

OPINION

of the Promo-LEX Association

on holding the republican referendum on the same day with the parliamentary or presidential elections

Background

1. The Electoral Code entered into force on 1 January 2023 established in art. 184 para. (2) that the republican referendum cannot be held on the day of the parliamentary, presidential and general local elections, neither 60 days before nor 60 days after the day of holding elections.
2. On 24 December 2023, the President of the Republic of Moldova Maia Sandu wrote in a post on a social network "Our future is in the European family and it is necessary to say clearly - the whole country - what path we choose for Moldova. I ask the Parliament to initiate the organization of a referendum next autumn, in which the voice of the citizens will be decisive"¹. It was also concluded: "We still have important steps to take and I am committed to continuing, if you will give me the confidence for a new mandate in 2024". We remind you that the presidential elections could also be held in the 2024 autumn.
3. A day later, on 26 December 2023, the deputies of the Party of Action and Solidarity (PAS) registered an amendment to art. 184 para. (2) of the Electoral Code to make holding the republican referendum and the presidential and parliamentary elections on the same day possible. On 28 December 2023, the amendment was adopted, following that after the promulgation of the law, art. 184 para. (2) of the Electoral Code had the following content: "The republican referendum cannot be held 60 days before and 60 days after the day of holding the parliamentary, presidential and general local elections, unless it is held on the same day as parliamentary or presidential elections. Two republican referendums cannot be held on the same day. The republican referendum of any type cannot be held on the same day as general local elections." The letter of re-examination of Law no. 453 received from the Presidency on 15 January 2024 does not refer to the amendment of art. 184 para. (2).
4. We draw attention to the fact that the respective draft law was approved by ignoring the legislation on decision-making transparency during the consultation, debate and voting. Furthermore, it is not clear what are the reasons for amending the legislation from arguments presented by the author of the amendment on the organization of the referendum simultaneously with other elections. However, almost a year ago, on 8 December 2022, the author was among the deputies who voted in the final reading the new Electoral Code, which established that merger was not possible. Meanwhile, during the year, there were no practices of applying the rule that would recommend amendment thereof. Finally, the frequent unargued amendments to the Electoral Code are contrary to the principle of the stability of the electoral legislation and affect the degree of confidence of citizens in the electoral process.
5. Having said that, we note that the provisions of the Electoral Code regarding the simultaneous holding of the republican referendum and the presidential/parliamentary elections were amended by the

¹ [Post](#) in Maia Sandu's Facebook account.

Parliament at the initiative of the President of the Republic of Moldova, with direct reference to the presidential elections in the 2024 autumn.

