

OPINION

of the Signatory Organisations on the Draft Law No 439 of 24.11.2016

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To: Legal Committee on Appointments and Immunities, e-mail: cji@parlament.md

Subject: the approval of the Draft Law No 439 of 24.11.2016 on amendment of Article 29¹ of the Electoral Code of the Republic of Moldova No 1381-XIII of 21.11.1997, developed by the Moldovan MP, Turcan Vladimir (hereinafter referred to as the "Draft Law No 439")¹

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To Mrs. Raisa Apolschii
President of the Parliamentary Committee
Legal Committee on Appointments and Immunities

By the Draft Law No 439, the MP Vladimir Turcan proposes the amendment of Article 29¹ of the Electoral Code, which regulates the establishment and functioning of polling stations from abroad. According to the current wording of the Article, the number of polling stations from abroad is determined by the number of people registered beforehand and the results of previous elections. In the new wording of the Article, authorities are obliged to open polling stations abroad proportionally to the number of citizens from the reference country, according to data of MFAEI.

Signatory organisations do not support this initiative for several reasons. Official data of MFAEI, received from the diplomatic missions and consular offices, which in their turn obtained them from host states authorities² cannot serve as legal basis to establish the number of polling stations from abroad, due to the following:

- the mechanism of making statistical data is not transparent;
- final data consist of information submitted by the authorities of other countries, whose accuracy cannot be verified by the responsible institutions of the Republic of Moldova;
- countries provide different rules and deadlines for the temporary registration of aliens. Thus, the information provided by the authorities of the countries on the number of Moldovan citizens in those countries will be distorted;
- establishment of data generated by other countries as the only criterion for opening polling stations abroad is a voluntary limitation of the state sovereignty and an acceptance of indirect interference of other countries in the electoral process.
- we can not exclude the possibility that not all the countries will be willing to provide information about the number of Moldovan citizens in its territory;
- it is not a neutral criterion, by contrary, it is a politicised one. Data are collected by MFAEI, respectively by the Government of the Republic of Moldova, which represents the political emanation of the parliamentary majority. The political opposition does not participate in decision making under this mechanism;
- data provided by MFAEI are often irrelevant as regards the establishment of the number of polling stations and voters, due to the fact that it does not reflect the actual number of citizens from that country (for example):

¹<http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/3489/language/ro-RO/Default.aspx>

²<http://socialistii.md/igor-dodon-cere-deschiderea-a-159-sectii-de-votare-in-rusia/>

Country	Number of Moldovan citizens, according to MFAEI	Number of voters, parliamentary election 2014	Number of voters, presidential election 2016, first round	Number of voters, presidential election 2016, second round
Belgium	1,364	1,163	1,419	2,995
Belarus	3,481	107	71	116
Ireland	728	1,467	2,079	3,000

Even though the legislative initiative is not a successful one, Article 29¹ of the Electoral Code is to be amended to exclude situations when citizens from abroad cannot exercise their right to vote. According to the signatory organisations, paragraph(3) of Article 29¹ could be exposed to the following wording:

“(3) In addition to polling stations provided in para.(2), a number of polling stations in other localities will also be open with the consent of the competent authorities of that country. Polling stations from abroad are established by the Central Electoral Commission based on the number of voters who participated in the previous election, on statistical data with the State Register of Population related to Moldovan citizens who left abroad for a permanent residency and based on the beforehand registration of citizens from abroad. During the organization and conduct of elections abroad, the Central Electoral Commission will cooperate with the Government of the Republic of Moldova, Ministry of Foreign Affairs and European Integration, diplomatic missions and consular offices of the respective countries.”

Two novelties are introduced under this wording.

