

8 February 2019

PUBLIC APPEAL
REGARDING THE VOTING BASED ON EXPIRED IDENTITY DOCUMENTS DURING
THE PARLIAMENTARY ELECTIONS OF 24 FEBRUARY 2019

The Civic Coalition for Free and Fair Elections calls for the Central Election Commission to adopt and publish, as soon as possible, a decision to allow the citizens of the Republic of Moldova with expired identity documents, wherever they will vote, to vote based on their expired identity documents in the parliamentary elections of 24 February 2019, as long as their identity documents allow their identification.

The Civic Coalition for Free and Fair Elections is concerned about the [decision of 14 January 2019 of the Constitutional Court](#), which missed the opportunity to set equal voting conditions for all citizens of the Republic of Moldova regardless of their residence. That decision, however, does not set legal impediments for the Central Election Commission (CEC) to continue its practice of previous years and issue a decision allowing Moldovan citizens to vote based on their expired identity documents in the parliamentary elections of 24 February 2019, regardless of their residence.

The CEC decision to allow citizens to vote based on their expired documents is very important and necessary for effectively ensuring the voting rights and the consistence with its previous practice in the parliamentary elections of 2010 and 2014 and the presidential election of 2016. The CEC's practice of allowing the voting based on expired documents is legal and was upheld and confirmed by [the Supreme Court of Justice \(SCJ\) decision of 28 November 2014](#). CEC's previous practice created a legitimate expectation among the citizens that, in the parliamentary election of 2019, the CEC would allow voting based on expired identity documents again and, consequently, the citizens did not take actions in advance to renew their documents. Moreover, the government and the CEC did not carry out an extensive campaign to inform citizens about the intention to change this practice.

The CEC decision to allow citizens to vote based on their expired documents will avert unreasonable denial of the right to vote to a considerable number of people, which otherwise could have major impact on the election results. For example, according to the CEC decisions that allowed the voting based on expired documents in the parliamentary elections of 2014 and presidential elections of 2016, in October 2016, there were 409,791 Moldovan citizens with expired passports, and in November 2014, there were approximately 155,232 Moldovans with expired identity cards and 241,746 Moldovans with expired passports. In 2019, even more citizens might have expired passports, just as in 2016 there were more than in 2014.

The voting based on expired documents will facilitate the exercise of the right to vote. This is not going to create a threat of fraud or distortion of the election results, since, during the voting process, the identification of citizens with the voting right is done by checking the State Register of Voters, intended for collecting, storing, updating and analyzing data about Moldovan citizens aged 18 and above, including those from abroad, who are not forbidden from voting by law ([Article 42 of the Electoral Code](#)). The State Register of Voters is the only official source of personal data about the Moldovan citizens with the voting right, and it is updated automatically on a daily basis (points 5 and 18 of the [Regulations on the State Register of Voters](#), approved by CEC Decision No. 2974 of 19 November 2014).



Argumentation note to the public appeal of the Civic Coalition for Free and Fair Elections of 8 February 2019 regarding the voting based on expired identity documents during the parliamentary elections of 24 February 2019

The Civic Coalition for Free and Fair Elections calls for the Central Election Commission to adopt and publish, as soon as possible, a decision to allow the citizens of the Republic of Moldova with expired identity documents, wherever they will vote, to vote based on their expired identity documents in the parliamentary elections of 24 February 2019, as long as their identity documents allow their identification. The public appeal is supported by the following arguments.

By [decision of 14 January 2019, the Constitutional Court](#) declared inadmissible the Ombudsman’s application regarding two aspects: the limitation of the voting by the citizens residing abroad, based only on the passport for entry into/leaving the country or the seaman’s book (express limitation provided for in Article 58 (3) c) of the Electoral Code) and the vague legal framework regarding the possibility of voting based on expired identity documents (there is no express provision regarding the validity of the documents based on which the citizens of the Republic of Moldova may vote).

The first question raised in the application refers to *the voting by the citizens residing abroad, based only on the passport for entry into/leaving the country or the seaman’s book*—a requirement set out in Article 58 (3) c) of the Electoral Code. In his application, the Ombudsman argued that that requirement set an unjustified differential treatment of citizens voting at the polling stations outside the country, because, unlike the citizens voting in the Republic of Moldova, they could not vote based on their identity cards or temporary identity cards. Regrettably, the Constitutional Court examined this matter superficially, giving only one argument in favor of keeping the differential treatment, namely that the validity period of the passport is 10 years and citizens residing abroad have the time necessary to prepare their documents, considering the predictability of elections, held once in every four years. The Court, however, did not explain why the fact that the law establishes different identity documents depending on the place of voting did not constitute differential treatment as long as passports and identity cards had different validity periods. Furthermore, the Constitutional Court did not refute at all the main cited argument that, under the law, the identity card—which identifies the voter just as well as a passport—can be used abroad and the electronic voter registration system makes it almost impossible for someone to vote more than once in one election.

