

Strasbourg, 13 January 2014

CDL-REF(2014)001 Engl.Only.

Opinion 749 / 2013

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

DRAFT LAW

AMENDING THE ELECTORAL LEGISLATION

OF

THE REPUBLIC OF MOLDOVA

LAW ON AMENDING AND SUPPLEMENTING SOME LEGISLATIVE ACTS

Parliament adopts this organic law.

Art. I. - Election Code no.1381-XIII of 21 November 1997 (Official Gazette of the Republic of Moldova, 1997, no. 81, art. 667), as amended, is amended and supplemented as follows:

1. In Article 1, after the notion "electoral constituency", to introduce two new notions as follows:

"national constituency – the national-wide constituency where the elections of MPs based on proportional voting on party lists are organized and conducted;

*uninominal constituency*¹ - the constituency, usually established under the administrative territorial units of second level, in which uninominal elections of a Member of Parliament on the basis of majority voting are organized and conducted;".

2. Article 4:

- the single paragraph becomes paragraph (1);

- the article is supplemented with paragraph (2) as follows:

"(2) In any voting within general parliamentary elections, each voter is entitled to one vote for, by voting with two ballots, one for the national constituency and another one for the uninominal district. All votes have equal legal effect."

3. In Article 10, after the word "electoral contestant", this text is introduced "and is entitled to one vote both in the national constituency and in uninominal constituency".

4. Article 22^2

- it is completed with the letter c1) as follows:

"c1) in parliamentary elections, it shall establish the boundaries of uninominal constituencies under the provisions of this Code.

- in letter t), the text "art. 87 and 88" is replaced by "art. 89, 91 and 92".

5. In Article 27 paragraph (1), after the words "correspond to" the words "usually" are introduced, and in the final paragraph is supplemented as follows: "Exceptions from this rule are provided in this Code."

6. In Article 39, the paragraph (9) is supplemented by the end with the text: "In case of parliamentary elections, the voting certificate is issued if the voter wishes to vote in another polling station in the uninominal constituency where s/he is included in basic voters list."

¹ Translator's note : i.e. **single-member constituency**.

² Translator's note : in English the wording would be different and would look like this: "In case of parliamentary elections on uninominal constituencies and in case of local elections".

7. In Article 42 paragraph (1), after the word "elections", to introduce the text "parliamentary on uninominal constituencies and in case of elections."

8. In Article 46 paragraph (6), the words "any changes in the lists" are replaced by "changes within the lists", and the number "79" – by the number "81".

9. In Article 48 paragraph (1), the word "ballot" is substituted in both cases, by the word "ballots".

10. Article 53:

- in paragraph (2) letter a), the words "voting certificate" will be followed by the words "in that constituency";

- in para. (3), the let. b) and c) are excluded.

- the article is supplemented with paragraph (31) as follows:

"(31) In polling stations established outside the Republic of Moldova, the voter shall complete and file an affidavit on abstention from multiple voting, being informed about criminal liability for breach of this obligation."

11. Title III reads as follows:

Title III PARLIAMENTARY ELECTIONS

Article 72. Scope of this title

Provisions of this title (art. 72–945) are applicable only to parliamentary elections.

Article 73. Parliamentary elections

(1) Parliament shall be elected by universal, equal, direct and secret and freely expressed suffrage for a term of 4 years.

(2) Parliamentary elections shall be conducted under a mixed system (proportional and majority) in a national constituency and in uninominal constituencies.

(3) In national constituency 51 MPs shall be elected based on proportional representation voting. In uninominal constituencies 50 MPs shall be elected based on majority voting, each one from each constituency.

Article 74. Electoral constituencies

(1) Parliamentary elections shall be held based on a national constituency, which covers the whole territory of the Republic of Moldova, as well as based on 50 uninominal constituencies that are usually established so as to cover localities of an administrative-territorial unit of the second level

(2) Electoral uninominal constituencies are the following:

- Chisinau municipality - 8 constituencies, including a constituency in the suburbs of the Chisinau municipality.

- Balti municipality 2 constituencies.
- A.T. U. Gagauzia 3 constituencies.
- In the localities on the left bank of Nistru and Dubasari district 3 constituencies.
- For districts Ungheni, Orhei, Ialoveni, Hinceşti Cahul 2 districts per each district. 4

- A constituency per two districts shall be established for Basarabeasca and Taraclia Rezina and Soldanesti, Donduseni and Ocnita.