Evolution of the legal framework

6. Having analyzed the electoral legislation retrospectively, we find that it has been amended several times as to regulating the possibility of merging the parliamentary, presidential and local elections with the republican referendums. The Electoral Code no. 1381 of 21.11.1997 established at the time of entry into force by art. 146 that "The republican referendum cannot be held also 120 days before and 120 days after the day of the parliamentary, presidential and general local elections or another republican referendum." Nothing was specified about the election day itself, and, on 23 May 1999, simultaneously with the general local elections, a republican consultative referendum was organized at the initiative of the country's President, confirmed by the Constitutional Court².
7. Later, by Law no. 480 of 02.07.1999, the parliamentary majority, which was in open conflict with the President of the Republic of Moldova at that time, had approved expressly the interdiction to merge elections: "the republican referendum cannot be held also 120 days before and 120 days after the day of the parliamentary, presidential and general local elections, *as well as on the day of holding them or another republican referendum.*"
8. In 2010, the Parliament had again amended the rule, having excluded the express interdiction to "hold on the same day", but also reduced the deadlines for organizing a referendum and early parliamentary elections in the second half of 2010, but not simultaneously³. Thus, "the republican referendum cannot be held also 60 days before and 60 days after the day of holding the parliamentary and general local elections, as well as on the day of another republican referendum."
9. In 2014, the Constitutional Court mentioned in the Opinion⁴ thereon that "merging different electoral exercises is not, in principle, prohibited". At the same time, "if the holding a referendum is prohibited 60 days before and 60 days after holding the elections, in order to avoid confusion, *a fortiori* the referendum cannot be held on that day." Finally, the Court found that "it is the Parliament's competence and obligation to eliminate the ambiguities in the Electoral Code regarding the possibility of merging the elections and the referendum".
10. The logic of the constitutional jurisprudence was preserved even later, as it was set forth in Decision no. 19/2020 regarding whether the Constitution allows holding two elections simultaneously in the same period. In this regard, the Court observes in para. 53 that "the only interdiction of holding two elections simultaneous concerns the situation of holding the (ordinary or early) parliamentary and presidential elections in the same period⁵".
11. At the end of 2018, in the context of promoting the initiative of the Democratic Party to organize a consultative referendum simultaneously with the parliamentary elections, Law no. 238 of 08.11.2018 amended art. 156 para. (2), which stated that, "The republican referendum cannot be held also 60 days before and 60 days after the day of holding the parliamentary, presidential and general local elections, *unless they are held on the same day.* Two republican referendums cannot be held on the same day."
12. The Promo-LEX Association, in 2018, recommended to the Parliament "not to legislate holding the republican referendum on the same day as parliamentary elections of 24 February 2019"⁶. The concerns and conclusions of the Promo-LEX Association were also reflected in the reports of

² [Decision of the Constitutional Court](#) of 23 May 1999 no. 32 of 15.06.99 on the confirmation of the results of the consultative republican referendum.

³ [Law no. 119](#) of 18-06-2010 on the amendment and completion of the Electoral Code no. 1381-XIII of 21 November 1997.

⁴ [Opinion no. 1/2014](#) (Referral no. 48c/2014) on the initiative to review articles 78, 85, 89, 91 and 135 of the Constitution of the Republic of Moldova through a republican referendum, para. 101, 102 and 107.

⁵ [Decision of the Constitutional Court](#) no. 19/2020 on the interpretation of articles 2 para. (1), 38, 61 paragraphs (1) and (3), 78, 85 paragraphs (1), (2) and (4), 90 paragraphs (1), (2) and (4) of the Constitution

⁶ [Promo-LEX Analysis](#) on the possibility and opportunity of holding a republican referendum on the day of the parliamentary elections of 24 February 2018.

international observation missions for the 24 February 2019 Parliamentary Elections⁷. However, the consultative referendum took place and the Constitutional Court confirmed the results of the republican referendum of 24 February 2019⁸.

13. At the same time, we note that many of the problems identified for the 24 merged elections of 2019 are already no longer relevant in 2024, as they have been resolved in the context of the adoption of a new Electoral Code. For example, the election campaign starts at the same time for all types of elections and does not allow the participants in the referendum to start earlier, as provided by the old legislation. In addition, many challenges were also determined in 2019 by implementing the new mixed system for the election of deputies, which was more complicated than the proportional representation used traditionally in the Republic of Moldova.
14. Having said that, we find that the legal provisions regarding the regulation of holding the republican referendum on the same day as parliamentary or presidential elections were diverse, as were determined largely by the socio-political situation. At the same time, according to the interpretations of the Constitutional Court, it is the Parliament's right and obligation to decide on these procedures.