First, we propose a new concept of sharing duties among state institutions involved in the organisation and conduct of elections. Thus, as regards the establishment of the number of polling stations abroad, the Association proposes that the decisional directorate Government/ MFAEI - CEC to be diametrically opposite. Therefore, due to the proportional representation of all the political forces in the Commission, it could ensure an unbiased, transparent and less politicised process of determination of the number of polling stations that are to be open abroad, of distribution on countries and establishment of the number of ballots distributed in these polling stations. In their turn, the Government and MFAEI should have an executive role in this process and ensure the good performance of CEC decisions, obviously taken under strict compliance with criteria provided by the Electoral Code. In addition, both the Government and MFAEI will provide CEC the required information relevant to ensure the election processes abroad.

Secondly, we believe that the following three indicators shall serve as legal basis to identify the number and the geography of distributing the polling stations:

- the number of voters who participated in the previous elections;
- the statistical data with the State Register of Population related to Moldovan citizens who left abroad for a permanent residency;
- preliminary registration of citizens who are abroad;

The novelty related to statistical data with the State Register of Population related to Moldovan citizens who left abroad for a permanent residency³. We believe that it is absolutely necessary to consider the right to vote of citizens that moved to live in another country. We think that, it is mandatory these citizens of the Republic of Moldova to be included in the basic lists of voters of polling stations from abroad.

We believe that the foundations submitted correspond to such fundamental criteria to ensure the integrity of electoral procedures as: the relevance, impartiality and transparency.

³<http://www.registru.md/date-statistice/referitor-la-cetatenii-rm-plecati-pest-hotare-la-loc-permanent-de-trai>

In addition, in terms of Article 29¹ of the Electoral Code of the Republic of Moldova, the signatory organisations come with several proposals.

Following the increase in the number of voters abroad during the last elections, and in the potential of Diaspora vote, and based on the continuous migration, we propose that the extraterritorial polling stations to refer to a separated constituency. It is necessary to establish an Electoral Constituency Council in charge of conducting the voting abroad. In this respect, the provisions of Article 27 of the Electoral Code are to be amended.

The signatory organisations, in the light of the next presidential and parliamentary elections, believe that ensuring the possibility of citizens of the Republic of Moldova from abroad to sign the signature sheets in support of candidates appointed is a must. Creating a separated constituency for the voters abroad would be a first step in this respect. A second one would suppose to exclude the need of local public authorities to authenticate signature sheets in case of national suffrage. For instance, while the Central Electoral Commission was checking the signature sheets, it was found that the most common case of cancelling signatures is about identifying signatures of persons not residing on that territory (8,652 cases). At the same time, we warn that there is no list where the LPA manager mentioned about signature sheets filled with errors. In such circumstances, we conclude that the procedure was conducted improperly, in case of national suffrage namely.

We believe it is a must to increase the number of ballot papers that can be rendered to polling stations from abroad. The limited number of 3,000 ballot papers provided currently by the Electoral Code seems to fail to reflect the maximum processing capabilities of a polling station. For instance, the ballot papers in one of the polling stations open in 2016 in London were over at about 2.00 pm, 7 hours after being open, and 7 hours before opening the polling station. This confirms that, reasonably, a well-organised polling station can process up to 6,000 ballot papers. We propose to replace the figure of "3,000" of the Article 49(3) of the Electoral Code with the figure "6000".

Also, we require the public and electoral authorities to decide and express in advance on the possibilities and opportunities of use of the electronic voting during the next national suffrage, as provided in the CEC's Strategic Plan for 2016 - 2019. We think that such alternative mechanisms allowing to exercise the right to vote will increase the accessibility of the voting procedures for Moldovan citizens abroad on election day or they will be unable to travel to the polling station.

The signatory organizations, as stakeholders, under Article 11(2) and (2¹) of the Law on transparency in decision making, and in accordance with the statutory provisions propose to initiate public consultations and stands ready to participate and present recommendations on the draft law concerned.

Hereby, we require to be informed about the results obtained following the review of applications and recommendations expressed.

Signatory organizations:

1. Promo-LEX Association;
2. Legal Resources Centre from Moldova (LRCM);
3. "ADEPT" Association for Participatory Democracy
4. Division for Analysis, Monitoring and Policies Evaluation (CAER)