- For districts: Anenii Noi, Briceni Calarasi, Cantemir, Căuşeni, Cimislia, Criuleni, Donduseni, Drochia, Edinet, Falesti, Floresti, Glodeni, Leova, Nisporeni, Rişcani, Singerei, Soroca, Stefan Voda, Straseni, Teleneşti - a constituency pear each district.

- Outside the country only one uninominal constituency shall be established.

(3) The delimitation of boundaries of uninominal constituencies, within a single administrative territorial units, shall be established by the Central Electoral Commission.

(4) The list of uninominal constituencies, indicating the numbers and boundaries, shall be published in the Official Gazette of the Republic of Moldova.

Article 75. Constituency Electoral Councils³ and Electoral Offices of Polling Stations

(1) For the purposes of organizing and conducting elections, the Central Electoral Commission shall establish, at least 50 days prior to them, Constituency Electoral Councils under art. 27, which shall be applied accordingly. Duties of constituency electoral councils are indicated in art. 28, except those in let. g), the provisions of which shall be applied accordingly.

(2) Electoral constituencies are divided into precincts under art. 29 and 291, which shall be applied accordingly.

(3) In polling stations electoral shall be established their Electoral Offices, the mode of formation and duties of which are provided in art. 29, 291 and 30, which shall be applied accordingly.

(4) In uninominal constituency established on the basis of two administrative territorial units, a single electoral constituency council shall be established with headquarters in the administrative territorial unit of II level with a larger number of voters.

(5) Within the administrative territorial units where several electoral constituencies will be established, the electoral councils of I and II levels shall be established.

(6) The electoral constituency council of Chisinau shall be responsible for the uninominal constituency established abroad.

Article 76. Candidates for the MP position

Candidates for MP position can be people who voting right who have reached, including on election day, the age of 18 years old, are citizens of the Republic of Moldova, reside in the country and meet the requirements of this Code.

Article 77. Establishing the election date

(1) Parliamentary elections shall be held within three months from the expiration of the Parliament's mandate or from dissolution of Parliament.

³ Translator's note: Also known as **DECs, i.e. District Electoral Councils.**

(2) In case of expiration of the Parliament's mandate, the date for parliamentary elections shall be established by the decision of Parliament at least 60 days before the election day.(3) In case of Parliament's dissolution, the same decree of the RM President, the date of new parliamentary elections shall be established. Early elections shall be held at least in 60 days, and not later than 3 months after the dissolution of Parliament.

Article 78. Nomination of candidates from parties

(1) Nomination of candidates for MP position for the national constituency and for uninominal constituencies shall be done according to statutory provisions of the parties and / or electoral blocs.

(2) Party and / or electoral bloc may submit:

a) list of candidates for the national constituency that will not be less than 30 persons and will not exceed 51 persons, plus two substitutes;

b) one candidate for each uninominal constituency.

(3) The model list of candidates shall be approved by the Central Electoral Commission.

Article 79. Process for registration of electoral contestant

(1) In order to be registered by the Central Electoral Commission, electoral contestants shall submit the documents stipulated in art. 44.

(2) The same person may be included only in one list of candidates, from one single electoral contestant.

(3) A person included in the list of candidates from an electoral contestant for election based on national constituency can run only in one uninominal constituency on behalf of the same electoral contestant or as an independent candidate.

Article 80. Special requirements for subscription lists

(1) In order to be registered by the Central Electoral Commission, the independent candidate shall submit, under art. 42 and art. 43, the subscription lists containing signatures of at least 1,000 supporters with voting rights in uninominal constituency where s/he intends to run, but not more than 2,000 signatures, or, if s/he intends to run on national constituency, containing at least 2,000 signatures, but not more than 3,000 signatures.

(2) If, on verification by the Central Electoral Commission, in the subscription lists some false signatures or repeated signatures are detected in several lists, then these signatures shall be excluded. If in the verification 5% false signatures are detected, the verification shall be ceased and the lists shall be rejected.

(3) If the verification finds that the required number of signatures is not submitted or, after exclusion of invalid signatures, their number is decreased and is lower than the minimum limit stipulated in par. (1), the independent candidate shall not be registered, communicating him/her the grounded decision within 24 hours since adoption.

