

Igor Dodon, President, Republic of Moldova

Pavel Filip, Prime Minister, Republic of Moldova

Andrian Candu, Speaker of the Parliament, Republic of Moldova

Tudor Ulianoschi, Minister of Foreign Affairs and European Integration, Republic of Moldova

Alina Russu, Chairperson of the Central Electoral Commission, Republic of Moldova

Gianni Buquicchio, President, Council of Europe Venice Commission

Donald Tusk, President, European Council

Jean-Claude Juncker, President, European Commission

Federica Mogherini, Vice-President of the European Commission, High Representative of the EU for Foreign Affairs and Security Policy

Johannes Hahn, European Commissioner for Neighbourhood Policy and Enlargement Negotiations

Antonio Tajani, President, European Parliament

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**Statement by the EaP CSF Moldovan National Platform
on the increasing tendencies of unjustified limitation of the right of Moldovan citizens to
initiate and conduct legislative referenda**

The current national legislation of the Republic of Moldova provides for the right of the citizens to initiate national and constitutional referenda. Article 155 of the Election Code stipulates that the national referendum may be, inter alia¹, initiated by at least 200 000 citizens who are eligible to vote. In case of a constitutional referendum, provisions of Article 141 clause a) paragraph (1) of the Constitution shall be applied. According to this article, the citizens initiating the review of the Constitution have to come from at least half of the second level administrative units and at least 20000 signatures must be registered in each of them in support of this initiative. Thus, since there are at least 36 administrative units of the second level², in order to initiate amending the Constitution, at least 20 thousand signatures – 18 administrative units of the second level are required, which represents at least 360 000 signatures, well above the threshold of 200.000 signatures.

We can infer that by introducing a minimum number of signatures necessary to be collected to initiate an ordinary legislative initiative or to amend the Constitution, the legislator

¹Besides citizens eligible to vote, the national referendum may be initiated by at least one third of MPs, President of the Republic of Moldova and Government. According to Article 155(2) of the Election Code the mentioned subjects could initiate any type of referendum.

²According to the Law No 764 as of 27 December 2001 on the Territorial-Administrative Organisation of the Republic of Moldova, the 36 second level -administrative units include 32 districts, Chisinau and Balti municipalities, as well as by two territorial-administrative units with special status (TAU Gagauzia and Transnistrian region).

sought to guarantee the right of citizens to initiate different types of national referenda and to ensure the direct exercise of sovereignty.

On July 27, 2017, the Constitutional Court of the Republic of Moldova declared unconstitutional³ the provisions of the current Article 155 paragraph 2 of the Election Code (after republishing, the numbering of the articles was modified), which provided the President of the Republic of Moldova, the Government and 200.000 citizens with the right to initiate any type of referendum.

On January 12, 2018, the Central Electoral Commission (CEC) rejected⁴ the request for registration of an initiative group for initiating a national legislative referendum to repeal the amendments and addenda adopted by the Law No 154/2017, by which the mixed electoral system for the parliamentary elections was introduced. The Commission substantiated its decision by formally invoking procedural deficiencies admitted by the group members, although they were qualified by some civil society⁵ organisations as insufficient for the rejection.

Going even further, by this decision, the Commission questioned the citizens' right to initiate legislative referenda: 'it is not clear whether a legislative referendum on the approval of the constitutional laws adopted by Parliament, as required by Article 157 (1) clause b) of the Election Code can be organised. Therefore, this article, which sets out an exhaustive list of the issues that may be subject to the national referendum, does not provide for the possibility of organising another legislative referendum than the one on the approval of the laws adopted by the Parliament. It is also stipulated that 'other important issues of society and the state' provided for by Article 157 paragraph (1) clause d) include both the consultative and the legislative referendum'.

On February 15, 2018, the Ministry of Justice of the Republic of Moldova initiated the public consultation⁶ on a draft law aimed at amending the Election Code by granting the Parliament the exclusive right to initiate the national legislative referendum⁷. In this context, several civil society organisations have issued opinions⁸ on this draft law⁹ and have 'expressed their disagreement with the proposed amendments to the draft law. The people of the Republic of Moldova, as the sole sovereign power holder, cannot be deprived of the right to initiate any type of referendum. Moreover, we **there are a number of artificial barriers unnecessary in**

³<http://constcourt.md/ccdocview.php?tip=hotariri&docid=627&l=ro>

⁴<http://cec.md/index.php?pag=news&id=1001&rid=21420&l=ro>

⁵<https://promolex.md/11378-opinia-asociatiei-promo-lex-respingerea-cererii-de-inregistrare-a-grupului-de-initiativa-pentru-desfasurarea-unui-referendum-legislativ-pune-la-intoiala-dreptul-cetatenilor-de-a-exercita-direct-suver/?lang=en>

⁶http://www.justice.gov.md/public/files/2018/transparenta_in_procesul_decizional/februarie/1381.pdf

⁷<https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf>

⁸<https://watchdog.md/2018/02/26/opinia-asociatiei-comunitatea-watchdog-md-asupra-proiectului-legii-pentru-modificarea-si-completarea-codului-electoral-autor-ministerul-justitiei/>

⁹<https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf>

a democratic society, which seem to be able to impede the intentions of exercising direct democracy by the people.

