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Valeriu PASHA

# [ GERRYMANDERING 2.0: HOW WERE THE UNINOMINAL CONSTITUENCIES IN THE REPUBLIC OF MOLDOVA DRAWN? ]

The study examines the legislation and the process which designs the delimitation of the uninominal constituencies in the Republic of Moldova. The author's conclusion is that most of the recommendations of the Venice Commission have not been taken into account in the process of amending the legislation, and the delimitation of constituencies has been non-transparent, contrary to the recommendations of the Venice Commission and the national legislation. The result of the formation of constituencies is disadvantageous to voters in the Diaspora and favors the parties that have promoted the modification of the electoral system, which is contrary to good international practices.

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## Introduction.

The present research will analyze the process of implementing the reform of the electoral system in Moldova regarding the establishment of the uninominal electoral constituencies. There will be analyzed the provisions of the national legislation and regulations subordinated to the law, as well as the practical realization of the delimitation of the uninominal constituencies. The issues to be addressed will be examined from the point of view of best international practices and the recommendations of the Venice Commission. It will be assessed the compliance with the Electoral Code's provisions and the exposure of the interests of political actors in shaping the uninominal constituencies.

The research methodology of this study is the comparative analysis. Research sources were collected from public data.

On July 20, 2017, the parliamentary majority of the Parliamentary Group formed from the Democratic Party, Socialist Party of Moldova and Popular European Party of Moldova approved in the final reading the modification of the electoral system for the parliamentary elections. The vote took place despite the protests of the civil society, those of the opposition and the negative opinion of the Venice Commission. The Bill on Electoral Code Amendment suffers from many shortcomings, vague formulations; its purpose has been clearly defined as favoring the governing party and the Socialist Party<sup>1</sup>.

The government's exponents said they followed the Venice Commission's opinion and took into account "practically 95%" of them.<sup>2</sup> On the other hand, many internal observers, politicians from the country and abroad and representatives of the development partners said that Parliament did not take sufficient account of the opinion of the Venice Commission experts. In addition to the non-compliance with the main clause on the modification of the election system into a mixed one as the Commission disagreed with it, it is discussed to what extent other recommendations have been followed. Moreover, the assessment of compliance with the opinion mentioned in the process of implementation of electoral reform is one of the political preconditions that can influence the relationship between the Government of the Republic of Moldova and the European Union.<sup>3</sup>

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<sup>1</sup>[http://www.transparency.md/wpcontent/uploads/2017/05/TI\\_Moldova\\_Evaluare\\_Modificarii\\_Sitemului\\_Electoral.pdf](http://www.transparency.md/wpcontent/uploads/2017/05/TI_Moldova_Evaluare_Modificarii_Sitemului_Electoral.pdf)

<sup>2</sup> <http://www.jurnal.md/files/pdf/attachment-2.pdf> and <http://www.jurnal.md/files/pdf/attachment.pdf>

<sup>3</sup> <http://www.jurnal.md/ro/politic/2017/11/30/seful-delegatiei-ue-pozitia-uniunii-europene-ramane-aceeasisistemul-de-vot-o-conditie-a-finantarii/>

In this study, we will examine to what extent the Venice Commission' opinion is respected in the process of implementing the new electoral system. We will focus specifically on the process and the results of the delimitation of the electoral constituencies, because it is the only action that followed aftermath the law's voting.

## **I. Provisions of the Electoral Code in the light of the Venice Commission's recommendations.**

On 19 June 2017, the Venice Commission issued a joint opinion on the law project regarding the modification of the electoral system in the Republic of Moldova<sup>4</sup>.

We have identified 27 recommendations and practices recommended in the Venice Commission's opinion on the criteria for delimiting the constituencies, how to set up and operate the special committee for the design of the electoral map, principles to ensure a fair representation, all in order to avoid gerrymandering. Most of these provisions are based on the recommendations of the Venice Commission's<sup>5</sup> Code of Good Practices in Electoral Matters (See Appendix 1). Specific recommendations for Moldova have been highlighted, such as the need to ensure fair constituencies for the Diaspora, avoiding the dilution of UTAG voters with localities from other regions, the need to regulate by law the number of constituencies for Transnistria.

From the table of divergences, we see that only 10 of the 27 recommendations are contained in the new version of the Electoral Code. Other 4 recommendations have only been partially transposed into law 154/2017. Among the 13 recommendations that have not been materialized in the legal provisions in the Republic of Moldova, there are specific important aspects that lack such as: ensuring the absolute independence and major public credibility of the commission for the delimitation of constituencies, the need to establish very precise criteria for the constitution of the Diaspora constituencies and for those for Transnistria, the use as a basis for calculation – a credible census or voters' registration <sup>6</sup> (details in Appendix 1). In addition to the general and specific

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<sup>4</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e)

<sup>5</sup> [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

<sup>6</sup> Using the number of voters listed in the last election as a basis of calculation is not at all similar to the results of voters' registration in the usual sense in most democracies. The Elector's Register (ER) in the Republic of Moldova is formed on the basis of the state's population register (with factual identity documents). ER does not reflect at all the actual number of voters living in one region or another, but only to a very small extent, the citizens who are permanently or quasi-permanent citizens abroad. The use of such an imprecise source as a basis of calculation does not in any case fall within the Venice Commission's standards.

recommendations contained in the Venice Commission's opinion, another reference document is also the VCo<sup>7</sup>'s Guide on Good Practices in Electoral Matters.

As we can see from the synthesis table presented in the Annex 1, out of 19 recommendations regarding the uninominal constituencies, the Electoral Code of the Republic of Moldova has included only 8. Other three were included only partially / formally. Most of the missing recommendations in the given case are the same in the joint opinion of the Venice Commission, but we must notice a very special recommendation. According to the Guidelines on Good Practice in Electoral Matters, the boundaries of constituencies are recommended to be included in the Constitution or at a different legal level superior to the ordinary laws<sup>8</sup>. This one provision is included because the boundaries of the constituencies are considered a fundamental element of the electoral legislation. It must have an increased stability so that it has a maximum legitimacy and in such a way so it can hardly be modified for the benefit of a competitor. In Moldova, however, the boundaries of the Districts are not even part of the Electoral Code, but are determined by the decision of the Cabinet of Ministers.

### Criteria for the constitution of the electoral constituencies in the light of good practices and the Venice Commission's opinion.

In its opinion and in the Guidelines on Good Practices in Electoral Matters, the Venice Commission sets out a series of criteria to which the delimitation of uninominal constituencies should correspond. In the Annex 1 we can delineate 17 recommendations of the VCo on general and specific principles for the Republic of Moldova, regarding the way of delimiting the constituencies. It is recommended, among other things, that the legislation should provide very precise criteria and formulas for the constituencies' delimitation. It is recommended that the basis for establishing the limits be a numerical criterion based on the most credible data - the number of registered voters, the precise population number, derived from safe sources, it is recommended to establish a very precise calculation formula. Meanwhile, vague provisions have been passed in the Electoral Code, some contradictory ones have even been put there. For the territory controlled by the Moldovan authorities within the country, the data from voter lists at the last general election (presidential elections in 2016) were established as a basis for calculation.

There have been recommended the clearest criteria possible on the number of voting stations and the number of constituencies that should be given abroad, indicating how to delimit them fairly. Instead, a number of vague, contradictory criteria were passed

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<sup>7</sup> [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

<sup>8</sup> [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e) , p. 10, II, 2, b

without a procedure and hierarchy being established. In the case of the Transnistrian region, an assumed political decision on the number and the boundaries of the constituencies is recommended. The maximum deviation between constituencies, starting from the reference figure, is 10% between the largest and the smallest constituency, which fully corresponds to the VCo's recommendation. Specific criteria have also been established for regions with compact presence of the national minorities, which also corresponds fully to the provisions of the VCo (Venice Commission).