Position of the Promo-LEX on the possibility and opportunity of holding the republican referendum on the same day as parliamentary or presidential elections

15. The organization and simultaneous conduct of referendums and elections for various elective positions (parliamentary, European parliamentary, presidential, etc.) is not a very widespread practice, but is used in some democratic societies⁹.
16. At the same time, the Parliamentary Assembly of the Council of Europe states in para. 4.2. of its Resolution no.2251 (2019) that, "in order to allow voters to make well-informed decisions while casting their votes, it should not be possible to hold referendums at the same time as other elections"¹⁰.
17. (Revised) Code of good practice on referendums¹¹ sets in point III.9.c. that "It is suitable not to hold elections and referendums on the same day if the referendum is about the institution facing election". The description states that "While the simultaneous holding of elections and referendums can be expedient from a practical point of view, confusion should be avoided between the issues at stake in an election and in a referendum. In some cases, differences in suffrage rights in elections and referendums may add to confusion. For those reasons, the guidelines recommend not to hold elections and referendums on the same day if the referendum is about the institution facing election."
18. Even if the European vector of the Moldovan society is not directly related to the presidential institution, the fact that the initiative to organize a referendum on an issue of national interest comes from a future candidate in the elections, which will probably be held on the same day as referendum, can advantage the respective candidate as compared to others, in particular, to those who will also support the idea of European integration. These observations allow us to argue that the recommendations of the Code of good practice could also refer to the case analyzed herein.
19. The Venice Commission in its Opinion on the draft Electoral Code (in force) assessed in para. 137 as a "positive change which contributes to voters' informed choices" the provision that "neither national nor local referendum can be held on the same day as parliamentary, presidential or local elections"¹².

⁷ [Final Report of ENEMO](#) International Observation Mission for the 24 February 2019 Parliamentary Elections. Republic of Moldova. p. 7. [BIDDO Election Observation Mission](#) Final Report. 24 February 2019 Parliamentary Elections. p.1.

⁸ [The Court confirmed](#) the results of the republican consultative referendum of 24 February 2019. Press release.

⁹ For example, in Romania, a consultative referendum was organized simultaneously with the European Parliament elections on 26 May 2019.

¹⁰ [Resolution 2251 \(2019\)](#). Parliamentary Assembly. Updating guidelines to ensure fair referendums in Council of Europe member States

¹¹ [REVISED CODE OF GOOD PRACTICE ON REFERENDUMS](#), Approved by the Council for Democratic Elections at its 73rd meeting (Venice, 16 June 2022) and adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)

¹² [Joint Opinion](#) on the draft Electoral Code approved by the Council of Democratic Elections at its 74th meeting (Venice, 20 October 2022) and Adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022).

20. The Promo-LEX Association, in the process of public consultation of the new Electoral Code, with reference to the possibility and opportunity of holding the republican referendum on the same day as elections of any kind, reiterated its position expressed in 2018 on the need to prohibit merging elections. In the study "Improving the legal framework on referendums", the Promo-LEX emphasized that "holding the referendum simultaneously with elections can affect the free expression of will of the people both during the referendum and the elections. Parliamentary, presidential and local agendas and political issues could negatively impact voters' ability to make informed decisions while voting. As some procedures for organizing referendums and elections differ, this could put an extra-pressure on the electoral administration.¹³"
21. Referring to the problems that can affect the quality of the organization and conduct of the elections, in the case of merging the elections, including, from the experience of 2019, we can highlight:
- multiplying the effort of the electoral bodies for counting, totalizing and reporting the results. In particular, we draw attention to the efforts to be made by the electoral commissions of polling stations abroad, where 5 thousand ballot papers are to be delivered for each type of election, for the most part;
 - creating unfair campaign conditions for competitors who will register only for the presidential elections and those who will register both for the presidential elections and as participants in the referendum, including, when it comes to double airtime, for example;
 - possibility of having two "Electoral Fund" accounts for the same party/electoral bloc, both as a competitor and as a participant in the referendum, will involve doubling the efforts and resources needed by the electoral bodies to ensure the effective supervision of the financing of electoral campaigns. In the conditions where merging the elections could involve saving some public financial resources, the need for additional financing of the efforts of the electoral bodies could diminish the value of this advantage;
 - risk of influencing the voter's right to freely and voluntarily participate in the elections, either parliamentary or referendum vote. Article 2 of the Electoral Code states that: "Participation in elections is free and voluntary. No one has the right to exert pressure on the voter with the aim of forcing him/her to participate or not to participate in the elections, as well as on his/her expression of free will." From the Promo-LEX's observations, in the 2019 parliamentary elections, there were situations where some voters damaged a large number of ballot papers or were forced to vote in the referendum, whereas ballot papers were offered to them both for the election of deputies and for referendum and they were not asked if they want to vote for both elections¹⁴. Even if we assume that the rate of participation in both elections would increase under the conditions of simultaneous organization thereof, we consider that the experience of 2019 revealed above could be repeated, thus affecting the voters' right to participate freely.
22. In conclusion, even if the Constitution of the Republic of Moldova does not prohibit holding the republican referendum on the same day as parliamentary or presidential elections, and international practice knows examples of this kind, the Promo-LEX Association still considers that such a merger of elections is not welcome whereas it can affect the equality of chances of the competitors and the freedom of forming the opinion of voters. In addition, the fact that the initiative to organize the referendum comes from a future candidate in the presidential elections can give him/her an advantage over other candidates.