(4) It is not accepted to submit additional subscription lists after the Central Electoral Commission has received and registered in the registry the set of documents referred to in art.44.

Article 81. Special requirements for registration of candidates lists in national constituency

The number of candidates included in the list at the time of registration may not be less than 30 persons and not more than 51, plus two alternate candidates.

Article 82. Changes to the list of candidates or withdrawal of candidate

(1) Electoral contestants have the right to withdraw its candidacy, to withdraw the entire list of candidates, to replace a candidate, to exclude from the list and to include another

candidate or to make changes within the list, but no later than in 7 days before the election day.

(2) The decision on the withdrawal of candidature, withdrawal or amendment of the list of candidates shall be adopted by the person or entity who nominated the candidate or filed candidates list and it shall be submitted to the Central Electoral Commission, which immediately makes it public.

(3) If in uninominal constituency one single candidate was registered and s/he withdrew or did not participate in the elections for other reasons, then in this constituency new elections shall be organized under this Code.

Article 83. Electoral lists

Electoral lists for parliamentary elections shall be made under conditions of Chapter 5 (art. 39 and art. 40), which shall apply accordingly.

Article 84. Electoral campaign for parliamentary elections

Electoral campaign for parliamentary elections shall be conducted in accordance with Chapter 7 (art. 45–art. 47), which shall be applied accordingly.

Article 85. Ballots

(1) Ballots shall be prepared in accordance with Chapter 8 (art. 48 and art. 49), which shall be applied accordingly. Ballots for the national constituency and uninominal one shall be printed separately and shall have different colours.

(2) An independent candidate shall be included in the ballot in a separate quadrilateral, indicating the name and the words "Independent candidate".

Article 86. Voting

(1) Voting in parliamentary elections shall be conducted in accordance with Chapter 9 (art. 50–art. 55), which shall be applied accordingly.

(2) The voter shall vote in the polling station within the territorial jurisdiction of which s/he has the domicile. Voters with domicile and residence shall vote in the jurisdiction area where they have their residence during its validity.

(3) Students and pupils with voting rights enrolled in educational institutions in a locality where they have no registration at home or at residence can vote, for the national constituency, at any polling station opened in this locality, being obliged to comply with the following conditions:

a) to present ID with attachment;

b) to present the student card of educational institution from the respective locality;

c) to write in and sign an affidavit for abstention from multiple voting, being informed about criminal liability for breach of this obligation.

(4) Voters specified in paragraph (3) shall be registered supplementary list, and in the column "Note" it shall be indicated the educational institution in which they are enrolled.

Article 87. Counting the votes and tabulation the election results

(1) Counting the votes and tabulation of results in parliamentary elections shall be conducted in accordance with Chapter 10 (art. 56–art. 60), which shall be applied accordingly.

(2) The electoral offices shall perform separately all procedures of counting and tabulation of results for national constituency and for uninominal constituency.

Article 88. Establishing the representation threshold for elections in national constituency

(1) After receiving from all electoral constituencies the minutes of constituency electoral councils, which show the voting results, the Central Electoral Commission shall make the total of the number of valid votes cast for each party, for other socio-political organisation, for each electoral bloc and independent candidate, in order to determine whether they reached the minimum representation threshold.

(2) Representation threshold constitutes the following proportions of valid cast of votes in the entire country:

a) for a party, political organization - 4 percent;

b) for an electoral bloc composed of 2 parties and/or socio-political organizations - 7 percent;
9 c) for an electoral bloc composed of 3 or more parties and/or socio-political - 9 percent;
d) for an independent candidate - 2 percent.

(3) Parties, other socio-political organizations, electoral blocs and independent candidates who have obtained fewer votes than the number specified in par. (2) shall be excluded, by the decision of the Central Electoral Commission, from the process of allocating the mandates.

Article 89. Counting the mandates obtained by electoral competitor in national constituency

(1) The MP mandates shall be distributed only to electoral contestants who have obtained the minimum necessary votes to pass the representation threshold established in art.88.

(2) Distribution of parliamentary mandates among parties, other socio-political and electoral blocs shall be made only after establishing the number of independent candidates who accumulated at least 2 percent of the valid votes expressed by voters and that number of independents is subtracted from the total number of MP mandates in Parliament elected in national constituency.