Per total, out from **17 VCo's recommendations** (Annex 1, headings 1, 2, 3, 4, 5, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 51) the **Electoral Code contains only five, two others** (regarding the application of the geographical and administrative criterion in the case of the establishment of borders and the non-application of the criterion of the number of voters in the Transnistrian region) **are partly found**. These two have come in the form of very vague formulations that either are not applicable or are interpretable because they overlap with other norms of the same law.

Other **10 recommendations** are not found at all in the law amending the electoral system. Among these are some very important ones, such as avoiding the segmentation of the electoral map in favor of certain parties and ensuring the equal power of constituencies. Also, contrary to the explicit recommendation of the VCo, no clear modalities have been established regarding the question of how the number of constituencies for the Diaspora and Transnistria will be drawn, which will be the basis for their calculation and the delimitation criteria. Only in the case of Moldovan elections taking place abroad, in Art. 74, 4, let. f) 9<sup>9</sup> have been established criteria for the distribution of constituencies according to the regions of the world. However, with the application of the border-setting criteria, the VCo recommendation remains unfulfilled due to the lack of numerical criterion.

### **The process of drawing the constituencies. The committee for the delimitation of constituencies.**

The formation of constituencies is still an important component for the Venice Commission which sets out general and specific principles for a coherent and fair process from the point of view of good international practice. International practices refer both to the level of legislation in which the map of the uninominal constituencies will be included, the way of formation and the establishment of the composition of the special commission, but also the way in which this commission will carry out its activity. A special role has the mandatory transparent and participatory character through broad consultations on the approval of the constituencies. In the

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<sup>9</sup> All references to the Electoral Code refer to the old editorial up to its republishing on December 29, 2017, because free access has only this text.  
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312765>

Annex 1 (headings 6, 8, 9, 10, 11, 21, 40, 42, 45, 49, 50) there are 11 recommendations of the VCo regarding the proper process of drawing the constituencies and the presumed activity of the special commission, as well as the method of creation and composition of this committee.

In the Electoral Code, **only four provisions** that directly reflect or correspond to the VCo's recommendations come to light. **Three other** recommendations are only partially or formally complied with Venice Commission's provisions. If the VCo opinion and the guidelines of Good International Practices stipulate the need to establish an "independent and credible" entity to delimit constituencies, only the independent character of the commission (Article 74 (2)) is passed in the Electoral Code of the Republic of Moldova from the entire recommendation. At the same time, there are established the institutions and the entities which will delegate representatives within the committee. The approval of the committee's nominal composition is delegated to the Government, that is to say, an eminently political institution. This cancels out from the beginning the independent nature of this commission.

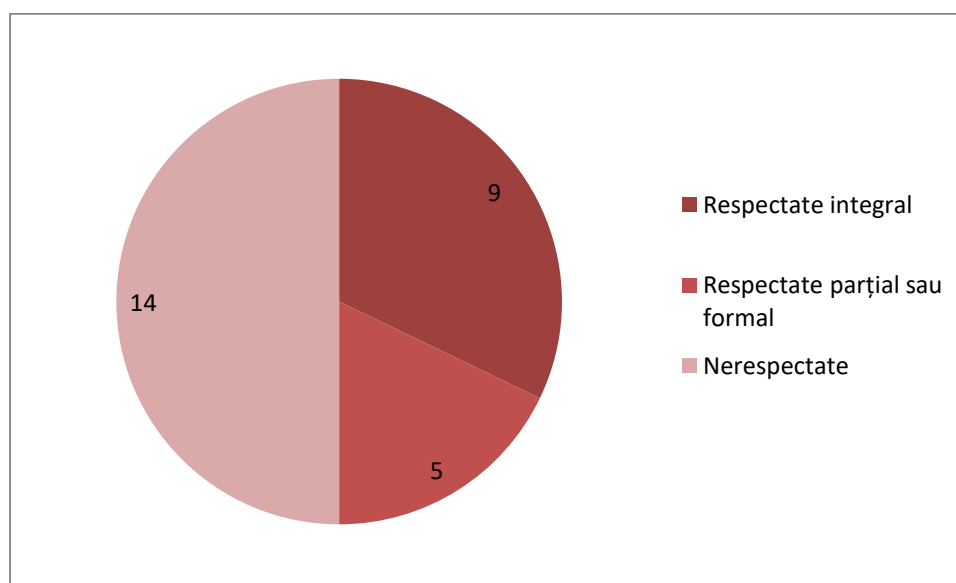
Another important aspect is the lack of a clear mechanism for the delegation of these entities'/ institutions' representatives to the commission. Some entities are vaguely described, it is unclear how many associations of ethnic minorities and which civil society organizations will be represented and on the basis of which criteria they are established. The recommendation that the Central Electoral Commission does not have to deal with the delimitation of the constituencies was only partially respected. Therefore, in the new law, the "representatives of the Central Electoral Commission" are involved in the activity of the special committee (Article 74 (2) (a)). The inclusion of the representatives of the parliamentary commission, the presidency, fractions and parliamentary groups in the special committee is not in agreement with ensuring the committee's independent and balanced political character. After all, the Venice Commission clearly stated about the balanced representation of the political parties in this committee.

There is no provision in the text of the law to establish a mechanism to ensure the public credibility of the special committee for drawing up the constituencies. This issue could have been solved by establishing some very clear procedures for the delegation of committee members through public competitions involving national and international observers.

The **4 recommendations** of the VCo on the delimitation of the constituencies and the formation and functioning of the special commission which cannot be found in the Electoral Code are: the obligation of a transparent process and the public consultations of the final draft of the decision of the commission, the obligation to respect the impartial character of the delimitation of constituencies; the most important missing criterion is the non-observance of the recommendation to include the list and the boundaries of the constitutional constituencies. Instead, the reverse was applied - the responsibility to approve the list of constituencies was delegated to the Government by a decision, not even by an ordinary law.

***Totally, out of the 28 recommendations of the Venice Commission within the law 154/2017, only 9 were fully respect, partially or formally – only 5, not at all – 14. In the final draft law approved on July 20, 2017 by the Parliament, contrary to the statements of the supporters of the electoral system***

*changes, only 32% of the Venice Commission's recommendations are found. 50% of them are not found at all (Figure 1).*



*Figure 1. Venice Commission's recommendations for the Electoral Code of the Republic of Moldova.*

## II. Regulation, composition and activity of the National Commission for the establishment of permanent uninominal constituencies in the light of the recommendations of the Venice Commission and the Electoral Code of the Republic of Moldova

### The process of approving the regulation and the composition of the Commission

On 18 August 2017, the Ministry of Justice announced public consultations on the draft regulation of the National Commission for the establishment of permanent uninominal constituencies<sup>10</sup>. The Ministry published the draft regulation regarding the change of the electoral system and offered 1.5 working days for those interested “to share opinions and suggestions” regarding this new law project. Already on 21 August, the Promo-Lex association and the Center for Legal Resources of Moldova (CRJM) issued a joint declaration that identified several deficiencies and violations of the Electoral Code<sup>11</sup>.

