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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**REPUBLIC OF MOLDOVA**

**DRAFT JOINT OPINION**

**ON THE DRAFT ELECTORAL CODE**

**On the basis of comments by**

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## I. Introduction

1. By letter of 27 July 2022, Mr Igor Grosu, the Chairperson of the Parliament of the Republic of Moldova, sent to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the European Commission for Democracy through Law of the Council of Europe (Venice Commission) a request for an opinion on the draft Electoral Code of the Republic of Moldova (hereinafter, “the draft Code”). According to the established practice, the opinion was prepared jointly by ODIHR and the Venice Commission.
2. Mr Richard Barrett, Mr Eirik Holmøyvik, Ms Inga Milašiūtė acted as rapporteurs for the Venice Commission. Mr Vasil Vashchanka and Ms Wiktorija Wislowska were appointed legal experts for ODIHR.
3. On 15-16 September 2022, a joint delegation composed of Mr Barrett, Mr Holmøyvik and Ms Milašiūtė for the Venice Commission and Mr Vashchanka for ODIHR, accompanied by Mr Pierre Garrone, Secretary of the Council for Democratic Elections, and Mr Goran Petrov, ODIHR Election Adviser, visited Chişinău and met with the Central Election Commission (CEC), the Judicial Committee for Immunities and Appointments of the Parliament (hereinafter, the Judicial Committee), political party factions represented in the parliament, the Minister of Justice, the audio-Visual Council (AVC) and non-governmental organisations (NGOs). This joint opinion takes into account the information obtained during the visit mentioned above.
4. This opinion was prepared based on the English translation of the electoral legislation. The translation may not accurately reflect the original version on all points.
5. *This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 15-16 September 2022. It was approved by the Council for Democratic Elections at its XXX meeting (Venice, XXX). It was adopted by the Venice Commission at its XXX Plenary Session (Venice, XXX).*

## II. Background and the scope of the joint opinion

### 1. Background

6. The Constitution of Moldova was adopted in 1994 and last amended in 2016. It guarantees the principles of the rule of law, the conduct of democratic elections, the protection of human rights, and fundamental freedoms to all citizens on an equal basis. Citizens enjoy the right to “free elections which are periodically conducted by way of a universal, equal, direct, secret and freely expressed ballot” (Article 38). The Constitution enshrines the principle of primacy of international regulations over domestic law in the field of fundamental rights (Article 4).
7. The current Electoral Code was adopted in 1997 and was since amended 69 times, most recently on 31 March 2022. Following the 11 July 2021 early parliamentary elections, starting in October 2021 the newly constituted CEC embarked on a comprehensive reform of several aspects of the electoral legislation, including a reform of the election administration. The draft Code under review was prepared and sent to parliament by the CEC on 14 June 2022.
8. In June 2022, the European Commission [recommended](#) that Moldova “be given a perspective to become a member of the European Union” and “be granted candidate status” on the understanding that steps are taken, *inter alia*, to “address shortcomings identified by OSCE/ODIHR and the Council of Europe/Venice Commission”. Moldovan institutions deem the

electoral reform an important part of the package to implement key reforms in governance, justice and the rule of law.

## 2. Scope

9. The scope of this opinion covers the draft Electoral Code, officially submitted for review.<sup>1</sup> The opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing elections in the Republic of Moldova. To harmonise the draft Code with several provisions in other election-related legislation, including in the Contraventions Code, the Code of Audio-visual Media Services and the Criminal Code, as well as the Law on Political Parties and various other laws, a draft Law 289/2021 on Amending Some Normative Acts was submitted by a group of MPs and registered as a bill by the Parliament (not part of this review).

10. The opinion takes note of numerous positive developments, especially when prior recommendations by ODIHR and the Venice Commission have been fully or mostly addressed. However, in the interest of brevity, the opinion mostly focuses on the areas that require further attention or improvements in the draft Code. The ensuing recommendations in this opinion are based on relevant international standards, norms and practices, including in the [1966 United Nations' International Covenant on Civil and Political Rights](#) (ICCPR), the [European Convention on Human Rights](#), the [1990 OSCE Copenhagen Document](#), the Council of Europe and other regional human rights standards, such as the [2002 Venice Commission Code of Good Practice in Electoral Matters](#) (hereinafter, Code of Good Practice), the [Revised Code of Good Practice on Referendums](#) as well as other good electoral practices. The opinion is not intended to assess the conformity of the draft with the Constitution of the Republic of Moldova, related national legislation or decisions of the Constitutional Court of the Republic of Moldova; however, it refers to them when necessary.

