*December 19, 2019*

**PUBLIC CALL**

**regarding the need to expedite the setting of a date for the new parliamentary election in single-member constituency No. 38, Hincesti**

We, the signatory member organizations of the Civic Coalition for Free and Fair Elections,

* *express concern over the Central Election Commission’s neglect of its duties related to the setting of a date for the new parliamentary election;*
* *disapprove the way the Parliament drags out the adoption of the decision to dismiss Alexandru Botnari, the Member of Parliament for single-member constituency No. 38, beyond the prescribed 30-day timeframe; but know for certain that this cannot stop the initiated legal procedures;*
* *draw attention to the need to ensure the predictability of the electoral process for both voters and potential election contenders as well as to exclude vulnerabilities caused by political uncertainties;*
* *consider that all election players (citizens, potential contenders, election management bodies, civic observers) have the right to equal opportunities and sufficient time in preparing for their possible involvement;*
* *insist that CEC members urgently meet and set a date for holding the new parliamentary election in single-member constituency No. 38 within the legally prescribed timeframe, that is February 5 – March 5, 2020.*

We remind that, under Article VI of Law No. 113 of August 15, 2019, for the Amendment of Certain Legislative Acts, in the event that the mandate of a member of parliament for a single-member constituency is declared vacant at least 180 days before the expiration of the mandate of the Parliament X, a partial parliamentary election shall be organized and held in accordance with the law effective before the adoption of this law.

In that regard, Article 105 (1) of the Election Code (as effective before the amendments) states that, if the office of a member of parliament becomes vacant, the CEC sets the date of the new election. The election must take place 60 days after the date when the election was declared null and void at the earliest and three months after this date at the latest. In addition, under Article 2 (7) of Law No. 39 of April 7, 1994, on the Status of Member of Parliament, in the event of dismissal, revocation of mandate, incompatibility or decease, the mandate of the member of parliament becomes vacant.

According to para. 80 – 83 of Decision No. 21 of June 24, 2015, of the Constitutional Court, if the resignation from the office of member of parliament comes from a member of parliament in a state of incompatibility, the mandate of the member of parliament ceases upon the submission of the resignation, and the Parliament must act promptly to abide by the law. The dismissal of a member of parliament triggers a set of procedures formed of several consecutive phases that require actions both from the member of parliament in a state of incompatibility and from the Parliament, the CEC and the Constitutional Court:

1. the submission of the member of parliament’s resignation to the Speaker
2. the acknowledgment of the resignation and the declaration of the mandate vacant by the Parliament

For members of parliament elected in single-member constituencies:

1) the setting of a date for the new (partial) election in the corresponding single-member constituencies

The Constitutional Court clarified in para. 88 that all procedures related to the incompatibility of members of parliament must finish within the 30 days required by law after the occurrence of incompatibility; otherwise, following the end of the 30 day timeframe, the mandate of the member of parliament ceases by operation of law, obviating the need for other formal conditions.

Member of Parliament Alexandru Botnari was elected Mayor of the Municipality of Hincesti following the second round of the local election of November 3, 2019, and Hincesti Court validated his mandate on November 5, 2019.[[1]](#footnote-1) After that, Alexandru Botnari submitted his resignation as member of parliament on December 5, 2019, that is on the last day required by law.

According to para. 98 and 99 of Decision No. 21 of June 24, 2015, of the Constitutional Court, an incumbent member of parliament becomes incompatible as soon as they take another paid office or upon the occurrence of other incompatibility circumstances described by the law—in our case, upon the validation of the Mayor mandate. Within the legally required timeframe of 30 days from the occurrence of incompatibility, the member of parliament must choose between the mandate of member of parliament and the other office, resigning from one of them.

Consequently, in light of the Constitutional Court’s explanations set out in Decision No. 21 of June 24, 2015, we consider that the mandate of the member of parliament ended at law on December 5, 2019, obviating the need for other formal conditions. All procedures related to the incompatibility of Mr. Alexandru Botnari should have ended within the 30 day timeframe that elapsed on December 5, 2019.

*Given the regrettable precedent of the protracted setting of a date for the new parliamentary election of October 20, 2019,[[2]](#footnote-2) we have a reasonable suspicion that both the CEC and the Parliament of the Republic of Moldova protract the setting of the new parliamentary election for single-member constituency No. 38 without a good reason.*

Thus, because the mandate of Member of Parliament Alexandru Botnari ended at law on December 5, 2019, the Central Election Commission must set a date for the new parliamentary election *ex officio* within the interval of February 5 – March 5, 2020, in line with Article 105 of the Election Code (as effective before the amendments) and Article 2 (12) of the Law on the Status of Member of Parliament.

Given the above arguments, the signatory organizations request the Central Election Commission:

* To convene in urgent meeting to discuss the setting of a date for the new parliamentary election for single-member constituency No. 38;
* To set a date for the new parliamentary election within the legal timeframe, that is February 5 – March 5, 2020.
1. Decision of November 5, 2019, of Hincesti Court (Ialoveni office), available at <https://bit.ly/2M5y10H> [↑](#footnote-ref-1)
2. Report No. 1 of the Promo-Lex’s observation mission on the general local election and the new parliamentary election of October 20, 2019, p. 15 and 16. <http://bit.ly/2kpYRpL> [↑](#footnote-ref-2)