<sup>10</sup> <http://www.justice.gov.md/libview.php?l=ro&id=3584&idc=4>

<sup>11</sup> [http://crjm.org/wp-content/uploads/2017/08/CRJM\\_Promo-LEX\\_opinie-regulament-comisia-circumscripitiuninomiale\\_FINAL.pdf](http://crjm.org/wp-content/uploads/2017/08/CRJM_Promo-LEX_opinie-regulament-comisia-circumscripitiuninomiale_FINAL.pdf)



Through the main violations were stipulated the non-conformation towards respecting the 30-day term following the vote on the amendment to the Electoral Code, within which the Government was required by law (Law 154/2017, Article III) to constitute the Special Committee. Another major deficiency noted in the statement of the Venice Commission is that the regulation is created by the Ministry of Justice, when the Electoral Code (Article 74 (3)) expressly provides that the rules of this procedure must be "of their own", meaning it should be drawn up by the commission. The authors of the statement have considered that non-compliance with this provision of the Electoral Code is a "direct interference in the work of this body and an intention to suppress its independence"<sup>12</sup>.

On August 23, 2013, contrary to the concerns of the civil society, the Government approved the draft regulation<sup>13</sup>, even though the committee itself was not yet formed. The way in which the Regulation on the activity of the National Commission for the establishment of permanent uninominal constituencies was approved also violates the legislation of the Republic of Moldova on transparency in the decision-making process<sup>14</sup>. Thus, Law 239/2008 provides that any draft decision has to go through several stages of public consultations and hearings (Article 8).

According to Article 9, within 15 working days from the date of initiation of the draft decision, the respective authority (in this case, the Ministry of Justice) was to place a public notice on project's initiation. The process of public consultations must last at least 15 working days before the date fixed for the final decision (Article 11 (22)). According to Article 12 (2) for at least 10 working days after the publication of the decision, the concerned authority will receive the recommendations and suggestions of the interested parts. The entire public consultation process is to be reflected in a synthesis table where the acceptance or rejection of each proposal is motivated. The synthesis table and the consultation process comments are to be made public and annexed to the draft decision.

Instead of complying with all of these transparency criteria, the Ministry of Justice has violated all procedures and time limits, providing only 1.5 working days for public consultation of the draft regulation. In conclusion, the committee's approval process violated both national and international transparency criteria and at least two provisions of the Electoral Code and of the 154/2017 Law.

On September 6, 2017, the Government approved the draft decision on the National Commission for Establishing Permanent Uninominal Constitutions<sup>15</sup>. The decision project

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<sup>12</sup> [http://crjm.org/wp-content/uploads/2017/08/CRJM\\_Promo-LEX\\_opinie-regulament-comisia-circumscripitiuninomiale\\_FINAL.pdf](http://crjm.org/wp-content/uploads/2017/08/CRJM_Promo-LEX_opinie-regulament-comisia-circumscripitiuninomiale_FINAL.pdf)

<sup>13</sup> [http://gov.md/sites/default/files/document/attachments/intr24\\_1\\_1.pdf](http://gov.md/sites/default/files/document/attachments/intr24_1_1.pdf)

<sup>14</sup> <http://lex.justice.md/md/329849/>

<sup>15</sup> [http://gov.md/sites/default/files/document/attachments/intr19\\_92.pdf](http://gov.md/sites/default/files/document/attachments/intr19_92.pdf)

was drafted by the State Chancellery and consisted of the text itself and an informative note. On the State Chancellery's official website, the draft decision was not subject to any public consultation<sup>16</sup>. Neither the text of the document, nor the informative note, neither the Electoral Code nor the Commission's Rules of Procedure make it clear how the nominal composition of the Commission was established. No official correspondence, decisions of the management or the decision-making bodies of the institutions and organizations represented in the Commission were made public. In the case of some organizations, the Government has applied absolutely discretionary criteria, as we shall see below, politically motivated, to select the represented institutions. This is particularly noticeable for associations of the national minorities and the civil society.

Only in the case of the Central Electoral Commission (CEC) there is made public the decision for delegating two members<sup>17</sup>. From CEC's decision text we find out that the delegation took place on the basis of an official request of the State Chancellery dated with August 25, 2017. That is, the request came only after the approval of the Government's decision. However, it is unclear under whose mandate the State Chancellery requested the delegation of members to the commission. Neither the Electoral Code nor the Commission's Rules of Procedure grant such powers to the State Chancellery. The latter institution is mentioned only as one that will provide the secretariat of the commission (National Committee) after its establishment. According to the Electoral Code (Article 74), the Government is responsible for setting up the committee, which would mean that the requests for delegation of members would be made by formal governmental address, based on a decision of this collective body. We also do not have information about the delegation of this task by the Government to the State Chancellery.

Similarly, there are no procedures for the delegation of the representatives. This would be the case to be mentioned in the law or, at least, in the committee's rules. The State Chancellery does not have the right to decide how certain collective institutions will delegate their representatives. Within the commission's work, there were not published the decisions on the basis of which one member or another managed to be delegated to it (to the commission).

In conclusion, we can say that the process of delegating the representatives to the National Commission for the establishment of permanent uninominal constituencies has taken place not transparently, except for very clear rules and procedures. This undoubtedly affects the credibility and legitimacy of this committee.

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<sup>16</sup> <http://cancelaria.gov.md/ro/apc/proiecte-supuse-consultarilor-publice>

<sup>17</sup> <http://cec.md/index.php?pag=news&id=1001&rid=20571&l=ro>

## Composition of the National Commission for the establishment of permanent uninominal constituencies.

The nominal composition of the Commission was approved on 6 September 2017 by the Executive (Cabinet of Ministers)<sup>18</sup>. According to the decision, the committee was to have 25 members. As several political parties refused to delegate their representatives to the commission, motivating that the change of the electoral system is illegal, the actual composition of the commission was made up of 20 members (Annex 3). Consequently, we will analyze the political affiliation of the committee members and to what extent it respects the national legal framework and VCo's recommendations.

As you can see in Appendix 2, the names of the members of the commission and their political affiliation are listed there. 8 members of the committee are party members or have a clear political affiliation. One is a PSD (Democrat Socialist Party) member and has been delegated by virtue of the fact that his party was part of a bloc that accrued more than 2% in the 2014 parliamentary elections. The delegation of a PSD representative clearly exceeds the legal framework because within the law (Electoral Code, Art. 74 (2) (e)). It is stipulated the representation of only the parties that have exceeded the 2% threshold, not the electoral blocs. In this case a totally different standard is applied to the PCR "Partidul Comunist Reformator", which was not invited to the commission because it ceased to exist as a legal entity. It is obvious that in this way it was hoped to inoculate a broader representation, and it was already known that most of the parliamentary and extra-parliamentary parties refused to participate in the work of the committee in order not to legitimize it. Two other persons are PSRM (Socialist Party of Moldova) members or directly affiliated to this party (RM's President). Another 5 people are PD (Democrat Party) members. From these last ones, only 1 is delegated by the Parliamentary fraction - Eugeniu Nichiforciuc deputy. The deputy Igor Vremea was delegated by the Parliament's Legal Commission, Vladimir Cîssa was included in the commission's membership considering his function as the president of UTAG (The Gagauz territorial administrative unit) Parliamentary Assembly, being the only PD member of Moldova's Parliament in the region. Veaceslav Burlac was delegated by the Union of Rayon Councils of the Republic of Moldova, an absolutely obscure organization localized in the Criuleni district, whose president is Mr. Burlac. He was included in the committee on the quota designed for the local public administration. Olga Coptu is the head of the Diaspora Relations Office, an institution subordinated to the Government. Being a PD member, Ms Coptul was appointed to the leadership of this institution based on political criteria without a contest for this job position.