11. The draft Electoral Code is being legislated as a new law and not as a revision of the current Electoral Code. The draft Code largely retains the structure of the current Electoral Code and builds upon it by introducing a considerable number of changes, including those related to the composition of the election management bodies, conduct of the election campaign, regulation and supervision of campaign financing, voting rights including voting abroad and the rules on various types of referendums.

12. While this opinion regards the changes to the electoral framework, it also identifies some areas that are lacking in the draft Code or are not sufficiently elaborated. For this purpose, the opinion also takes into account previous reports of ODIHR and the Parliamentary Assembly of the Council of Europe (PACE) on elections observed in the Republic of Moldova, including their previous recommendations, where relevant.

13. Given the above, ODIHR and the Venice Commission would like to note that this joint opinion does not prevent them from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of the Republic of Moldova in the future.

14. The Venice Commission and ODIHR have already examined the Moldovan electoral legislation in several instances, including most recently the 2020 [Urgent joint opinion](#) on amending the Electoral Code, the Contravention Code and the Code of Audio-visual Media Services and the 2017 [Joint opinion](#) on the legal framework governing the funding of political parties and electoral campaigns.

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<sup>1</sup> [CDL-REF\(2022\)036](#).

### III. Executive summary

15. The legislative changes envisaged in the draft Code include a number of welcome developments. These include measures to clarify the procedures for voting abroad, strengthening of the campaign funding regulations and the CEC's mandate to engage in meaningful control and supervision of political and campaign financing, and increasing the capacity of district councils by making the position of their chairpersons permanent.

16. Several other prior recommendations from ODIHR and Council of Europe observation reports are fully or mostly addressed in the draft Code, including:

- A. Introducing a rule that the most important aspects of election law may not change within a year of elections, thus creating a legal safeguard against frequent changes of the law;
- B. Providing the possibility for citizens to sign in support of more than one initiative group or independent candidate;
- C. Adjusting the procedures for appointment and nomination of the CEC to enhance its impartiality;
- D. Introducing some specific measures to increase voter list accuracy;
- E. Prohibiting the organised transportation of voters by political parties on election day;
- F. Defining and clarifying what constitutes campaign coverage in the broadcast media.

17. To further improve the electoral legislative framework, ODIHR and the Venice Commission make the following key recommendations:

- A. Making clear reference as to what constitutes objective criteria for the provision of two-days of voting. The Code could enumerate the reasons, in line with the international standard to have a clear legal basis for all voting arrangements. The measures to ensure the integrity of election materials should also be clarified.
- B. Removing vague grounds for the dismissal of CEC members, clarifying the procedure for their appointment and limiting the tenure of DEC chairpersons to a specified number and duration of terms.
- C. Removing from the responsibilities of the CEC the task of reviewing appeals on alleged false information in print and online media, unless other important criteria are introduced, including the definition of false information and mechanisms for its consideration, and until the institutional capacity and expertise is ensured.
- D. Reviewing the list of grounds for de-registration of candidates, in order to ensure that this measure is applied as a last resort against only the most serious actions that cannot be remedied by any other means.
- E. Specifying the exhaustive list of circumstances which could lead to the de-registration of political parties, recognising that the de-registration or dissolution of political parties is a drastic measure that may be applied only in limited and grave situations.

18. Furthermore, the Venice Commission and ODIHR recommend:

- A. Reconsidering the limitations of the right to vote and to stand for election;
- B. Elaborating on or at a minimum making reference to the election processes held in the Autonomous Territorial Unit Gagauzia and describing the relevant election authorities there.
- C. Defining more precisely which symbols or types of symbols are not permissible in the campaign in order to limit such restrictions to the utmost necessity of such limitations in a democratic society.
- D. Reconsidering the prohibition for electoral contestants to organise various types of campaign events, such as concerts, competitions and other types of political promotion.

- E. Reconsidering the number of interim expenditure reports by the electoral contestants before election day and the deadline for submission of the final report after the elections, to best serve the interests of transparency and accountability while not imposing burdensome requirements.
- F. Reconsidering the possibility for list submitters to change the order on the list after registration;
- G. Retaining the possibility that the ballot papers and the relevant voter information are produced in both Romanian and the languages spoken by national minorities.
- H. Reviewing the eligibility requirements for standing for president, which are unreasonably restrictive by international standards and good international practice, including limitations based on education, language proficiency and length of residency, as well as the requirement for mayors to have completed general secondary education.
- I. Reviewing the turnout requirements for various types of elections and referendums, including repeated voting and second round of elections where applicable.