The European vector of the Republic of Moldova – issue of public or political interest?

23. According to constitutional jurisprudence, "it is necessary to distinguish between the questions that pursue a public interest and the questions of political interest. The questions of public interest are those that have behind them a transparent public action as a whole, characterized by a strong and

¹³ [Improving](#) the legal framework on referendums. Policy document. R. Secieru, Promo-LEX Association. 2022. p. 15.

¹⁴ Report no. 6. The Promo-LEX Observation Mission for the 24 February 2019 Parliamentary Elections. Election day. p. 17, 18, 28.

unequivocal message, belonging to the whole political class and directed towards the realization of the common good. Questions of political interest are used as a political weapon and seek to gain advantages in a political struggle"¹⁵. Subsequently, "questions addressed to the people that fail to coordinate the political action that political leaders want to implement with the political, economic and social context in the state automatically become of political interest and should, therefore, be avoided in order not to aggravate the crisis."

24. The importance of the European path for the future of the Republic of Moldova as a democratic state and society has been demonstrated over the years by several governments of different political colors. Enlargement of the European Union has provided the Republic of Moldova with the opportunity to develop a relationship of continuous closeness, involving both economic integration and deepening of political cooperation. Strategic commitments were established through such important steps as signing the EU-Moldova Action Plan in 2005¹⁶ and the Association Agreement in 2014¹⁷, as well as obtaining the status of a candidate state for EU accession in 2022 and opening accession negotiations in 2023.¹⁸
25. Furthermore, at least 28 (45%) political parties out of the 63 registered ones, according to the Public Services Agency page¹⁹, have included the desired "European integration" in their charters.
26. Another aspect we believe it is necessary to draw attention to, is that, according to the practices of the states that have joined the European Union (EU), the absolute majority have organized referendums on that issue of public interest at the stages immediately preceding the final decision to accede, about a year before accession. And none of them were held concurrently with other elections²⁰.
27. Respectively, the Promo-LEX Association considers that the subject of the European integration of the Republic of Moldova is one of public and strategic interest for the future of the Republic of Moldova, which should not be "monopolized" for purely electoral purposes.

Consultative referendum or constitutional referendum?

28. Another relevant question would be the type of referendum that is intended to be organized. At the moment, from the information available in the public space, we have not identified an answer to that question. According to the legislation, the republican referendum can be of three types: consultative, legislative and constitutional²¹. We remind that in 2019, a consultative referendum was organized simultaneously with the parliamentary elections. However, we consider that the issue of the referendum expected for the 2024 autumn is much more important in terms of national interest of the Republic of Moldova, than the issues subject to the consultative vote in 2019²².
29. According to the legislation, but also the constitutional jurisprudence, the wording of the issue subject to the referendum is influenced by the type of referendum, which, in turn, produces different legal effects. Only constitutional and legislative referendums produce binding legal effects, not consultative ones. At the same time, even if the decisions adopted as a result of the consultative referendums do not have supreme legal power, their results can serve as a basis for subsequent political decisions of the authorities motivated by those results. Following the organization of that type of referendum, the

¹⁵ [Decision of the Constitutional Court](#) no. 24 of 27 July 2017 on the control of the constitutionality of the Decree of the President of the Republic of Moldova no. 105-VIII of 28 March 2017 on the conduct of the republican consultative referendum on issues of national interest (republican consultative referendum), para. 87, 88.

