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PUBLIC APPEAL on the dangerous provisions of the draft law no. 263 on amending the electoral legislation and organization of public consultations

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The signatory organizations, members of the Civic Coalition for Free and Fair Elections (CALC),

Urge

The Parliament of the Republic of Moldova:

- *to organize public consultations on the draft law no. 263 on amending electoral legislation in a transparent and participatory manner, involving all stakeholders;*
- *to withdraw from the draft law dangerous provisions on the organization and conducting of a free and fair electoral process, the activity of electoral observers and on the equidistant and correct reflection of the electoral campaign by the media.*

On 9 July 2020, the Parliament adopted in the first reading the draft law no. 263 on amendment of the electoral and related legislation, registered by a group of MPs on 19 June 2020. On 25 June 2020, which is 6 days following registration, the Parliament's Legal Committee on Appointments and Immunities (Legal Committee) approved the report by which the draft law was proposed for adoption in the first reading, mentioning that it was drafted by the Central Election Commission (hereinafter – CEC) with the participation of a number of civil society organizations, including the Civic Coalition for Free and Fair Elections (CALC). Prior to the approval, the Legal Committee did not publicly consult the draft law in accordance with the provisions of the legislation on transparency in decision-making and the Parliament's Rules of Procedure. One day earlier, on 24 June 2020, CALC launched a public appeal calling on the CEC and the Parliament of the Republic of Moldova to ensure a transparent and inclusive process in examining and adopting the draft law on amending electoral legislation and getting ready for the organization of elections during pandemics, which was ignored by the authorities.

In this context, we **state** that the organization of public consultations of legislative draft laws is an

obligation of the parliamentary standing committees and under no circumstances should be conditioned by the organization of consultations by other public institutions. At the same time, we would like to **specify** the fact that the approval by the CEC of the draft law was preceded by 2 meetings with the CALC representatives, at which the opinions of the Coalition members regarding the necessary amendments to the electoral legislation were presented. These meetings cannot be considered public consultations or debates, they being organized at the request of CALC and CALC members only presented their opinions, without discussing them with all the relevant stakeholders.

On 2 June 2020, the CEC expeditiously approved the draft law for amending the electoral legislation and related laws, by Decision no. 3949, without debating some of the proposals submitted by CALC members. The last ones, according to the CEC Chairperson, were to be sent to the Parliament and the Government together with the voted draft law, but also published on the CEC website. Thus, several of the key proposals made by the CALC member organizations were not found in the draft law.

In this case, by only partially taking over the CALC recommendations, it is **impossible to solve the real problems** identified by the members of the Coalition, especially regarding the provisions related to: the introduction of the principles of the electoral system; the rules related to electoral campaigning; concepts of inclusiveness, disability, administrative resources, accessibility; publishing and ensuring transparency in the process of drafting / adopting CEC decisions; opening polling stations abroad; complex mechanism for examining complaints; clarity in the forms of responsibility; provisions of the Contravention and Criminal Code on liability for electoral misconduct; proposals for the limitations provided in art. 13 (nomination of candidates for the position of the President of the Republic of Moldova); provisions of the law on political parties, etc.

At the same time, we **warn** that the draft law no. 263 contains several controversial and even dangerous provisions that could vitiate the election process and refer to several aspects of the electoral process. The most problematic of these refer to the coverage of the election campaign by the media, the activity of observers, the organization of the electoral process and especially ensuring the right to vote of voters in the current epidemiological conditions.

Below are the main findings and recommendations of the CALC on amending electoral legislation and related laws.

Organization of the electoral process

- By an express provision in the Electoral Code, the CEC should be obliged to draw up clear and predictable regulations establishing the manner and conditions for opening of polling stations abroad;
- Retaining the period of exercising the right to vote (art. 58 paragraph (7) of the Electoral Code) and extending the period of activity of the office by a maximum of 3 or 4 hours, based on the real situation in the section.
- It is imperative to reform the way the CEC is set up and operates, by establishing permanent membership status for all CEC members and increasing the institutional will. The reform is to be carried out without delay and implemented in a year, in the summer of 2021, when the mandate of the current composition of the CEC expires.

Ensuring the right to vote of the voter

- It is necessary to review the reduction of voting time by 2 hours (art. 55 of the Electoral Code). In the current pandemic conditions, it is recommended to extend the voting time in order to avoid the crowding of people in the polling stations and to reduce the spread of Covid-19 infection.
- The reduction of the working time of the polling stations during one day must be conditioned exclusively by the extension of the voting period during two days for all voters.

Campaign coverage

- Most proposals by CALC and media NGOs to establish clear and fair rules for media coverage of elections were ignored.
- The proposals to eliminate the ambiguous provisions of articles 69 and 70 of the Electoral Code, which put media service providers in great difficulty in the last elections, were neglected. The obligation to broadcast election debates "in live coverage only in peak hours – between 19:00 and 22:00 on weekdays and between 17:00 and 22:00 on weekends", for objective reasons, cannot be honored by media service providers.
- The draft law proposes to supplement art. 84 of the Code of Audiovisual Media Services with two new para. (101 and 102), which give the Audiovisual Council powers that can be abusively applied by the discretionary sanctioning of media service providers, including by suspending the broadcasting license. The acceptance by the Parliament of the Republic of Moldova of these amendments will have destructive effects on the freedom of the media in the country and, consequently, on the adequate information of the electorate.

Observation of the electoral process

The draft contains provisions that will address and diminish the rights of observers, but also of non-governmental organizations, namely:

- Bureaucratization of the full access to voters and subscription lists, or the procedure for accrediting observers already means a legal effort and commitment;
- Attempt to amend the current provisions that allow the accreditation and activity of observers before the start of the election period, but also after its completion.

At the same time, several amendments to the existing provisions of the draft law are required, namely:

- Inclusion of the provisions regarding the accreditation of observers from the political parties at the stage of collecting subscription signatures, or currently, this right is held only by electoral contestants, who are excluded from monitoring this important stage of the electoral process;
- Establish the exact and clear conditions for the cancellation of the accreditation of an observer, as well as the manner of contesting this decision;
- Clarification of the provision regarding the interdiction to make electoral campaigning for non-commercial organizations, trade unions and charitable organizations (art. 52 paragraph (3) of the Contravention Code). In the proposed version, the provision is ambiguous and can be abusively applied by banning election monitoring, public expression on certain irregularities detected during the election campaign etc.
- Uniformization of the proposed provisions for sanctioning all actors in the non-governmental sphere, or at the moment, for instance, non-commercial organizations can be sanctioned for involvement in any form in the election campaign, and religious cults only for electoral

campaigning.

- Impose data transparency (donor name, surname; year of birth; place of work; occupation; source of funding) from the financial reports of electoral contestants.

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The Civic Coalition for Free and Fair Elections (www.alegeliber.md) is a permanent, voluntary entity, comprised of 35 civil society organizations from Moldova, whose aim is to contribute to the development of democracy in Moldova, through advocacy and implementation of free and fair elections according to the standards of ODIHR (OSCE), the European Council and its specialized affiliated institutions.

The appeal in Romanian is available at: and in English at:.

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