The second question raised by the Ombudsman referred to the *validity of the documents used by citizens to vote*. The application asked the Constitutional Court to rule on the content of Article 58 (3) of the Electoral Code “to the extent it prohibits the voting based on expired identity cards or passports that enable, nonetheless, voter identification in the State Register of Voters.” It is important to stress that the provisions of the Electoral Code do not contain the word “valid” in Article 58 (3), which lists the documents that voters may use to vote. The applicant asked the Constitutional Court to rule on the constitutionality of Article 58 (3), “to the extent it prohibits the voting based on expired identity cards or passports.” Accordingly, the Constitutional Court had to rule whether Article 58 (3) prohibits the voting based on expired documents or not. Regrettably, the Constitutional Court did not examine this question and proceeded directly to the examination of whether the requirement regarding the validity of documents was constitutional, leaving the reader to assume that the validity of documents was a requirement imposed by the Electoral Code. Moreover, the Court referred exclusively to the validity of passports, omitting the validity of identity cards in its analysis. The application, however, referred to the validity of identity documents (meaning both passports and identity

card), not the validity of passports. In its analysis of the alleged requirement that passports be valid, the Court focused exclusively on the proportionality of this requirement from the state's perspective to maintain the links with the citizens residing abroad, prevent voting frauds abroad and on the predictability of elections timing, consequently the "ease" with which the citizens residing abroad can arrange for extending or changing their passports in advance.

Regrettably, the Constitutional Court ignored the established practice of the Central Election Commission, which allowed the voting based on expired documents at least in the early parliamentary elections of 2010 ([CEC Decision No. 3817 of 12 November 2010](#)), the parliamentary election of 2014 ([CEC Decision No. 2954 of 18 November 2014](#)), and the presidential election of 2016 ([CEC Decision No. 390 of 14 October 2016](#), regarding exclusively the citizens residing abroad).

Furthermore, the Constitutional Court did not take into account the [Supreme Court of Justice \(SCJ\) decision of 28 November 2014](#), which upheld the CEC decision on the voting based on expired documents in the parliamentary elections of 2014. In that decision, after examining the legal framework, the SCJ found that *"the condition of holding valid identity documents was not listed among the exceptions for denying the right to vote."* Referring to the list of documents set out in Article 58 (3) of the Electoral Code, the SCJ concluded that *"its provisions expressly listed the identity documents that citizens may use to exercise their voting right, without establishing, however, regulations or prohibitions regarding the validity of such identity documents."* The SCJ concluded further that *"the identity card and the passport of the citizen of the Republic of Moldova were the identity documents from the national system of passports, issued for use in the territory of the country and outside its borders. Their expiry did not mean that the holder of the identity document could not be identified as an individual/citizen, but only that he/she would not be able to use them in some relations expressly prohibited by the law in force. For those reasons, the Court held that the provisions of Article 53 (3) of the Electoral Code did not expressly regulate the mandatory presentation of non-expired identity documents for voting, but only listed them and established certain elements those documents must contain, namely the indication of the voter's domicile or residence in the territory of the polling station, the individual's state identification number (IDNP), the citizenship of the Republic of Moldova etc."*

As for the possibility of election fraud in case of the voting with expired documents, in 2014, the SCJ held that *"the regulations allowing the voting based on expired identity documents had been applied during previous elections, too, and the Commission (CEC) had not received reports about multiple voting or electoral fraud as a result of voting with expired identity documents."* Neither national nor international observers noted violations related to multiple voting or other violations related to the voting based on expired documents in the parliamentary elections of 2014 and the presidential elections of 2016. Hence, it is not clear what facts determined the Constitutional Court to conclude in January 2019 that the voting based exclusively on valid identity documents was a necessary condition to prevent electoral fraud.

In conclusion:

- In its decision of 14 January 2019, the Constitutional Court did not examine whether Article 58 (3) required the validity of identity documents used by citizens in order to vote;
- The decision of 28 November 2014 of the Supreme Court of Justice expressly held that the Electoral Code did not require the validity of the documents used by citizens to vote and the exceptions for denying the right to vote did not include the requirement to hold valid identity documents;



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- According to the *res judicata* principle, the final and irrevocable decision of the Supreme Court of Justice is applicable until the SCJ sets a new legal precedent;
- The CEC's previous practice of allowing citizens to vote based on expired documents, during the parliamentary elections of 2010 and 2014 and the presidential elections of 2016, created the citizens' legitimate expectation that, in the parliamentary elections of 2019, the CEC would allow the voting based on expired identity documents again. Consequently, many citizens did not take advance actions to renew their identity documents. Moreover, the government and the CEC did not carry out an extensive campaign to inform citizens about the intention to change this practice;
- The number of citizens of the Republic of Moldova with expired documents is considerable, and denying them the right to vote can impact the election results significantly. For instance, according to the official data mentioned in the CEC decisions issued in 2014 and 2016, in October 2016 there were 409,791 Moldovan citizens with expired passports, and, in November 2014, there were approximately 155,232 Moldovans with expired identity cards and 241,746 Moldovans with expired passports. These figures show that from 2014 until 2016 the number of citizens with expired passports increased, which indicates that in 2019 this number might be even bigger;
- During the voting process, the identification of citizens with the right to vote is done by checking the State Register of Voters, which is single integrated information system for registering voters in the Republic of Moldova, based on the State Population Register. The State Register of Voters is intended for collecting, storing, updating and analyzing data about the citizens of the Republic of Moldova aged 18 and above, including those from abroad, who are not forbidden from voting by law ([Article 42 of the Electoral Code](#)). The State Register of Voters is the only official source of personal data about the Moldovan citizens with the right to vote and it is updated automatically on a daily basis by importing data from the State Population Register (points 5 and 18 of the [Regulations of the State Register of Voters](#), approved by CEC Decision No. 2974 of 19 November 2014). As a result, it is not possible to distort or rig the voting process by presenting voters' expired identity documents.

Considering the above, the CEC has all legal grounds to adopt and publish, as soon as possible, a decision allowing Moldovan citizens with expired identity documents, wherever they will vote, to vote based on their expired identity documents in the parliamentary elections of 24 February 2019, as long as their identity documents allow their identification.