19. Additional recommendations are included throughout the text of this joint opinion.

20. ODIHR and the Venice Commission remain at the disposal of the Moldovan authorities, the CEC and the parliament for further assistance in this matter, including providing opinions on subsequent drafts and as well as the adopted Code.

#### **IV. The process of reform**

21. ODIHR and the Venice Commission have consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements:

- 1) a clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations;
- 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and
- 3) the political commitment to fully implement such legislation in good faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.

22. Consultation and discussion with stakeholders may take place at different steps in the legislative procedure as long as consultation is meaningful and effective. An open and transparent process of consultation and preparation of draft legislation, until it is adopted, increases confidence and trust in the adopted legislation and in state institutions in general. The recommendations and outcomes of such consultations should be meaningfully addressed by the parliament when drafting the legislation. One of the pre-dispositions to an inclusive process is a political will and a constructive approach by all political actors. ODIHR and the Venice Commission recommend to the legislature to seek broad consensus and constructive engagement from all political forces represented in the parliament, to the extent possible.

23. Following up on its initiative to engage in electoral reform, the CEC declared an intention to engage in conducting broad consultations for introducing the changes: on 3 February 2022, during the first of a series of public events and in cooperation with the NGO Promo LEX, the CEC presented a concept for amending the Code and related legislation. The process of presenting and discussing proposed legislative changes was described by the CEC, several political parties and the NGO representatives as transparent and accessible. The CEC invited all electoral stakeholders, including voters, to contribute to the law-drafting process, by submitting their proposals. By May 2022, the CEC organised eight additional public consultations to present and discuss the proposal, with the participation of state institutions, NGOs, several political party

representatives and international partners (including ODIHR). The parliamentary opposition parties had limited engagement during the initial consultation process organized by the CEC.

24. Throughout the consultation process, the CEC maintained an online platform to receive and analyse recommendations from various stakeholders. The ODIHR and Venice Commission delegation was informed by the CEC that more than 400 recommendations were received during this period, some of them presented by various political parties. Promo LEX, who actively participated in the process, informed the delegation that many of their proposals were adopted.

25. The CEC formally approved its draft at a CEC session on 14 June 2022. The CEC informed the delegation that the draft was voted for unanimously. The CEC also formally decided to submit the draft text to the government and the parliament. The draft was submitted to the parliament by a group of more than 40 MPs, all members of the ruling Action and Solidarity Party (PAS), and on 13 July 2022, the draft Code was registered by the parliament as draft Law 288/2022. The Minister of Justice informed the ODIHR and the Venice Commission delegation that the government would provide their opinion at a later stage during the legislative process.

26. Without engaging in any additional discussion with relevant stakeholders, and following a one-day discussion in the plenary session, the draft Code was adopted on 28 July in the first reading by the vote of the ruling majority and unsupported by the parliamentary opposition, and with only a few changes introduced in the CEC's text. During the meetings with the Judicial Committee in Parliament, the ODIHR and Venice Commission delegation were informed that the rapid first reading was a formal step aimed at expediting the legislative process, and about the parliament's intention to engage in a meaningful debate to amend the draft Code for the second reading, planned for the end of October, at the earliest.

27. The CEC and representatives of the parliament have stated on numerous occasions that they wish that the new Code is promulgated sufficiently in advance of the next nationwide elections, which are the local elections, tentatively planned for late October 2023. While the process of amending the Electoral Code conducted by the CEC appears to have been consultative and inclusive so far, it is recommended that the parliament continue consultations as part of the formal law-making process by seeking input from and broad consensus with all political forces represented in the parliament.

## **V. Analysis and Recommendations**

### **A. General terms and principles**

28. The stability of the electoral law is vital for building trust in the electoral processes and, in particular, for excluding any suspicion of adjusting the electoral or legislative framework for political gain. In this respect, ODIHR and the Venice Commission welcome the introduction of Article 11, which provides that the electoral system and the way in which constituencies are established may not be changed in the year before a national election. This provision addresses a prior ODIHR recommendation to introduce legal safeguards against frequent changes to the key features of election legislation. However, other fundamental elements pertaining to the stability of electoral legislation, particularly the composition of election management bodies, are not stipulated.<sup>2</sup> Moreover, Article 11, which is part of ordinary legislation, might be amended or removed in the year preceding the election without any legal requirement for a consensus.