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<sup>18</sup> [http://gov.md/sites/default/files/document/attachments/intr19\\_92.pdf](http://gov.md/sites/default/files/document/attachments/intr19_92.pdf)

Another deputy who joined the commission is Ștefan Creangă, a representative of the parliamentary group PPEM (Popular European Party of Moldova). This party is part of the ruling majority formed around the PD. Iurie Ciocan, who was delegated by CEC, heads the Center for Implementation of Reforms, an institution subordinated to the Executive, that finally is subordinated to PD<sup>19</sup>. We must also note that the current composition of the CEC is mostly from persons delegated by the parliamentary majority, often voting for decisions that have been interpreted as being biased in favor of the PD. Another member of the commission is Valeriu Sajin, a member of the Diaspora Bureau, headed by Olga Coptu.

As in the case of the representatives of local administrations, the three representatives of the national minorities were selected discretionary by the Executive. It is not clear why these three organizations were selected, not necessarily the most representative ones. It is true, however, that all of those three: Piotr Donțov, Nicolai Oleinic and Fiodor Sabii openly supported in the 2014 parliamentary elections the Democratic Party<sup>20</sup>. Two other members of the committee who may be unconditionally considered to be affiliated to the Democratic Party are Serghei Ostaf - delegated by the National Council for Participation (related to the Executive) and Victor Juc - delegated by the Academy of Sciences. Mr. Ostaf is permanently invited to comment on televisions belonging to the PD leader (Vladimir Plahotniuc). Mr Ostaf actively and permanently supports all the opinions and the positions of the actual government. The same is done during the meetings with external partners and he has even been delegated to defend the position of the current government at some meetings abroad<sup>21</sup>. Mr Ostaf's behavior falls directly into what is called GONGO (government-affiliated NGO). Mr Juc is another permanent guest of PD's affiliated televisions, while none of the analysts and commentators criticizing the government has access to this media. His opinions are reduced to the unconditional support of the Executive's position, even if they are not motivated but only launched in order to be. We must also note that the Academy of Sciences is subordinated to the Cabinet of Ministers.

In conclusion, as it can be seen from Annex 2, at least 13 of the members of the committee are members, affiliated or influenced by PD. 13 out of 25 members is a demonstration of an obvious goal of having a comfortable political majority of over half of the commission's members. **It is absolutely clear that the commission's independence has not been respected.**

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<sup>19</sup> <https://anticoruptie.md/ro/stiri/doc-cum-a-cheltuit-centrul-de-implementare-a-reformelor-banii-in-2017-si-cesalariu-are-seful-institutiei>

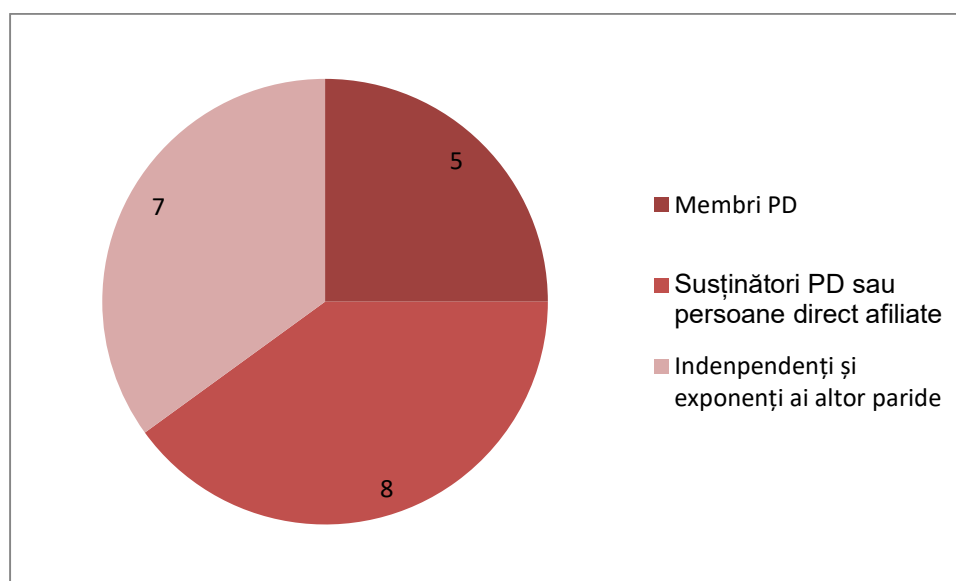
<sup>20</sup> [https://www.publika.md/ucrainenii-din-moldova-sustin-vectorul-european-al-tarii-si-obiectivele-stabilite-depdm\\_2140391.html](https://www.publika.md/ucrainenii-din-moldova-sustin-vectorul-european-al-tarii-si-obiectivele-stabilite-depdm_2140391.html) and <http://www.epresa.md/stirile-zilei/liderii-comunitatilor-etnice-din-moldova-isi-sustinpartidul-democrat-la-alegeri-suntem-pentru-pace-si-libertate>

<sup>21</sup> <http://www.atlanticcouncil.org/events/webcasts/moldova-reform-efforts-and-regional-outlook>

In order to ensure a comfortable majority, the Executive has come to the discretionary interpretation of the legislation, and it has chosen the majority of the members as they thought it should be in the National Committee.

Even the remaining 4 people who are not obviously politically affiliated cannot be considered 100% non-influenced. Thus, as we mentioned above, the CEC president was elected by a majority of members delegated by the Executive. Two other employees of the Academy of Sciences are also indirectly subordinated to the the same structure as CEC. Even the director of the Congress of Local Authorities (CALM) may be theoretically influenced by the PD, as this party currently holds the majority of mayoral mandates in the country. The Venice Commission's recommendation is a clear one – to ensure that the commission is independent, which means that its members, not even tertiary, should not have been exposed to any political influence.

*In conclusion, by applying a discretionary interpretation of the legislation, using the deliberate lack of clear procedures in the law for the delegation of committee members, the proper composition and the application of the principle of political balance, the Executive created a fully controlled political commission (Fig. 2). No committee member can be considered 100% independent from the current government. 13 out of 20 members are members of the Democrat Party, employees of state-controlled political structures by PD or openly affiliated persons to this party through their public behavior/comments/opinions. Only 3 people are exponents of other parties. The initial intent and intentional manipulation of the legislation is visible in order to ensure full control over the national commission for the constitution of permanent uninominal constituencies.*



*Figure 2. The political structure of the "independent" committee for the formation of the uninominal constituencies.*

### National Commission's Regulation on the establishment of permanent uninominal constituencies in the light of the Venice Commission's recommendations and the provisions of the Electoral Code.

Regarding the way in which the constituencies are created and the way the commission works, the Regulation of the commission for the constitution of the permanent uninominal constituencies<sup>22</sup> is based on the same provisions as the Electoral Code. In addition, a number of technical aspects are provided on how to make decisions, how to organize and conduct committee's work, etc. **According to the summary that we see in the Annex 1, this Regulation violates only one provision of the Electoral Code - mainly that the draft of this regulation is initiated by the Executive and not by the committee after its constitution.**

Out of the 27 recommendations contained in the VCo's notice, the Regulation only fully complies with 10, others are partially or formally respected. Of the 19 Recommendations on the constitution of the constituencies contained in the VCo Good International Practices' Guide, only 8 are totally respected, 4 partially, 8 not at all. Other three provisions of the Regulation only partially correspond to the recommendations Of the Good Practices' Guide, but they do not actually contradict it (Annex 1, items 25, 39 and 40).

In general, the Regulation lacks the same recommendations from the Venice Commission as in the text of the Electoral Code. An important exception is that, unlike the text of the law, an important recommendation of the VCo - the periodical review (at 10 years) of the boundaries of the constituencies, is found in the committee's regulation.

