



15 July 2020

### **The issues and risks posed by the draft law no. 263 amending the electoral and election-related legislation**

**The [draft law](#) no. 263 on amending the electoral and election-related legislation in its current version may undermine the conduct of free and fair elections. The draft law lacks a broad political consensus among the parliamentary parties and the relevant stakeholders that is crucial for ensuring the credibility and fairness of the forthcoming 2020 presidential elections. It was developed and adopted in the first reading in a hasty manner, in violation of the legislation on decision-making transparency, while the public consultations were merely formal. The numerous flawed provisions contained in the draft law may seriously affect the activity of observers and the voting rights.**

On June 19 2020, a group of four MPs from the Party of Socialists of the Republic of Moldova (PRSM) registered a [draft law](#) on amending the electoral and election-related legislation. The draft law was passed extremely quickly through the legislative procedures in the Parliament, in breach with the timeframes provided by the Parliament's Rules of Procedure. 6 days following the registration, on 25 June 2020, the Parliament's Legal Committee on Appointments and Immunities (hereinafter – 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 approval, the Legal Commission 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.

On July 9, the Parliament adopted the draft law in the first reading. No public consultations were held before the first reading, contrary to the existing legislation on the transparency in the decision-making and the Parliament's Rules of Procedure. The consultations organized by the Legal Committee on July 14, 2020 after the first reading, were merely formal. The next day, on July 15, 2020 the Legal Committee put the draft law on the agenda of its meeting, contrary to the art. 65 para. (2) of the Parliament's Rules of Procedure that states that amendments could be submitted to the committee during 10 days after the first reading. During the meeting of the Legal Committee, two MPs from opposition asked to postpone the examination of the draft law no. 263 for the next week on this reason, but their proposal was not approved by the majority of the Legal Committees members.

When discussed within the Legal Committee, the draft law has not been approved by the Government, which according to the art. 58, para. 2 of the Parliament's Rules of Procedure and the art. 131 of the

Constitution is mandatory for draft laws and legislative proposal that increase budget revenues and expenditures. The proposed draft contains provisions increasing the remuneration of the members of Central Electoral Commission and the Center for Continuous Electoral Training during the electoral period that will generate additional budgetary spending. At that moment, the draft law received only two opinions – those of the National Anticorruption Center (NAC) and the Legal Commission of the Parliament’s Secretariat. The Government included a [draft opinion](#) on the draft law no 263 in the agenda of its meeting of July 15, 2020 (the same day the Legal Committee approved the examination of the draft law for the second reading).

Today, 15 July 2020, the parliamentary Legal Committee approved the draft law for the second reading. This is probably done in order to adopt it in the second reading during the meeting of the Parliament that will take place this week, on Thursday or Friday (the draft agenda has not yet been published). In this case, the draft law will be adopted in less than a month from registration.

In its [opinion](#), the NAC has highlighted the issues on transparency in decision-making and has concluded that the draft law contains factors and risks of corruption caused by the gaps in the proposed amendments, which should be resolved before the approval in the second reading. The Legal Commission of the Parliament’s Secretariat [has also stressed](#) several inconsistencies, but also the presence of provisions with an ambiguous and potentially corruptible character.

The civic Coalition for Free and Fair Elections has also submitted [their proposals](#) both to the Central Electoral Commission, that developed the draft law, and to the parliamentary Legal Committee, but only few of them have been considered. The most important ones aimed to solve the issues related to the electoral complaints resolution process, the media coverage of the campaign, the activity of electoral observers, involvement of the church and charity foundations in the electoral agitation have been ignored. At the same time, the proposed amendments have only partially resolved the Addresses of the Constitutional Court, issued when it validated the 2016 presidential elections.

The organizations members of the civic Coalition for Free and Fair Elections are concerned that the approval of the draft law no. 263 in its current version may undermine the conduct of free and fair elections for the following reasons:

1. Lack of a broad political consensus on the proposed amendments among the parliamentary parties and the stakeholders. A broad consensus is mandatory for ensuring the credibility and fairness of the forthcoming 2020 presidential elections.
2. The draft law was developed and adopted in the first reading in a hasty manner, in violation of the legislation on decision-making transparency, while the public consultations were merely formal.
3. The numerous flawed provisions contained in the draft law may seriously affect the activity of observers and the voting rights.