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<sup>2</sup> The Venice Commission's Interpretative Declaration on the Stability of the Electoral Law (CDL-AD(2005)043) regards the following elements as fundamental rules: the electoral system proper, i.e. rules relating to the transformation of votes into seats; rules relating to the membership of electoral commissions or another body which organises the ballot; the drawing of constituency boundaries and rules relating to the distribution of seats between the constituencies.

29. Article 11(2) introduces a requirement that any draft amendments to this Code must be first submitted for the opinion of the CEC (*NB: the English translation wrongly mentions “approval” instead of “opinion”*). This is a positive measure, as it provides for a more robust and consultative law-making process that, in this case, seeks to ensure consideration by a qualified institution responsible for the implementation of the law, and may prevent amendments containing inconsistent or ambiguous language from being hastily adopted.

30. Article 8 defines election day as a single Sunday but contains a possibility of derogation by a CEC decision to hold elections over two days (Saturday and Sunday) in certain constituencies or polling stations. In such cases, the CEC outlines ‘objective reasons’ in its decision, which must be made at least 25 days before election day. Given the recent experience of organising polling procedures during a health pandemic, such flexibility is welcome as it is conducive to increased voter access. This is in line with international standards, as early voting opportunities (such as allowing voting also on Saturday) can expand the universality of the vote. Paragraph 11 of General Comment 25 to the ICCPR specifies that “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right”.

31. At the same time, during the delegation’s visit to Moldova, parliamentary opposition representatives raised concerns that availing only selected polling stations of this opportunity would allow the CEC to exercise discretion in favour of particular political interests, especially concerning polling stations abroad. This may endanger the equality of opportunity to cast a ballot for different groups of voters. Nevertheless, it should be stated that as long as all voters are provided with ample opportunity to vote, a situation in which only in some locations voting takes place also on Saturday is not in itself a detriment to voters who can vote only on the election-day Sunday. Furthermore, the requirement that the CEC decision on two days of voting is made sufficiently in advance of elections allows adequate time to inform voters of this measure. At the same time, to provide more clarity for voters and candidates, and to allow for an effective judicial control, the draft Code should further specify what the ‘objective reasons’ may relate to. It would be beneficial if the Code enumerated the possible reasons, in line with international standards and OSCE commitments to have a clear legal basis for all voting arrangements. For example, it remains open to further deliberation would this measure apply only in extraordinary situations, such as a health pandemic, or may it also be relied upon by the CEC in case of a logistical necessity in some specific cases – such as a high number of registered voters in polling stations abroad.

32. It should be noted that two-day voting introduces additional complexity that must be taken into account, especially related to securing the election materials over longer periods. Given the considerations related to the integrity of the election materials and its effect on the public trust, it may be beneficial that the Code obliges the CEC to organise two-days voting only in exceptional circumstances.<sup>3</sup> While two-day voting may provide an additional opportunity to vote, this approach should be considered in connection with the necessary additional safeguards, most notably concerning the secure storage of sensitive election material spanning over two days of voting and specifics of the vote counting procedure.

33. Article 13 formalises in the draft electoral Code the use of the State Automated Information System ‘Elections’ (SAISE), an already mature electronic election administration system that has been used in Moldovan elections since 2008 for the purposes of maintaining the electronic state voter register, election results management, and other election-related functions. As a new element, paragraph 1(b) of this article introduces a function of SAISE to offer the possibility for

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<sup>3</sup> For comparison, see the new Article 54 in the Constitution of Norway allowing to postpone or extend voting “If something extraordinary has happened which is liable to prevent a significant portion of the electorate from voting” Moreover, the provision requires that “extension or postponement may be adopted only as far as is necessary to ensure that the electorate has the possibility to vote”.



alternative voting (i.e., a form of electronic voting). This function is not further developed in the draft Code, and the rest of the text does not include any additional mentions, mechanisms or procedures for electronic voting. Separately from the process of drafting the new electoral Code, by June 2022, the CEC has also developed the concept for the introduction of electronic voting, specifically remote electronic voting over the internet (internet voting).<sup>4</sup> The CEC has stated on various occasions, including in meetings with ODIHR and the Venice Commission, that it intends to initiate the process of legislating and potentially introducing internet voting in future elections only after the Code is already adopted by the parliament. During the delegations' visit to Moldova, the opposition representatives expressed concerns that the parliament might introduce a form of electronic voting in the amended draft text before the Code is adopted.

