

**DECLARATION**

***March 14, 2018***

**We, the organisations of the National Platform of the Eastern Partnership Civil Society Forum, signatories to the Declaration, are deeply disappointed and concerned about the increasing tendencies of unjustified limitation of the right of Moldovan citizens to initiate and conduct legislative referenda. We believe that the law does not provide for such a limitation and a democratic society does not need it.**

**The current national legislation of the Republic of Moldova provides for the right of the citizens to initiate republican and constitutional referenda. Article 155 of the Electoral Code stipulates that the republican referendum may be, inter alia**[[1]](#footnote-1)**, initiated by at least 200.000 citizens of the Republic of Moldova eligible to vote. In case of constitutional referendum, provisions of Article 141 letter 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 territorial-administrative units and at least 20.000 signatures must be registered in each of them in support of this initiative. Thus, finding the present existence of at least 36 territorial-administrative units of the second level**[[2]](#footnote-2)**, in order to initiate amending the Constitution, at least 20 thousand signatures \* 16 territorial-administrative units of the second level are required, which represents at least 320.000 signatures, well above the limit of 200.000 signatures.**

**We can infer that by introducing minimum numbers of signatures that need to be collected to promote an ordinary legislative initiative or to amend the Constitution, the legislator sought to guarantee the right of citizens to initiate different types of republican referendums and to ensure the direct exercise of sovereignty.**

**On July 27, 2017, the Constitutional Court of the Republic of Moldova declared unconstitutional**[[3]](#footnote-3) **the provisions of the present (after republishing, the numbering of the articles was modified) paragraph 2 of Article 155 of the Electoral Code, which offered inter alia the President of the Republic of Moldova, the Government and 200.000 citizens the right to vote any type of referendum.**

On January 12, 2018, the Central Electoral Commission (CEC) rejected[[4]](#footnote-4) the request for registration of an initiative group intending to initiate a republican legislative referendum to repeal the amendments and addenda adopted by the Law No 154/2017, by which the mixed electoral system of election of Members in the Parliament was introduced. The Commission substantiated its decision by formally invoking procedural deficiencies admitted by the group members, although they were qualified as insufficient by some civil society[[5]](#footnote-5) organizations to be rejected.

Worse, by this decision, the Commission questioned the citizens' right to initiate legislative referenda: ‘it is not clear whether can be organised a legislative referendum, which does not refer to the approval of the constitutional laws adopted by Parliament, as required by Article 157 (1) letter b) of the Election Code, therefore, this article, which sets out exhaustively the problems that may be subject to the Republican referendum, does not provide for the possibility of organizing another legislative referendum than the one which refers to the approval of the laws passed by the Parliament, or it is presumed that ‘other important issues of society and the state’ provided for by Article 157 paragraph (1) letter 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 consultation[[6]](#footnote-6) of a public debate on a draft law aimed at amending the Electoral Code by granting the Parliament the exclusive right to initiate the republican legislative referendum[[7]](#footnote-7). In this context, several civil society organizations have issued opinions[[8]](#footnote-8) on this draft law[[9]](#footnote-9) and have ‘expressed their disagreement with the proposed amendments to the consulted draft law. The people of the Republic of Moldova, as the sole sovereign holder of the power cannot be deprived of the right to initiate any type of referendum. Moreover, we have **to find some artificial barriers that are not necessary in a democratic society and which seem to be obstacles in the future to suppress the intentions of exercising direct democracy by the people.**

On March 7, 2018, contrary to the legislation in force[[10]](#footnote-10), the Legal Commission of the Moldovan Parliament examined the CEC's request for official interpretation of the Electoral Code and issued an advisory opinion, even if the Commission requested formal interpretation. According to the Advisory Opinion No. CJ-10/74 of March 7, 2018[[11]](#footnote-11), 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 to a legislative referendum not regulated by the Constitution.

On March 12, 2018, the Central Electoral Commission rejected[[12]](#footnote-12) a new request from the initiative group to organize a republican legislative referendum for the adoption of a law on the electoral system, which stipulates that the Parliament's elections are based on a proportional voting system. Although the normative framework did not undergo any change, the CEC justified its refusal to register the application by invoking the (non-existent) constitutional jurisdiction in the field of initiating the republican legislative referendum, in the absence of the normative legislative norms referring to the initiation of the referendum by the citizens, as well as by the international regulations not to modify the electoral system until at least one year before the ordinary elections ...’

**To conclude**,

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

Calling attention to consistently visible actions by a number of public authorities aimed at limiting the exercise of constitutional rights of citizens in 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 examination 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 Commission ‘Legal Committee for Appointments and Immunities have trained themselves in various forms to limit the right of citizens to initiate any type of referendum;

Considering that the prerogative of Parliament to declare resolutely all proposals to initiate the referendum is excessive and might serve as an unjustified and exclusive instrument of political opportunity to block popular initiatives;

Insisting on the fact that the participatory democracy counts and that in the decision-making process the good faith of public institutions and political actors prevails, and this will be assured, which will be the decisive factor in the evolution of law and jurisprudence in the Republic of Moldova;

EaP CSF National Platform Organisations, **CALL FOR**:

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

* to abandon initiatives to limit the right 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 that limit 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 expose their opinion on a problem of national interest in a democratic exercise;
* to insist on the consultation of the Venice Commission's opinion on draft laws on the right of Moldovan citizens to initiate any type of referendum.
1. Besides citizens eligible to vote, the republican 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 Electoral Code the mentioned actors could initiate any type of referendum. [↑](#footnote-ref-1)
2. According to the Law No 764 of 27 December 2001 on the Territorial-Administrative Organization of the Republic of Moldova, the 36 second level territorial-administrative units are represented by 32 districts, Chisinau and Balti municipalities, as well as by two territorial-administrative units with special status (TAU Gagauzia and Transnistrian region). [↑](#footnote-ref-2)
3. <http://constcourt.md/ccdocview.php?tip=hotariri&docid=627&l=ro> [↑](#footnote-ref-3)
4. <http://cec.md/index.php?pag=news&id=1001&rid=21420&l=ro> [↑](#footnote-ref-4)
5. <https://promolex.md/11378-opinia-asociatiei-promo-lex-respingerea-cererii-de-inregistrare-a-grupului-de-initiativa-pentru-desfasurarea-unui-referendum-legislativ-pune-la-indoiala-dreptul-cetatenilor-de-a-exercita-direct-suver/?lang=en> [↑](#footnote-ref-5)
6. <http://www.justice.gov.md/public/files/2018/transparenta_in_procesul_decizional/februarie/1381.pdf> [↑](#footnote-ref-6)
7. <https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf> [↑](#footnote-ref-7)
8. <https://watchdog.md/2018/02/26/opinia-asociatiei-comunitatea-watchdog-md-asupra-proiectului-legii-pentru-modificarea-si-completarea-codului-electoral-autor-ministerul-justitiei/> [↑](#footnote-ref-8)
9. <https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf> [↑](#footnote-ref-9)
10. According 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. [↑](#footnote-ref-10)
11. <https://watch.cpr.md/cec-refuza-cetatenilor-dreptul-la-initierea-referendumului-legislativ-inca-o-proba-degradarii-mecanismelor-democratice/> [↑](#footnote-ref-11)
12. <http://cec.md/index.php?pag=news&id=1001&rid=21675&l=ro> [↑](#footnote-ref-12)