*The same as the modified Electoral Code, the Regulation does not comply with most or all of the Venice Commission's recommendations and it violates even a provision of the national law.*

### Commission's activity for setting up permanent uninominal constituencies.

The commission for the constitution of the constituencies started its activity on September 12, 2017. According to its action plan<sup>23</sup>, it would hold several meetings and on October 24 it had to submit to the Executive, for approval, the draft decision for the formation of uninominal constituencies. Already at the first meeting of the commission<sup>24</sup> there was elected its leadership - Iurie Ciocan (delegated by CEC) became the president and Ms

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<sup>22</sup> [http://gov.md/sites/default/files/document/attachments/intr24\\_1\\_1.pdf](http://gov.md/sites/default/files/document/attachments/intr24_1_1.pdf)

<sup>23</sup> [http://brd.gov.md/sites/default/files/planul\\_de\\_actiuni\\_calendaristic.pdf](http://brd.gov.md/sites/default/files/planul_de_actiuni_calendaristic.pdf)

<sup>24</sup> <https://www.privesc.eu/arhiva/77831/Sedinta-Comisiei-Nationale-pentru-constituirea-circumscripțiilor uninominale-permanente>

Maria Nedea VCo (delegated by the Academy of Sciences of Moldova) was named as secretary.

During September and October 2017, several committee meetings took place. These were public, being transmitted live. Even if the commission did not have such a mandate under the law and the Regulation, it has accepted to hear proposals coming from persons and organizations concerned about the district-sharing process of the constituencies. Even if they were read at public meetings, these proposals were not taken into account at all, the motivations being absolutely discretionary and largely dictated by the committee chairman.

As the meetings have been publicly broadcasted, their content is available online. From the content of the discussions it is absolutely clear that the members of the commission interpreted the law according to their own preference/interest, they decided absolutely discretionary the number of constituencies offered to citizens from abroad and those offered to the Transnistrian region. Likewise, committee members have allowed a total interpretation beyond the legal framework on the number of voters to be part of a constituency.

Already on October 4, 2017, a group of 14 notorious public organizations in the country and from the diaspora issued a public statement in which they drew attention to the non-transparent nature and illegal behavior of the committee's work<sup>25</sup>. Among other things, attention was drawn to the lack of public hearings of meetings, failure to comply with the law on transparency in the decision-making process at the drafting stage of the final law project, plus the lack of synthesis on whether the proposals were accepted or rejected in a justified way, as required by the law.

All the conclusions of that statement are valid until now: the minutes of the meetings are not publicly available, the government's draft decision approving the uninominal constituencies is not accompanied by a summary of the proposals accepted or rejected reasonably, neither the commission nor the government public consultations on the draft decision are present.

On November 7, 2017, the Government approved the decision concerning the approval of permanent uninominal constituencies<sup>26</sup>. The project is not even accompanied by an informative note, not precisely the legislative dossier containing the table of divergences on the proposals, as required by the national transparency rules in the decision-making

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<sup>25</sup> <http://www.e-democracy.md/files/pr/2017-10-04-apel-transparenta-circumscriptii-uninomiale.pdf>

<sup>26</sup> [http://gov.md/sites/default/files/document/attachments/intr20\\_93.pdf](http://gov.md/sites/default/files/document/attachments/intr20_93.pdf)



process. The Commission did not take account of experts' proposals and findings, even if they received very consistent analyzes<sup>27</sup>.

Even if the commission had to submit the draft decision for the delimitation of the constituencies by October 24, 2017, the commission only finalized it on November 1<sup>28</sup>. On November 2, the annexes to the draft constituency decision<sup>29</sup> were published on the Executive's website. This publication contained neither the text of the draft decision nor any informative notes, nor the minutes, nor the text of the commission's decision approving the draft submitted to the Cabinet of Ministers.

On November 7, 2017, 12 civil society organizations issued a public statement accusing the lack of transparency and the violations of the national legislation and Good International practices in circumscribing the constituencies<sup>30</sup>. The signatories requested the removal of all illegalities in the draft decision, the publication of all the committee's working papers and the conduct of public consultations on the basis of the draft decision. It should be noted that even the publication of the annexes to the draft decision on 2 November cannot be considered as a public consultation intention because the notice did not contain the addresses to which proposals on the draft (annexes) could be sent.

On 7 November, in an unclear manner, in the afternoon, the Executive included on the agenda the draft decision on the constitution of the constituencies and adopted it on the same day.

### III. Delimited constituencies through the recommendations of the Venice Commission, the Electoral Code and political interests.

Already after publishing and approving the map of the electoral districts, there appeared several reactions of the concerned actors, and also a series of specific analyzes of the results of the commission's work<sup>31</sup>. Among their conclusions are the violation of the provisions of the Electoral Code, the Venice Commission's opinion and Guide of Good Practices, the tendentious distribution (in the interest of some parties) by deliberate

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<sup>27</sup> <https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumsriptii-uninominal-care-urmeaza-a-fi-create-pest-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro>

<sup>28</sup> <https://www.privesc.eu/arhiva/78617/Sedinta-Comisiei-Nationale-pentru-constituirea-circumsriptiilor-unominal-permanente>

<sup>29</sup> <http://gov.md/ro/content/harta-circumsriptiilor-unominal-prezentata-spre-aprobare-guvernului>

<sup>30</sup> <https://promolex.md/10733-apel-public-privind-transparenta-limitata-si-deficientele-constatate-in-procesul-de-adoptare-a-proiectului-hotararii-privind-constituirea-circumsriptiilor-unominal/?lang=ro>

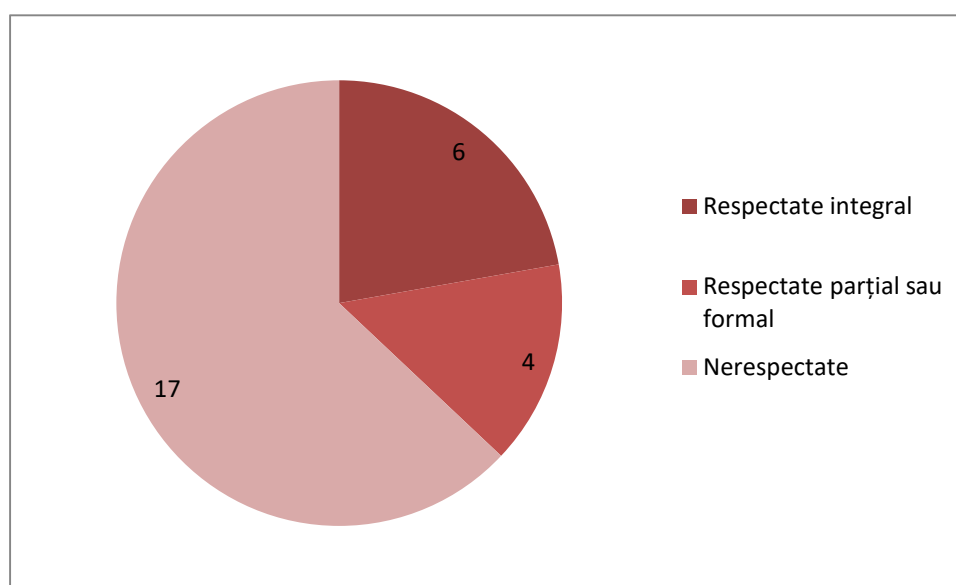
<sup>31</sup> [https://promolex.md/wp-content/uploads/2017/11/1-Analiza-circumsriptii\\_EA\\_23.11.17.pdf](https://promolex.md/wp-content/uploads/2017/11/1-Analiza-circumsriptii_EA_23.11.17.pdf)  
<http://sic.md/pe-placul-cui-au-fost-croite-circumsriptiile/>



concentration of traditional supporters in special constituencies or based on their control over local administrations. Another aspect already found is the excessive concentration of some party supporters in way too large constituencies (the European Diaspora voters) or the formation of constituencies for very few active voters of some parties (Transnistria). As a consequence, the incorrect creation of the electoral map, which will include settlements found at very big real distances, the failure to observe the demographic and administrative criteria, is visible. All of these conclusions are absolutely valid, but we will systematically go through each provision of the national legislation and VCo's recommendations to see to what extent they find themselves in the results of the constituency formation.