34. In relation to the possible introduction of any forms of electronic voting and counting processes, it is worth recalling that the CoE standards on e-voting call on member States wishing to introduce a form of e-voting to do so in a "gradual and progressive manner" and that public trust is a "precondition to the introduction of e-voting".<sup>5</sup> In recent years, ODIHR and the Venice Commission have consistently advised the States that are considering new voting technologies to do so with due regard to several crucial states of the process, including providing relevant procedures prescribed by law, testing, piloting, transparent and accountable procurement process, training of election officials and voter education, as well as comprehensive mechanisms for cybersecurity screening and protection and auditing and certification of systems.

## **B. Election administration**

### **1. Central Election Commission**

35. The draft Code spells out the mission of the Central Election Commission (Article 18) and its status (Article 19) in some detail, including provisions on its independence from an organisational, functional, operational, and financial point of view. Article 19 could also include such principles as impartiality or political neutrality of the CEC.

36. The draft Code significantly changes the composition of the CEC and the manner of its establishment, shifting the model from the current party-nominated body (proportional representation based on the political party representation in the Parliament) to a body with membership appointed by a wider range of state bodies (Article 20(1) of the draft Code), specifically:

- a) one CEC member appointed by the President,
- b) two by the Superior Council of Magistracy,
- c) two by the Government, and
- d) two by the Parliament, with due regard for proportional representation of majority and opposition.

37. In its 2021 final report, ODIHR recommended reconsidering the procedure of appointment and nomination of the CEC to enhance its impartiality. The chosen model significantly reduces the role of Parliament in forming the election management body and considers good practices by including the judiciary in the appointment process.<sup>6</sup> Positively, the draft Code also envisages that all CEC members are employed on a permanent basis (currently, this is the case only with the CEC chairperson, deputy chairperson and secretary).

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<sup>4</sup> On 27 June 2022, the CEC passed a [decision](#) to approve the concept of "e-Voting" and published the concept.

<sup>5</sup> Recommendation [CM/Rec\(2017\)5](#) of the Committee of Ministers to the member States on standards for e-voting.

<sup>6</sup> Code of Good Practice in Electoral Matters, Explanatory Report, para 75.

38. At the same time, it should be noted that the principle of the political composition of the CEC is retained, as political bodies would appoint all but two members appointed by the Superior Council of Magistracy. Furthermore, if the President hails from the same political options as the government majority, the proposed model will not ensure against possible domination, or its perception, over the CEC by such a political majority. While the President is elected in a separate election and may therefore exercise his or her powers independent of the political balance in the Parliament, that is not the case for the Government. In a parliamentary system such as in Moldova, the Government hails from or at least requires the confidence of a majority in the Parliament. One may therefore question why the Government, being dependent on and usually acting in concert with the parliamentary majority, should appoint members to the CEC. It is questionable whether such a nomination mechanism can address the underlying concern of insufficient impartiality and political neutrality of the CEC and pave the way for its professionalisation, which is the stated aim of the legislator.

39. Furthermore, it is unclear whether “proportional representation of majority and opposition” clearly ensures that one nominee comes from among the opposition parties regardless of their strength in the Parliament. To avoid uncertainty concerning the draft proposal, it would be advisable to clearly state that one member appointed by the parliament is appointed by the governing party or parties and one from the opposition. Since there may be situations in which the opposition parties might not agree on a common candidate, the Code should specify the procedure for nomination, for example, by specifying the candidate with the most votes from among the opposition MPs shall be appointed or a similar procedure.

40. While different models of the composition of the central election management body may be considered, the composition of the election management body should strive to avoid a situation in which one political option is dominant in the decision-making processes of this body. If, on the other hand, the CEC is to be composed of non-political appointees, a greater role in the appointment process should be envisioned for non-political bodies, such as the judiciary, academia or the civil society organisations engaged in electoral matters. In the current proposal, considerations should be given to specifying that the two appointees from the Government should not be political figures, but rather experts nominated by specialised bodies, for example, those dealing with national minorities, media, gender issues and human rights.