(3) The number of votes obtained by independent candidates who have accumulated at least 2 percent of the valid votes cast shall be subtracted from the total number of valid votes cast in those parliamentary elections. Number of votes obtained shall be divided by the number of MP mandates that remained after subtracting the number of mandates obtained by independent candidates, obtaining thus the electoral coefficient of those parliamentary elections.

(4) The number of valid votes cast obtained by each party, other socio-political organization or every electoral bloc that passed the representation threshold established in art. 88 shall be divided by the electoral coefficient, obtaining thus the number of MP mandates to be received by every electoral contestant. The fraction numbers bigger than 5 are rounded up, and the 5 and lower are rounded down.

(5) The number of MP mandates that remain undistributed shall be distributed sequentially, one by one to each party, socio-political organization, each electoral bloc, starting with the electoral contestant who obtained the highest number of mandates, in descending order.

Article 90. Election of MP in uninominal constituency

(1) Candidate for MP position is considered elected if s/he receives more than half of the valid votes of voters who participated in voting in the uninominal constituency where s/he ran as candidate.

(2) If no candidate receives more than half of valid votes cast, within 2 weeks the second suffrage round shall be held with the top two candidates who obtained the highest number of votes in first round. These two candidates shall be listed in the ballot in descending order according to the number of votes cast in the first round. If more candidates have obtained an equal number of votes, the constituency electoral council shall draw lots, mentioning this fact in the minutes.

(3) In the second round, the candidate who received the highest number of votes shall be considered elected, regardless of the number of voters who participated in the election. In case of a tie, the candidate who received the highest number of votes in the first round shall be considered elected.

(4) Notwithstanding the provisions of this Article, in the uninominal constituency established abroad will be considered as elected those 3 candidates who have accumulated the highest number of votes.

Article 91. Attribution of mandates acquired in national constituency

(1) Mandates shall be attributed to candidates from lists of electoral contestants by the Central Electoral Commission in order of their registration in lists.

(2) The candidates included in list of electoral contestant that passed the representation threshold established in art. 88 but were not elected shall be declared alternates. Alternate candidate shall be declared elected by the Constitutional Court, following the motion from the Central Electoral Commission, if, for some reasons, an MP mandate belonging to the party mandate, socio-political organization or electoral bloc that s/he represents becomes vacant. Alternate candidate may decline the MP mandate, submitting a written statement to the Central Electoral Commission.

(3) If a party or other socio-political organization or electoral bloc receives a number of mandates that is bigger than the number of candidates on the list, then this party, socio-political organization or electoral bloc shall be given the number of mandates that is equal to the number of candidates in the list.

(4) The remaining MP mandates shall be redistributed to other parties, socio-political organizations or electoral blocs as established in Art. 89 par. 5. The same shall be done in case of further vacancy of mandates, if the electoral contestant has no 11 alternate candidates or if the MP mandate obtained by independent candidate elected in national constituency becomes vacant.

Article 92. Attribution of mandates acquired in uninominal constituency

(1) After receiving the minutes of electoral offices from all polling stations in a uninominal constituency, which show the voting results, the constituency electoral council shall make the total of the number of valid votes cast for each candidate in order to determine who was elected.

(2) The Central Electoral Commission attributes mandates to candidates elected in uninominal constituencies.

(3) If the candidate elected in uninominal constituency was also elected on party list in the national constituency, then s/he is considered as being elected only in uninominal constituency and will not be taken into account in the attribution of mandates based on party list.

Article 93. Confirmation of election results and validation of mandates by the Constitutional Court

(1) The Central Electoral Commission, within 48 hours from final tabulation of election results, shall submit to the Constitutional Court the documents referred to in art. 60 and lists of elected MPs and alternate candidates.

(2) Within 10 days from receiving the documents from Central Electoral Commission, but not before the final settlement by the courts of appeals filed under the procedures established by law, the Constitutional Court shall confirm or invalidate, through an opinion, the legality of elections. Simultaneously, the Constitutional Court shall validate the mandates of elected MPs and confirms the lists of alternate candidates.

(3) If the elections are declared as legal, the Central Electoral Commission shall issue certifications to elected MPs.