### Uninominal constituencies in the light of the recommendations of the Venice Commission and the Electoral Code

According to Appendix 1, we see that out of the 19 recommendations contained in the VCo's Good Practices Guidelines, in reality, only 5 were taken into account. Other 3 were only partially or formally respected. Two other aspects - the composition of the committee and the compliance with the administrative criterion for delimitation correspond only partially to the recommendations of the guide. Of the 27 recommendations contained in the VCo's notice, only 6 have been fully respected, 4 others are partially respected. That is, 63% of VCo's recommendations regarding the formation of constituencies were not actually observed (Figure 3).



*Figure 3. The recommendations of the Venice Commission in relation to the results of the circumscription formation process.*

Even more concerning is the fact that several provisions of the Electoral Code have not been strictly observed, or they have been misinterpreted and are not actually respected.

Out of the 31 provisions on constituencies in the Electoral Code, only 13 were respected in reality, 5 were partially respected. 13 provisions (42%) have not been respected at all! If we are talking about complying with the Commission's Rules, then out of 32 provisions were fully respected only 14, 5 – partially, 13– not at all.

The violations of the Electoral Code are a very serious fact, in this case the constituencies suffer not only from lack of legitimacy but also from lack of legality. From the analysis of the way in which the constituencies were formed (Annex 1), we detected 13 violations of the electoral law.

1. Article 74 (paragraph 4) stipulates that the constituencies in the controlled territory of the Republic of Moldova will have between 55 and 60 thousand voters with the right to vote. There are no exceptions to this rule. Of the 46 constituencies formed in the controlled territory, only 11 are in line with the given rule (24%)<sup>32</sup>.

2. The same paragraph states that "the deviation of the number of voters between uninominal constituencies must not exceed 10%". According to elementary mathematical logic, the calculation must go from the smallest constituency. The smallest constituency in the controlled territory is the one with number 44, which includes the localities of Taraclia district - 35082 voters.

- *It was created in order not to dilute the compact area of the ethnic Bulgarians. Although it is in principle respecting the recommendations of the Venice Commission, the difference compared to other constituencies is excessive. Moreover, it applies a totally different calculation basis compared to UTAG (The Territorial Administrative Union of Gagauz), which means a different treatment, in this case the Gagauz ethnicity is somewhat discriminated. We must not forget that the Venice Commission made a precise reference to the UTAG situation and does not mention the Taraclia rayon in this respect. To avoid any interpretation, the application of a preferential attitude to overcoming the general rules would need to be found in the Electoral Code. In the given case, it was an absolutely discretionary decision, supported by the Executive, of the commission for the formation of constituencies.*

If the constituency for Taraclia district is to be taken as the basis for calculation, then none of the remaining 45 constituencies in the territory controlled by the RM authorities fall within the maximum permissible deviation rule of 10% (45 out of

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<sup>32</sup> [http://gov.md/sites/default/files/document/attachments/intr20\\_93.pdf](http://gov.md/sites/default/files/document/attachments/intr20_93.pdf) (Annex 2)

46-98%). If only the second lowest constituency is taken as the reference number (No. 25 Chisinau), then only 15 out of 46 constituencies fall within the rule of difference permitted by law, 31 constituencies (67%) do not correspond to the provisions of Article 74 (4), lett. b).

3. According to Article 74, paragraph 4, two mutually complementary rules are established. These concern the observance of the boundaries of the territorial-administrative units:

- *"d) the uninominal constituency is formed from the localities of a second-level administrative-territorial unit or, for the purpose of an optimal organization, from the localities of several units of the same level;*
- *e) if the number of voters in a locality is higher than the average calculated number for an uninominal constituency, several uninominal constituencies are formed in this locality. It is not allowed to draw the boundaries of the uninominal constituencies on the inside of a first-level administrative-territorial unit. "*

According to Article 4 (4) of the Law on the Administrative-Territorial Organization of the Republic of Moldova, the sectors of the city of Chisinau are administrative territorial units of first level. The existence of this norm repeatedly denotes the lack of an impact analysis and functionality of the law through which the Electoral Code was modified. Anyway, from the nine constituencies formed in Chisinau, 5 include voting stations assigned to two different sectors. It was probably intended to ensure that there will be no small localities that will be divided into different constituencies. However, due to lack of expertise, the legislator created a norm that would mean that a sector of Chisinau municipality should comprise either more constituencies or a single one. In fact, the rule is applicable.

The number of voters (2016) in the sectors of Chisinau is: Botanica - 136 214, Buiucani - 89 936, Center - 70 739, Ciocana - 93 666, Râșcani - 117 447. In relation to the reference value of 55-60 thousand, this would mean that Riscani sector will have 2 whole constituencies. The other sectors could have formed whole uninominal constituencies within the reference values, the remainder being filled with voting sections outside the country to respect the representation rule based on election results. The Electoral Code rules do not prohibit such a process; moreover, the uninominal constituencies for voters from the Diaspora are attributed to the electoral constituency of Chisinau.

This rule did not draw the attention of the members of the commission for the formation of constituencies, so parts of different first level territorial-administrative units have come to be part of different constituencies. And it was easier to avoid the violation of this legal norm if part of the districts were left in sectors and communes / towns in the suburbs of Chisinau. As we shall see below, the isolation of the suburbs in separate constituencies was made intentionally, applying a classic gerrymandering process. Beyond manipulation linked to political interests, we see that the isolation of the suburbs also led to the violation of the law.

4. According to the law, for the formation of constituencies abroad, the commission had to take into account the data on the number of Moldovan citizens per country that have access to national consular services. According to the official data of the Ministry of Foreign Affairs<sup>33</sup>, the number of permanent residents outside the country is over 805,000. As Promo-Lex noted, this would have meant the need to form 10 uninominal constituencies, but only 3 were created.

5. The same applies to the provisions of Article 74 (5) let. b).

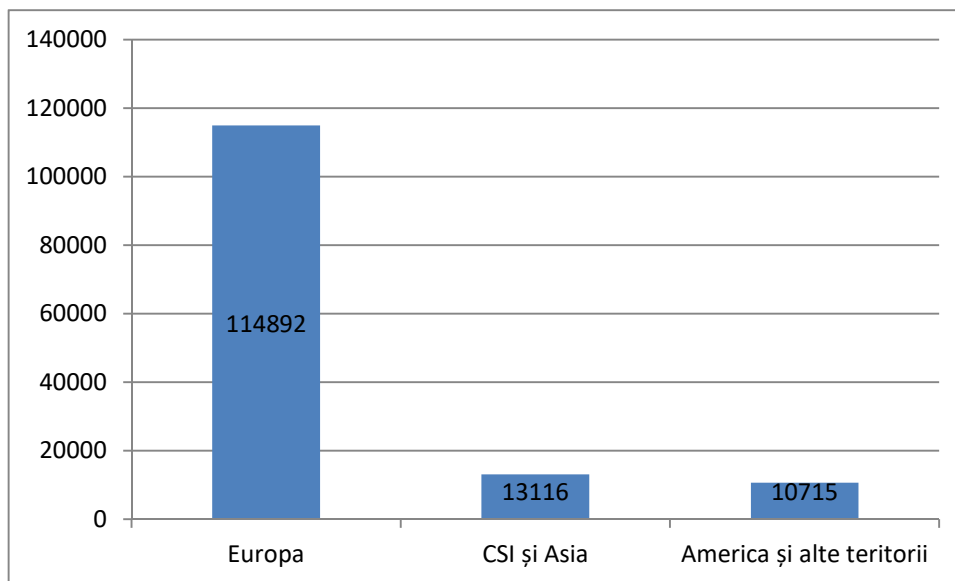
6. The same applies to the provisions of Article 74 (5) let. c).