41. The draft Code reduces the number of CEC members from 9 to 7 (Article 19(3)) and increases their term of office from 5 to 7 years, with the possibility to serve a maximum of two terms (up to 14 years). While there are no international standards related to the length of tenure for the appointed members of the highest electoral body, the extension of the term to seven years should be viewed from the perspective of the body’s impartiality and independence. It should be noted that some important details are missing from the draft Code, including transitional measures to explain when and how the currently appointed members will be replaced or whether the entire commission will be replaced with a new composition. Also, it is advisable that the process of the transformation of the CEC composition is accompanied by an explicit legal provision governing the replacement of its members, which should preferably be staggered (for example, with only one member replaced or re-appointed every year). Such a mechanism could weaken political pressure from any current ruling structure and increase the institutional memory of the commission.

42. According to Article 20(3), the CEC shall be constituted when at least five members are appointed, which leaves a possibility of composition without any opposition representation. Furthermore, the CEC may hold deliberative meetings if the “absolute majority” of members attend (Article 31(2)), which in the case the CEC is constituted with only five members, means a majority of at least three members. Decision-making may thus be carried out by a small number of members, which may be detrimental to the institutional legitimacy of the CEC. In

this context, it is worth recalling the Code of Good Practice's recommendation for electoral commissions to reach decisions by a qualified majority or consensus to the extent possible.<sup>7</sup>

43. According to the draft Code, the authorities shall carry out the procedure for selecting candidates for the position of member of the commission, on the grounds of competence and professionalism, by their own procedures. While members of election administration should be "competent" and "professional", when such terms are used as requirements for the appointment and selection, their meaning should be established in the law as clearly as possible. Further, Article 22(1)(c) introduces the requirement of an 'irreproachable reputation' for all CEC appointees. This requirement is questionable, as it may be used for arbitrary disqualifications and should be either removed or further defined.

44. The authorities appointing CEC members are entitled, according to Article 23(2) of the draft Code, to dismiss its appointee or appointees, among other things, if "serious and obvious professional incompetence was found", as stated in paragraph 2(h) and "acts incompatible with his/her office were committed" (paragraph 2(i)). Such grounds for dismissal appear vague and could be used for dismissal based on subjective and inappropriate reasons. This provision, therefore, challenges the international good practice that recommends having grounds for dismissal clearly and restrictively specified in law.<sup>8</sup> Also, while such a CEC member would be relieved by the appointing authority, it remains unclear which authority would establish and ascertain professional incompetence. Due process guarantees must also be considered, providing those members subject to dismissal with a clear legal path to address grievances, detailed in the law. Access to a judicial remedy may be provided for in other legislation. In addition, if not explained in the law in more detail, the possibility for dismissals on such grounds is not conducive to ensuring the security of tenure and, thus the independence of CEC members. It is recommended to uphold the independence of CEC members by setting out exhaustive and specific grounds for their dismissal as well as the procedure for ascertaining them. Those dismissed should have a clear legally defined possibility to appeal the decisions of their dismissal.

45. Article 17(5) prescribes that the election authorities should seek to provide gender balance in the composition of the election management bodies, in line with international commitments and good practice, which recommends the representation of women in all decision-making bodies in political and public life be above 40 per cent.<sup>9</sup> In previous elections, women were equally represented in lower-level commissions, but this was not the case with the CEC composition<sup>10</sup> and currently, five out of eight appointed CEC members are men. Given the intention of the legislator to change the composition of the CEC and include appointees from multiple organisations, the draft Code could enshrine a principle for appointing agencies to seek gender balance among the CEC members, at the time of members' appointments.

46. Article 28 deals with cooperation of the CEC with other entities. In its para (2), it enables the CEC to decide to come up with additional responsibilities belonging to other authorities. This formulation appears too vague. The division of powers between the CEC and the electoral constituency councils, stipulated in Article 102(6), is also not clearly explained. ODIHR and the Venice Commission recommend making these provisions more precise. To avoid any ambiguity, it would be advisable to include detailed definitions of the first- and the second-level electoral constituency councils in Article 1, along with other relevant definitions related to election administration bodies.

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<sup>7</sup> Code of Good Practice in Electoral Matters, II.3.1.h; Explanatory Report, para 80.

<sup>8</sup> Code of Good Practice in Electoral Matters, II.3.1.f; Explanatory Report, para 77.

<sup>9</sup> [Recommendation Rec \(2003\)3](#) of the CoE Committee of Ministers on "Balanced participation of women and men in political and public decision making."

