence.
- 6) The legislator should amend the Electoral Code, especially article 42 (6) with special provisions that would ease candidates' terms and conditions to collect signatures in order to register in the race. The legislator should consider reinstating the affirmative provisions in the Law on Political Parties, which, through public funding, amounted to 20% of the total quantum, to be yearly allocated, would encourage gender equality.
- 7) The Parliament should consider to introduce temporary special legislative measures to promote gender quotas and also financial incentives for the political parties that will promote women on the parties' lists and decision making positions.