7. According to Article 74 (5), let. d), the commission had to take into account the formation of constituencies by the number of voters who participated in the previous elections. This provision is very important because it shows reliable values on the number of active Diaspora voters by country and region. In the presidential election in 2016, 138,720 voters participated from the Diaspora (Fig.4). Considering the three areas provided by the Electoral Code (Art. 74 (5), letter f)), they are distributed as it follows<sup>34</sup>:

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<sup>33</sup> [https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumsriptii-uninominal-care-urmeaza-a-fi-create-pest-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro#\\_ftn2](https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumsriptii-uninominal-care-urmeaza-a-fi-create-pest-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro#_ftn2)

<sup>34</sup> [https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumsriptii-uninominal-care-urmeaza-a-fi-create-pest-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro#\\_ftn2](https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumsriptii-uninominal-care-urmeaza-a-fi-create-pest-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro#_ftn2)



**Figure 4. The number of voters who participated in 2016 elections in the constituencies formed for the Diaspora**

Election results are the most credible figures on the number of voters, however, instead of the constituencies being at least numerically balanced; two constituencies were formed at 10-13 thousand voters and one at 115 thousand voters. As we will see below, this assignment has a clear political motivation to favor certain electoral competitors.

8. Also for constituencies outside the country, Art. 74 (5), let. e), it is foreseen to take into account *"other relevant data, obtained by the central public authorities upon request, from the authorities of the host country under the law"*. No information obtained from foreign public authorities was submitted to the commission's work; even if there exists also relevant public data, such as those from Eurostat.

9. According to the provisions of Article 74 (6), let. b), for the constituencies created on the left bank of the Dniester, *"data from the State Register of voters, including those based on the preliminary registration, according to the procedure established by the regulation approved by the Central Electoral Commission"* have to be taken into account. According to official data, the number of voters domiciled in the territory not controlled by the constitutional authorities is slightly more than 210 thousand people. That is, the equivalent of about 4 constituencies. The number of two constituencies clearly indicates that these data were not taken into account. If we talk about prior registration for citizens in the Transnistrian region, then it is very little used. However, we must also acknowledge that the data held by the CEC cannot be credible either,

or verified. It should also be noted that the Venice Commission did not recommend the formation of constituencies based on the number of voters with domicile, probably because of the very low participation of the citizens of the Transnistrian region in all the elections.

10. According to Article 74 (2), *"Uninominal constituencies shall be approved by the Cabinet of Ministers on the basis of an independent committee decision"*. As we have seen above, the absolute majority of committee members is affiliated or politically influenced. The interaction between it and the Executive, the State Chancellery, the way the commission's regulations were created and approved, its work and its results demonstrate that we cannot rely on an independent committee.

11. In accordance with Article 74 (2) let. e) the composition of the commission for the formation of constituencies must include a representative of the parties that have accumulated at least 2% of the votes (of the voters) at the last parliamentary election. This rule has not been respected because there is no officially registered political party that has accumulated more than 2% in the 2014 elections. The inclusion of a PSD representative in the committee clearly outweighs the legal framework, or this party participated in the elections as a block, and law 23 refers specifically to parties. Furthermore, he can no longer represent a collective entity that ceased to exist shortly after the date of the elections, when the electoral block was not registered by CEC (the Central Electoral Commission).

12. From the commission for the formation of constituencies there should have been part of this the representatives of the associations of national minorities (Article 74 (2) (g)). The lack of a transparent process through which a large number of ethnic associations were to delegate a representative denotes that the three exponents chosen were selected according to the criterion of political affiliation by the Executive.

13. *"The independent commission (referred to in paragraph (2)) shall act on the basis of its own regulation approved by the Cabinet of Ministers"* (Article 74 (3)). The regulation was elaborated by the Ministry of Justice and not by the commission.

Such a large number of violations of the Electoral Code (13!) allow the process of the formation of uninominal constituencies to be considered illegal.

## IV. Gerrymandering with any price. Creating constituencies based on political interests.

### Process 1: Malapportionment

The malapportionment process<sup>35</sup> is known as defective and disproportionate allocation of the seats between constituencies. It is envisaged the allocation of a similar number of mandates to constituencies with a much different number of voters / citizens. It is a different process than gerrymandering. In the US, in 1962, the Supreme Court of Justice declared this practice unconstitutional<sup>36</sup>. Sometimes it happens when this process is combined with classic gerrymandering. However, no example in the world can be given, when this process has been applied as broadly as it was in the Republic of Moldova as a result of the formation of uninominal constituencies. Especially since the mismanagement of mandates is combined with a visible gerrymandering. To avoid malapportionment, precise rules are applied regarding the allowed deviations. In the Electoral Code of the Republic of Moldova these norms are passed – first one the maximum of 10% deviation (the maximum deviation between constituencies, starting from the reference figure, is 10% between the largest and the smallest constituencies) and the second norm of 55-60 thousand voters included in the lists (the districts on the controlled territory of the Republic of Moldova will have between 55 and 60 thousand voters with the right to vote).

Out of 51 constituencies, 36 exceed in both directions the norm established by the law - so 70% of the constituencies. If it is to establish the maximum difference, then the 50 (Europe) constituency is the largest one with over 110 thousand voters who participated in the 2016 elections and the lowest it is the 47 constituency (the northern districts of Transnistria) with less than 7 thousand voters that came to the 2016 elections.

Even if we do not take into account the rules of representation established by the law, the average number of voters on lists in 45 constituencies (without Taraclia, Diaspora and Transnistria) is 61 700. The maximum deviation from this average in the 45 constituencies is 10.6 %, but 6 constituencies have a deviation of at least 57% (District 44 Taraclia). In the case of the constituency no. 50 (Europe), only if we look at the last elections, almost twice as many voters as the average number for the country were included, meanwhile in the constituencies for the Transnistrian region almost 10 times more voters were taken into account.

If we add to this fact that voters' lists in the Republic of Moldova are more than the real number of citizens with voting rights (living in the respective localities in the rural areas)

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<sup>35</sup> [https://en.wikipedia.org/wiki/Apportionment\\_\(politics\)#Malapportionment](https://en.wikipedia.org/wiki/Apportionment_(politics)#Malapportionment)

<sup>36</sup> <https://www.theatlantic.com/magazine/archive/2012/10/the-league-of/309084/>

and in Chişinău, there are even more voters living than they are on lists<sup>37</sup>, the situation is even more alarming.

The voters from abroad are the most affected. There are different data, some contradictory, regarding the actual number of citizens living permanently abroad. The realistic number can be approximately 1-1.1 million voters. They behave very different in the elections. The situation since the last electoral poll showed that there are regions where voters in the Diaspora are actively voting. There have been several situations when there haven't been enough voting sheets in some voting locations<sup>38</sup>. In any case, the number of voters is the only true figure regarding the minimum number of voters in one country or another. In this case, the formation of two constituencies for 10-13 thousand voters and one for 115 thousand is an obvious example of malapportionment.