<sup>10</sup> In 2021, the CEC was composed entirely of men; see ODIHR Final Report on the 11 July 2021 Early Parliamentary Elections, p.7.

## 2. Lower-level election management bodies

47. The Code proposes that the mid-level election administration, which in most cases is at the district level (district electoral councils, DEC)s), become a permanent institution by making the chairpersons appointed by the CEC employed on a permanent basis, with the guarantees provided to civil servants (Law 158/2008). This welcome change is expected to positively impact daily work, such as maintenance of the voter register and supervision of political party financing. However, given the importance of the permanently appointed chairpersons, the draft Code does not include how the CEC's selection and appointment of DEC chairpersons will be carried out, what transparency measures for the recruitment will be in place, nor measures to ensure the impartiality of their work, to be free from political pressure and influence. In addition, the draft Code does not limit the period for which the DEC chairpersons are appointed; rather, it introduces them as career positions. Given that the DEC)s have significant competencies, it is advisable to consider clarifying the procedures for appointing the DEC chairpersons and terms of office.

48. Articles 35(5) and 38(12) stipulate that only trained persons who hold certificates from the CEC's Centre for Continuous Electoral Training may be appointed DEC and PEB members. The Code of Good Practice recommends that the members of the election commission should receive training (Guideline II.3.1.g). In light of a need to increase the PEB)s' performance and knowledge of procedures, especially related to the vote count, comprehensive training and refresher courses could be of value, especially having a well-established training centre under the CEC. However, it should also be considered that this precondition threatens to limit the pool of potential PEB members preferred as nominees, for example, those nominated by the political parties. Additional provisions should be added to alleviate this potential problem.<sup>11</sup> If training is retained as a precondition for an appointment of commission and election board members, the wide accessibility of training should be ensured to allow for equal opportunity in appointments.

49. Moreover, while the draft is rather detailed on how polling stations should be set up (Article 38(2)-(3)), it provides that the CEC may set up polling stations in other cases (Article 38(16)). The ODIHR and the Venice Commission recommend that the scope of this provision should be clarified.

## 3. Elections in the Autonomous Territorial Unit Gagauzia

50. The draft Code does not regulate the election management bodies of the Autonomous Territorial Unit of Gagauzia. While a separate law regulates the elections of authorities of Gagauzia, the draft Code should either elaborate on the election processes held in Gagauzia and describe the relevant election authorities there or, at a minimum, make reference to the existing legislation related to the election of the administrative bodies as well as the People's Assembly of Gagauzia and any other relevant legislation. This is particularly important, having in mind that Article 246(3) stipulates that "[t]he formation and operation of electoral bodies not provided for in this Code shall not be permitted." The Judicial Committee informed the ODIHR and the Venice Commission delegation of their intention to consider this issue during the second reading and introduce amendments to the draft.

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<sup>11</sup> The Code of Good Practice notes that "Members of electoral commissions must receive standard training" (II.3.1.g). This applies to all levels of the election administration (paragraph 84 of the Explanatory Report). Such training should also be made available to the members of commissions appointed by political parties."

## C. Suffrage rights

### 1. The right to vote and to stand for election

51. Article 14 prescribes that all citizens who have reached the age of 18, including on election day, except those deprived of voting rights "by the court decision establishing the judicial protection measure" have the right to vote.<sup>12</sup> Despite the new wording of Article 14 allowing the deprivation of voting rights only based on a court decision, the legislative barriers to electoral participation of persons with intellectual and psychosocial disabilities have not been fully removed, as previously recommended by ODIHR, including, most recently, in relation to the 2021 early parliamentary elections. According to the way it is interpreted, this provision may be in line with the case-law of the European Court of Human Rights, based on Article 3 Protocol 1 to the European Convention on Human Rights.<sup>13</sup> However, it is at odds with the Convention on the Rights of Persons with Disabilities (CRPD),<sup>14</sup> which promotes and protects the political rights of people with disabilities, including, by definition, people with intellectual and psycho-social disabilities.<sup>15</sup> ODIHR and the Venice Commission recommend reconsidering restrictions on suffrage rights based on intellectual and psychosocial disabilities, in line with international obligations and standards.

### 2. Voter lists

52. Article 60 specifies that the State Register of Voters (SRV) is to be continuously updated and administered by the CEC. Additional data records, such as the sex, voter status, number of the assigned polling station, references to prohibitions on voting and the date of the last personal data update, are introduced to the legal definition of the SRV. While these are welcome additions, some categories, including 'voter status' and 'references to prohibitions on voting', should be clarified in the primary legislation.