On March 7, 2018, in violation to the legislation in force¹⁰, the Legal Commission of the Moldovan Parliament examined the CEC's request for official interpretation of the Election Code and issued an advisory opinion, even though the Commission requested a formal interpretation. According to the Advisory Opinion No. CJ-10/74 as of March 7, 2018¹¹, the Parliament is the supreme representative body of the people and the sole legislative authority of the state, empowered with the right to decide on the electoral system, the right of citizens to proceed with a legislative referendum not regulated by the Constitution.

On March 12, 2018, the Central Electoral Commission rejected¹² a new request from the initiative group to organise a national legislative referendum on the adoption of a law on the electoral system, which stipulates that the Parliament's elections would be based on a proportional voting system. Although the legal framework has not been amended, the CEC justified its refusal to register the application by invoking the (non-existent) constitutional jurisdiction in the field of initiating the national legislative referendum, in the absence of the legal norms on the initiation of the referendum by the citizens, as well as by the international regulations on not modifying the electoral system within at least one year before the ordinary elections.

In conclusion,

Recalling that the referendum is an instrument of direct democracy, through which citizens can express their views on issues of national interest;

Calling for attention to consistently conspicuous actions by a number of public authorities aimed at limiting the exercise of constitutional rights by the citizens of the Republic of Moldova;

Regretting that the Constitutional Court of the Republic of Moldova, in examining a particular case, unjustifiably extended the scope of the review and declared a rule guaranteeing the right of citizens to initiate any type of referendum fully, not partially, unconstitutional;

Regretting that, following the Constitutional Court's decision, several public authorities such as the Central Electoral Commission, the Ministry of Justice and the Parliamentary Legal Committee for Appointments and Immunities have used various means to limit the right of citizens to initiate any type of referendum;

¹⁰According to Article 72(2) of the Law No 100 of 22 December 2017, the formal interpretation of laws is carried out exclusively by the Parliament by the adoption of interpreting laws.

¹¹<https://watch.cpr.md/cec-refuza-cetatenilor-dreptul-la-initierea-referendumului-legislativ-inca-o-proba-degradarii-mecanismelor-democratice/>

¹²<http://cec.md/index.php?pag=news&id=1001&rid=21675&l=ro>

Considering the prerogative of the Parliament to declare all proposals to initiate the referendum to be excessive and potentially serving as an unjustified and exclusive instrument of political opportunity to block popular initiatives;

Insisting on the fact that participatory democracy is important and that in the decision-making process it is of paramount importance to assure the good faith of public institutions and other political actors, which should be the decisive factor in the evolution of law and jurisprudence in the Republic of Moldova;

The EaP CSF Moldovan National Platform Organisations call on:

The public authorities, parliamentary and extra-parliamentary political parties, civil society organisations promoting democracy and supremacy of human rights, other relevant national political and non-political actors:

- to abandon initiatives to limit the rights of citizens to exercise their sovereignty directly by initiating any type of referendum;
- to initiate a genuine and constructive dialogue with promoters and opponents of ideas limiting the right of citizens to initiate any type of referendum;
- to request Venice Commission's opinion on limiting the right of citizens to initiate any type of referendum;
- to recognize, support and promote all legal requests initiated at national level to block initiatives limiting the right of citizens to initiate any type of referendum;
- to amend the legislation to ensure a legal certainty of citizens' right to initiate any type of referendum and, according to the obligation of public authorities, to allocate the financial resources needed to consult the will of the people;

The international partners of the Republic of Moldova:

- to continuously monitor the intention of the authorities of the Republic of Moldova to unjustifiably limit the right of the citizens of the Republic of Moldova to initiate any type of referendum but also to freely express their opinion on this issue of national interest in a democratic process;
- to insist on the consultation with the Venice Commission's opinion on draft laws on the right of Moldovan citizens to initiate any type of referendum.

Members of the Moldovan National Platform of the Eastern Partnership Civil Society Forum