Article 94. Certification of election results by the Central Electoral Commission

(1) The minutes on the election results, accompanied by the opinion of the Constitutional Court confirming the legality of elections and the decision on the validation of at least 2/3 of MP mandates, shall be submitted to Parliament within 2 days. A copy of these documents and the confirmed lists of alternate candidates shall be submitted to the Central Electoral Commission.

(2) The Central Electoral Commission shall publish the final election results within 24 hours from receiving the documents from the Constitutional Court.

Article 94¹. Invalid elections

(1) The Central Electoral Commission shall consider the elections as invalid if they were attended by more less than 1/4 of the number of persons registered in the electoral lists.

(2) Decision to declare the elections invalid shall be adopted by the Central Electoral Commission based on the documents submitted by electoral constituency councils.

(3) Those elections in uninominal constituencies shall be considered invalid where one candidate ran and did not gathered the necessary number of votes in order to be elected.

Article 94². Void elections

If the Constitutional Court finds that during the elections and/or vote counting the violations of this Code were committed that influenced the outcome of voting and attribution of mandates, the elections in the respective constituencies shall be declared void.

Article 94³. By-elections

(1) If, following the parliamentary elections, in uninominal constituency no MP was elected, including where the case stipulated in art. 82 par (3), or MP position became vacant, the Central Electoral Commission shall establish, within 2 weeks, the date of by-elections in the uninominal constituency concerned.

(2) The term of office of the elected MP will last until the expiry of the general term of office of Parliament.

(3) If the MP vacancy occurred during the last 12 months of the Parliament's term of office, then new elections in the uninominal constituency concerned shall not be organized.

Article 94⁴. Repeated voting

(1) If the elections were declared invalid or void or in the case stipulated in art. 90 par. (2), the Central Electoral Commission shall organize, within 2 weeks, repeated voting in the electoral constituencies concerned.

(2) Repeated voting shall be conducted on the basis of the same electoral lists, for the same candidacies and with the same electoral councils and offices.

(3) The electoral contestants guilty in violating the provisions of this Code shall be sanctioned or excluded from the ballots on the basis of a final court decision, and the electoral councils and offices that committed such violations shall be replaced.

Article 94⁵. New elections

(1) If even after repeated voting the elections are declared invalid or void, the Central Electoral Commission shall establish the date for new elections, which shall take place within 60 days from the date when elections were declared invalid or void.

(2) Provisions of paragraph (1) shall also apply in the case where after by-elections the mandates of at least 2/3 of MPs elected in uninominal constituencies were not validated.

(3) In case of early elections, if even after repeated voting the elections are declared invalid or void, the President of the Republic of Moldova shall establish, by decree, the date of new elections, taking into account the period indicated in art. 76 par. (3).

(4) New elections shall be held under conditions of this Code."

Article II. - Law no.39-XIII of 7 April 1994 on MP status (republished in the Official Gazette of the Republic of Moldova, 2005, no. 59-61, art. 201), as amended, is amended and supplemented as follows:

1. In Article 2:

- paragraph (11) reads as follows:

"(11) In case of vacancy of an MP mandate gained in uninominal electoral constituency, Central Electoral Commission shall organize by-elections, following the notification of Parliament or ex officio."

- the Article shall be supplemented with paragraph (12) as follows:

"(12) The MP elected as result of by-elections shall exercise his/her mandate after its validation by the Constitutional Court and s/he shall exercise his/her functions during the Parliament's term of office."

SPEAKER OF PARLIAMENT

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EXPLANATORY STATEMENT TO THE DRAFT LAW ON AMENDING AND SUPPLEMENTING CERTAIN LEGISLATIVE ACTS

This draft law provides for the amendment of the electoral system in the Republic of Moldova in case of parliamentary elections.

Currently, in the parliamentary elections, the electoral system of proportional representation is used, based on the party lists in a single national constituency where 101 MPs are elected.

International practice witnesses two basic electoral systems: the majority system and proportional one.

The electoral system with majority vote is characterized by elections that are held in uninominal constituencies, usually a mandate per constituency and the winner is the one who gets the most votes (relative majority) or at least half plus one of the votes cast (absolute majority). Usually, the elections are conducted in two rounds.

Such a practice is not new for the Republic of Moldova, because it was applied until 1994 for parliamentary elections and it is currently for the elections of mayors.

Electoral system with proportional vote or based on party lists means elections in a single national constituency where all MPs are elected based on the results obtained by each electoral contestant taking into account certain proportion that varies depending on the formula used.

