

Declaration: Implementation of the mixed electoral system starts late, in violation of the law, and undermining the independence of the Commission for the Establishment of Single-Member Constituencies

Chisinau, 21 August 2017

The Parliament of the Republic of Moldova approved on 20 July 2017 the Law No 154 on Amendments and Addenda to Some Legislative Acts¹, which changed the electoral system by switching from the proportional electoral system to a mixed one.

Article III of the Law No 154 obliges the Government to establish the National Commission for the Establishment of Permanent Single-Member Constituencies within 30 days, term which expired on 20 August 2017. Contrary to the obligation mentioned above, the **Government did not establish the National Commission within the deadline stipulated by the Law**. However, on 18 August 2017, two days before the deadline, the Ministry of Justice launched for public consultations a draft Regulation² on the operation of the National Commission for the Establishment of Permanent Single-Member Constituencies. **The Regulation provides neither the nominal structure of the Commission, nor the duration of its mandate**. Instead, the draft Regulation stipulates how the Commission should be established and organised, the rights and obligations of its members, the duties of the Commission's Chairperson and Secretary³. Concurrently, the draft establishes how to organise and conduct the Commission's meetings, and how to adopt its decisions.

Article 74(3) of the Electoral Code, in the version issued after the adoption of Law No 154 of 20 July 2017, states that the **independent Commission for the Establishment of Single-Member Constituencies shall act under its own regulation, approved by the Government. Accordingly, the Government's initiative to regulate the activity of a commission, which, pursuant to the law, is presumed to be independent and should draw up its own Activity Regulation, which should only technically be approved by the Government, is nothing but a direct interference in the work of this body and an intention to suppress its independence**. Pursuant to Article III of Law No 154 of 20 July 2017, the Government, until 20 August 2017, was supposed only to approve the nominal structure of the independent Commission and set its activity mandate over time, as well as the deadline within which the established Commission will propose to the Government its own Activity Regulation. In addition, Article 3 of the draft Regulation, stating that the Government shall approve the Commission structure at least 14 months before the Parliament's mandate expires, is currently in direct contradiction with Article III of the Law No 154 of 20 July 2017.

We reiterate the position⁴ of Promo-LEX Association, that granting the right to set up permanent single-member constituencies to a political body, namely the Government, which is subordinated to the parliamentary majority, and the failure to include the boundaries of the single-member constituencies in the Electoral Code are major deficiencies of the mixed electoral system approved by Law No 154 of 20 July 2017. Besides, we point out other shortcomings of the draft Regulation to be taken into account by the established Commission when drafting its own Regulation:

¹<http://monitorul.md/index/viewpdf/id/1982/?lang=1>

²http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/august/2017.08.18_Regulament_CNCCU_v3_1.pdf

³http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/august/NF2017.08.18_Regulament_CNCCU_v3.pdf

⁴<https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/>

1. Contrary to the legal provisions laid down in the Electoral Code, the Government introduced a new position for the Commission's members, namely: a representative of the political party that nominated a candidate who participated in the second round of the last presidential election (p.3, letter f);
2. The member revocation procedure is not described explicitly and definitively. The initiation is made by 1/3 of members, and the revocation itself is not regulated (p.12).
3. Point 18 stipulates the position of Chairperson and Secretary of the meeting (in the absence of the Commission Chairperson), but a procedure for their election is not described. On the other hand, p.18 rule comes in direct contradiction with p. 27, which establishes that if the Commission Chairperson is unable to attend the meeting, his/her duties should be fulfilled by the Secretary of the Commission.
4. Admitting the adoption of Commission's decisions by the majority of present members would allow adopting decisions by almost one-fourth of the members of this body (p. 29). Hence, the recommendation is to adopt decisions by the majority of the elected members.
5. Given that the Commission's basic task is to establish permanent single-member constituencies, we deem it appropriate to delimit or even exclude situations and decisions that can be approved by secret ballot (p.30).
6. The limitation of the number of representatives of civil society organisations to only one representative compared to academics, who seem to be represented by 3 people, raises concerns.

However, we welcome and recommend that, when developing its own Regulation, the Commission take into account the suggestion of the Ministry of Justice to include in its composition members with consultative voting rights from other relevant entities: central public authorities, extra-parliamentary political parties, civil society organisations, etc. We also believe that developing a Calendar Plan is a useful tool that can be taken forward, but it is better for it to be mandatory for a good and orderly operation.

Signatories:

Promo-LEX Association
Legal Resources Centre from Moldova (LRCM)