¹⁶ EU-MOLDOVA [Action Plan](#) no. 402 of 22-02-2005.

¹⁷ [Law no. 112](#) of 02-07-2014 on the ratification of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their member states, on the other hand.

¹⁸ EU [enlargement policy](#). Republic of Moldova.

¹⁹ [List](#) of political parties in the Republic of Moldova.

²⁰ For more information, see: [When and why](#) candidate countries held referendums on EU accession. Radio Europa Libera.

²¹ [The Electoral Code](#) of the Republic of Moldova, art. 181-182.

²² [Promo-LEX Analysis](#) on the possibility and opportunity of holding a republican referendum on the day of the parliamentary elections of 24 February 2018.

authorities can become aware of the people's opinion on a matter of national interest in which they were consulted, but without having an obligation.

30. According to the Venice Commission, it is a fundamental question whether advisory referendums are appropriate at all. Due to their purely advisory nature, they may backfire and create more discontent if they are not honoured by the law-making authorities. This may waste the energy of the citizens, and – most importantly – serve as a pretext for the lawmaker to shove off responsibility, and in any case blur the political responsibilities²³.
31. Considering the above, if the political actors will still insist on the simultaneous organization of two elections, initiating a constitutional referendum would probably be more relevant. This would imply supplementing the Constitution with rules on guaranteeing the European path of the Republic of Moldova, thus being more justified in terms of legal effects and organizational costs. In this sense, we have as an example the case of the referendum organized in Romania in 2003²⁴. We remind that both Ukraine and Georgia have included the desired "European integration" in their Constitutions²⁵. Even if the revision of the Constitution in the case of Ukraine and Georgia did not happen by popular vote, the example of the revision of the Constitution is one to follow.
32. By virtue of the above, we state that there is still no clarity in the public space on the type of republican referendum to be held in the 2024 autumn simultaneously with the presidential elections, but we consider that it should produce legal effects.

Conclusions and recommendations:

33. **The Promo-LEX Association considers that art. 184 para. (2) of the Electoral Code** which stipulated that the republican referendum cannot be held on the day of the parliamentary, presidential and general local elections **should not be amended**. The provisions in question were in accordance with the recommendations of European reference institutions in the field of democracy and international and national election observation missions.
34. In the context of the request for re-examination of the draft law received from the Presidency on 15 January 2024 and by virtue of the arguments presented above, **we advise the Parliament to review its initiative** on the possibility of holding the republican referendum and the parliamentary or presidential elections simultaneously.
35. The **subject of European integration** is one of strategic public interest for the Republic of Moldova, which should not be **"adopted" or "monopolized" for electoral purposes** by a certain political force. The fact that the initiative to organize the referendum on the same day as presidential elections comes from a future candidate in the elections can give him/her an advantage over other candidates.
36. If the Parliament or another public authority will still decide to initiate a referendum for the 2024 autumn, simultaneously with the presidential elections, we believe that **it should be a constitutional one**.

²³ Venice Commission, [Opinion on](#) the citizens' bill on the regulation of public participation, citizens' bills, referendums and popular initiatives and amendments to the provincial electoral law of the autonomous province of Trento (Italy), CDL-AD(2015)009, para. 58.

²⁴ [Constitution](#) of Romania (republished in 2003).

²⁵ [Constitution](#) of Ukraine; [Constitution](#) of Georgia.