The key problematic provisions are presented below:

### **Prohibition of electoral agitation**

The draft law introduced the art. 52 of the Contravention Code to prohibition the electoral agitation during the Election Day and the previous day. Concerning the religious entities, the draft law expressly prohibits the electoral agitation done by the church and in the churches. At the same time, the draft law prohibits “the involvement in any form of non-commercial organizations, trade union, charitable organizations in the electoral campaign”. This provision can be interpreted much more broadly than electoral agitation and can lead to the prohibition of legitimate activities of non-commercial organizations during the election campaign, such as monitoring of elections, public statements on irregularities detected during the election campaign, etc. The latter are forms of involvement that are necessary and permitted by national law and international standards on freedom of expression and

association. The proposed wording is stricter for the non-commercial organizations than to churches, without any reasoning. In the 5<sup>th</sup> Address mentioned by the Constitutional Court in its Decision of 13 December 2016, the Court asked the Parliament to establish prompt and immediate sanctioning mechanisms, including sanctions under the Criminal Code, for any attempt of involvement of religious cults in electoral campaigns. **We recommend revising the wording and standardizing the prohibitive provisions for the both non-commercial organizations and religious entities.**

#### **The activity of electoral observers**

The draft law contains provisions that would reduce the rights observers, but also of non-governmental organizations. Namely, the amendment to the art. 68 para. (6) of the Electoral Code limits the current provisions that allow the accreditation and activity of observers before the start of the election period, but also after its completion. The amendment to the art. 75 para. (9) of the Electoral Code introduces very ambiguous conditions for cancelling the accreditation of electoral observers, that leave room for interpretation. The amendment does not contain any provision on the procedure for contesting this decision. The draft law does not bring any improvements related to the transparency of donations for electoral contestants and the access of observers to this data. The proposal of CALC to align the Electoral Code to the art. 29 of the Law on political parties that prescribes the publication in the financial reports of political parties the donor's name and surname; year of birth; place of work; occupation; source of funding was rejected.

**We recommend revising the proposed amendments to ensure the proper activity of the electoral observers before and throughout the electoral period.**

#### **The media coverage of election campaign**

The draft law keeps the ambiguous provisions of articles 69 and 70 of the Electoral Code, which put media service providers in great difficulty during the last elections. According to these provisions, all broadcasters are obliged to air election debates "in live coverage and only during prime-time hours - between 19:00 and 22:00 on weekdays and between 17:00 and 22:00 on weekdays", which cannot be honored by media service providers for objective reasons and due to the impossibility of electoral contestants to participate simultaneously in political debates at different media providers. Besides, the draft law introduces two new para 10/1 and 10/2 to the art. 84 of the Code of Audiovisual Media Services which extend the sanctioning powers of the Audiovisual Council, that can be abusively applied in a discretionary manner by sanctioning the media service providers, including through suspension of the broadcasting license. In addition, the draft law does not contain any provisions which would expressly refrain media from conducting electoral agitation. The CALC proposed to fill this gap.

**We recommend the revision of the proposed amendments on media coverage. Their approval will have destructive effects on the freedom of the media in the country and, consequently, on informing voter in an unbiased and fair manner.**

#### **Organized transportation of voters**

In 2019, a massive turnout was observed among the Transnistrian residents, but different from the diaspora, the Transnistrian voters had been transported in an organized manner, allegedly by one of the electoral contestants. The proposed draft law does not contain any provision on sanctioning the organized transportation of voters. In this situation, there is a high risk that in the 2020 presidential elections the Transnistrian voters could be used to influence the election outcome in a fraudulent way.

#### **Voting time**

The draft law provides in art. 55 of the Electoral Code for the reduction of voting time by 2 hours: from 07.00 and 21.00 to 08.00 and 20.00. This kind of amendment during times of pandemic, when the main purpose should be avoiding gatherings, does not seem reasonable. The informative note to the draft does not mention the need to reduce voting time. On the contrary, in the current conditions in which all states are facing the covid-19 pandemic, 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 the covid-19 infection. **During**

**the meeting of July 15, 2020, the Legal Committee excluded this amendment. Even in these circumstances, the Parliament can vote in favor for this amendment.**

Considering the current pandemic situation and the restrictions to avoid the crowding of the people in the polling stations, this amendment might not be sufficient for guaranteeing the voting rights, especially of voters residing abroad. In 2016, the massive turnout among Moldovans abroad raise the issue of the limited ballots and insufficient number of polling stations abroad. The 2016 issues with the diaspora vote have been partially addressed by increasing both the number of ballot papers per polling station and the number of polling stations abroad. The COVID-19 pandemic could also pose a serious risk for limiting the vote of diaspora. The CEC has already received signs from the foreign authorities about possible restriction for opening polling stations depending on the epidemiological situation. Considering the highly probable risks that foreign states will not allow the opening of polling stations outside the diplomatic missions due to the pandemic situation, we are concerned that maintenance of the current voting time will not be sufficient for the voters abroad to cast their votes. Thus, **we recommend increasing the voting time to 2 days in all polling stations, both in the country and abroad.**

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**The Civic Coalition for Free and Fair Elections** (CALC, [www.alegeliber.md](http://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.