However, in some states with advanced democracy we can find an electoral system that combines the advantages of both the majority and the proportional system - mixed system. In such a system, some of MPs are elected in uninominal constituencies with majority vote, and the other ones are elected based on party lists with proportional vote. The voter in this case has two votes in the uninominal constituency and in the national one. Such systems may be encountered in Ukraine, Romania, Germany, etc.

Each electoral system has both advantages as well as disadvantages. However, by examining the electoral and political practice in the Republic of Moldova in the last 20 years, it was found necessary to improve this system, and the best way would be a mixed electoral system with the vote on uninominal and national constituencies, where some of the MPs would be elected on party lists party, and the others would be elected directly by citizens.

Voting for MPs just based on party lists is not justified any more, given that citizens lose the contact with elected officials, whom often they do not even know, they know only the leaders.

According to art. 68 para. (1) of the Supreme Law, *In exercising the made, MPs are in the service of people*. In reality this legal rule is not fully developed. And people usually vote for a party, for leader, for certain political symbols. In this situation, the other MPs elected on party's list do not have their own political identity, being morally obliged to vote in the same way as their leader or as decided by the party.

In this case, in order to ensure maximum transparency and getting the citizens closer to their voters, it is required that, in addition to elections based on party lists, the citizens would be able to elect concrete persons to represent their electoral constituency in the supreme legislative body.

This may encourage much to ensuring a greater stability and would increase the independence of MPs in their actions.

In such situation, the need is obvious to apply the proposed amendments, according to which the people will be able to know whom they vote for, and the elected MP should know that if s/he does not fulfil his/her duty, the people who voted him/her can replace him/her by a more credible and more competent person.

This draft law proposes to change the way of election for Moldovan Parliament, whereby the MPs will be elected not only in a single national constituency, but also in single-member (uninominal) constituencies - the so-called mixed system. The proportion will be: 51 MPs in the national constituency and 50 MPs in the uninominal constituency. The proposed electoral system exists in a range of European countries and it proved to be an effective system.

From the social point of view, the proposed amendments provide every citizen with a greater access to decision-making at the legislative level through elected MP, since the latter is dependent on the vote of each citizen in the constituency locality.

At the same time, it increases the responsibility of the parties, which remain the main political entities enabled to identify, prepare and promote personnel for political and administrative system of the Republic of Moldova. However, they will be obliged to take into account their competence and the credibility of candidates proposed to voters in the uninominal constituency.

Also, with the view of ensuring the right to be elected (Art. 38 para. (3) of the Supreme Law), the possibility for each person to become an independent MP 17 increases, given that the total number of necessary votes is reduced compared with the current situation in which they run in a single constituency.

Uninominal constituencies will be established on a territorial demographic principle, usually on the basis of administrative territorial units of the second level with some exceptions for small or large districts (raions) and for Chisinau, Balti municipalities and ATU Gagauzia.

Since a large number of Moldovan citizens reside abroad, it is proposed that besides the right to vote in national constituency, citizens would be able to vote also on the basis of uninominal constituencies in which 3 candidates shall be elected. Thus, for the first time in the history of the Republic of Moldova, the Diaspora will be able to delegate its representatives to the supreme legislative body to defend its interests.

At the same time, there is a well known problem of voting by Moldovan citizens living on left bank of Nistru. Until now, the state authorities have provided them with the opportunity to vote for the national constituency in the polling stations under the control of the authorities. In the context of introducing the mixed system, the citizens from the left bank of Nistru will continue to enjoy the right to vote for national constituency and for the uninominal constituency. In this regard, it is proposed to constitute in the left bank of Nistru 3 uninominal constituencies, including Dubosari district. Therefore, in premiere for the Republic of Moldova, the Transnistrian inhabitants could be represented by three MPs in the Parliament of the Republic of Moldova. This could be a turning point to lay the basis for the settlement of Transnistrian conflict and an additional opportunity for reintegration of the country.

Given the change of the electoral system, it is necessary to develop and apply some amendments to the Law on the Status of Members of Parliament regarding the mandate of MPs elected in uninominal constituencies.

In this context, this draft law is proposed for consideration and adoption by the Parliament. The application of these amendments and additions do not require additional financial expenses and should be enforced by the next parliamentary elections.