Of the 6 districts affected visibly by the application of the malapportionment procedure, in the case of 4 it was applied visibly in the interests of the pro-Russian parties (Taraclia, Transnistria - 2 constituencies and CIS + Asia). As well in the case of the constituency 50 (Europe) took place a concentration of a very large number of European pro-voters in a single constituency (Annex 2). In the case of the formation of an entire constituency for America, pro-European parties are favored. The final score would be 5:1 constituencies spread deficiently, visible in favor of the pro-Russian parties. As we will see below, more than half of the constituencies can assure malapportionment, which can assure the advantage of PSRM in the next elections based on mixed system of voting.

If it is strictly to apply the provisions of the electoral law in the Republic of Moldova, malapportionment can be traced to all the constituencies that do not respect the norm of 55-60 thousand voters, per total the case of 70% of the constituencies.

## Process 2: Classic Gerrymandering

As a basis for verifying the presence or the lack of the gerrymandering process in the process of distributing the uninominal constituencies in the Republic of Moldova, we will take the results of the second round of the 2016 presidential elections. They are very relevant because they are the most recent and they reflect most accurately the cleavage between the two large categories of voters in Moldova - pro-European and pro-Russian. In Appendix 2 we see that preferences of voters in different constituencies vary greatly. In order to be able to see whether constituencies are distributed deficiently or not, we need to compare the results that would be in a proportional and in a mixed voting system. If

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<sup>37</sup> [http://www.transparency.md/wpcontent/uploads/2017/05/TI\\_Moldova\\_Evaluare\\_Modificarii\\_Sitemului\\_Electoral.pdf](http://www.transparency.md/wpcontent/uploads/2017/05/TI_Moldova_Evaluare_Modificarii_Sitemului_Electoral.pdf)

<sup>38</sup> [https://promolex.md/wp-content/uploads/2017/01/raport-electoral-final\\_RO\\_2016.pdf](https://promolex.md/wp-content/uploads/2017/01/raport-electoral-final_RO_2016.pdf)



they correspond or they deviate a little bit, then we can be sure that the distribution has been done impartially.

If we take as a basis the results of the presidential elections and we will shape them as possible parliamentary elections, then we see that left parties would have accumulated 837 thousand votes, and the right parties - 766 thousand. Based on the proportional system, this would mean a score of 27 to 24 mandates out of 51 in total. Instead, according to the mixed system, we see that 30 constituencies would be won by the left candidate and only 21 by the right. The difference between the two camps would increase from 3 to 9 seats. If we put aside the 6 constituencies on which the malapportionment mechanism combined with gerrymandering was applied, then we will notice that the ratio of the 45 mandates on the basis of the proportional system would be 25 –left: 20 –right, but it is 26 –for the left and 19 for the right. We analyzed closely commission's working stages and concluded that this difference was ensured on behalf of the Chisinau municipality.

In the first stage, the commission decided to establish 46 constituencies in the controlled territory of the country, then it decided that 11 would be from Chisinau. At the next stage, the commission decided to allocate 2 constituencies for the Transnistrian region and only 3 for the Diaspora. Finally, it was decided to subdivide Chisinau suburbs into two different constituencies. In this case we are talking about a classic method of excessive concentration of voters of a certain orientation in a single constituency. Of the 11 constituencies in Chisinau, 5 favor the left and 6 the right (Annex 2). However, the largest difference between right and left parties' voters (in constituencies favoring the right parties' voters in the municipality of Chisinau) is about 6 thousand voters. Instead, in the two constituencies in the suburbs of Chisinau, the right parties accumulate 7700 and 12100 more voters. It is a deliberate intentional concentration.

If the suburban localities were included in the same constituencies with the nearest voting stations from the sectors, the situation would have changed a lot. We have already shown above how in order to concentrate abusively the pro-European voters from the suburbs, it was violated the law by including parts of different sectors in the same constituencies. Nor is it the case to say that the map of constituencies of the two suburban districts looks bizarre due to the large distances between localities, while combining them with neighboring regions from the sectors would have been much more rational<sup>39</sup>. Had this procedure not been applied, the constituencies' report in Chisinau municipality would have been 8 to 3 or even 9 to 2 in favor of the pro-European orientation parties.

*In conclusion, out of 30 constituencies favoring the pro-Russian orientation parties, 7 were formed by applying the malapportionment procedures (Taraclia, 2 in Transnistria*

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<sup>39</sup> [http://gov.md/sites/default/files/document/attachments/intr20\\_93.pdf](http://gov.md/sites/default/files/document/attachments/intr20_93.pdf) (page 189)

*and 1 in the Diaspora) and the gerrymandering method (nr. 23, 29 and 31 from Chisinau . The constituency nr. 50 (Europe) was formed by excessive concentration of pro-European voters, which disfavored right-wing parties. If these procedures were not applied, the ratio of favorable constituencies (based on presidential elections modeling) should have been 25 to 26 in favor of right-wing parties, not 30 to 21 in favor of the left-wing ones.*

## **Conclusions – Moldovan gerrymandering know-how.**

The issue of politicians in control of the electoral rules abusing their power is a widespread one. Gerrymandering is present even in more developed democracies. Politicians change electoral laws to fit their own interests. However, in Moldova this practice was taken to a whole new level. Already the first analyses of the draft laws regarding the change of the electoral system made it clear that the new rules would favor PDM and PSRM. It became obvious that the two parties had made a deal behind the scenes. The winner-takes-all system, with MPs elected in a single round, clearly favors PSRM, which has monopolized the left. Involving the National Integrity Agency in the electoral process, limiting the role of mass media, increasing the power of the politically subordinate judiciary in electoral matters, increasing the importance of administrative resources and of the control of local administration - these and other provisions of the new legislation will provide the governing party with almost complete control over the electoral process.

The second stage was the creation of single-mandate constituencies according to the same logic. Even though the Electoral Code requires the establishment of an independent commission to draw up the constituencies, the regulation of this body was prepared by the Ministry of Justice, controlled by PDM, thus undermining the commission's independence from the very start. Next, in a discretionary manner, the authorities appointed as members of the commission a majority of politically affiliated people, thus ensuring complete political control over the creation of constituencies.

The commission's work was wholly non-transparent and the decisions were taken without any public consultations. The government acted the same way when approving the constituencies. The commission disregarded even the provisions of the Electoral Code, not to mention international good practices. As a result, most the constituencies violate the legal provisions.

Out of the 51 constituencies, nine bear clear signs of malapportionment and gerrymandering. The manner in which the constituencies have been drawn up and approved shows that in most cases the Party of Socialists is favored, while pro-European parties are at a disadvantage.

The way in which the single-mandate constituency reform was implemented proves once again that the current government plans on staying in power via PSRM's

candidates in constituencies. The Socialists are sufficiently under control to be used to promote under their banner people that will later make up the parliamentary majority of the current government. There may be even more secret deals behind the scenes. What is certain is that the constituencies have been designed to disadvantage pro-European voters.

*During the creation of the constituencies, most of the recommendations of the Venice Commission have been ignored. Even worse, many provisions of Moldova's own legislation have been disregarded. The Moldovan electoral reform is an international innovation in matters of subordinating electoral laws and regulations to the interest of a governing group. I don't think there are similar cases when, in a single move, the rules for the next elections are changed so radically and with so many infringements of democratic norms. An electoral system like this cannot be found in any other parliamentary republic with a single-chamber Parliament. Already in the first stage the changes favored PDM and PSRM. In the second stage, the new and vague laws have been applied in a discretionary way to create a politically obedient commission. Next, this commission drew up the electoral constituencies in an equally discretionary manner, applying and interpreting the Electoral Code according to its own interests. As a result, over two thirds of all constituencies don't fit the legal requirements. Nine of them bear clear signs of political design - gerrymandering and malapportionment. The result of the commission's non-transparent work is that PSRM candidates are at an advantage in most constituencies.*

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