53. Article 61(8) determines that voters may declare a change of their home address (domicile) up to 30 days preceding national elections or a referendum. The provision no longer includes local elections, where the length of the residency requirement is longer (at least three months of permanent or temporary residence in a given locality), which is a reasonable safeguard for the integrity of local elections and in line with international good practice.<sup>16</sup>

54. A two-step process of finalising voter lists is introduced by Articles 61(9) and 62. First, a preliminary voter list will be made available for public scrutiny 20 days before the election, and corrections could be requested up to 7 days before election day (previously, one day). The final voter lists are then printed and forwarded to the PEBs at the latest two days before election day. This is a positive change, as it allows for sufficient time to reflect all updates before election day, in line with a prior ODIHR recommendation, calling for continued efforts to increase the voter list accuracy.<sup>17</sup>

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<sup>12</sup> Under Article 308<sup>11.2</sup> of the Civil Procedure Code, a court may deprive a person of the right to vote in the context of guardianship proceedings if the person does not meet a comprehension and cognitive ability test.

<sup>13</sup> See in particular *Strøbye and Rosenlind v. Denmark*, nos. 25802/18 and 27338/18, 2 February 2021, paras 112-120, and *Alajos Kiss v. Hungary*, no. 38832/06, 20 May 2010.

<sup>14</sup> According to Articles 12 and 29 of the CRPD, "State Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life" and ensure their "right and opportunity [...] to vote and be elected". Paragraph 48 of the [General Comment to Article 12 of the CRPD](#) states that "a person's decision-making ability cannot be justification for any exclusion of persons with disabilities from exercising [...] the right to vote [and] the right to stand for election".

<sup>15</sup> Republic of Moldova ratified the CRPD on 21 September 2010.

<sup>16</sup> Code of Good Practice in Electoral Matters, paragraph I.1.1.c.iii.

<sup>17</sup> ODIHR [Final Report](#) on the 1 and 15 November 2020 Presidential Election, recommendation 11.

55. Voters who have changed their permanent or temporary residence or are not located there on election day may request from the PEBs to be issued an absentee voting certificate (AVC), permitting them to vote elsewhere in the same given electoral constituency. However, to reduce the need to issue AVCs to a minimum and to ensure a most convenient approach to voters who have already changed their domicile and would need to travel to get an AVC, it could be considered that the deadline for declaring a new domicile for the purpose of elections is synchronised with the deadline for all other changes, i.e., seven days before elections.

56. Article 13(1)(c) of the draft Code provides that the SAISE system will record all voters who voted on election day and thus intercept any instances of multiple voting. This important election integrity safeguard could be elaborated in the draft Code in more detail, expressly providing that the records in the database are checked against multiple voting, a practice that was already in use in previous elections.

57. The Code remains silent if the voter lists are updated for the second round of presidential and mayoral elections. It does, however, note that repeated elections held in case of invalidation of elections (for any electoral contest) are held using the same electoral lists, which seems to imply that the second round is also held using the same voter list. The Code should clarify whether the electoral lists are updated between the first and second rounds. If they are, it should specify which updates are permitted and the deadlines for such updates.<sup>18</sup>

58. Article 62(3) includes a provision for all types of election stakeholders to be able to verify the voter lists (the preliminary lists are by law posted for public scrutiny but contain only names, surnames and dates of birth). It also prescribes that taking photographs or making copies or videos of voter lists is not permitted. As noted in the previous joint opinion of the Venice Commission and ODIHR, observers and electoral contestants could be explicitly allowed to take notes during the verification to ensure meaningful access to voter lists.<sup>19</sup>

### 3. Voting abroad

59. Voting abroad is a sensitive topic in Moldova and in many other OSCE and CoE member states especially where there is a sizable diaspora. In a previous opinion, the Venice Commission and ODIHR summarised the European standards on voting abroad in the following way:<sup>20</sup> The trend in recent decades has been for more European states to allow voting from abroad in national elections.<sup>21</sup> While there is no international standard regulating the right for citizens residing abroad to vote in national elections,<sup>22</sup> changes to such existing provisions should nonetheless be subject to the same stability requirements as other provisions on the right to vote. In its case law, the ECtHR has awarded states a wide margin of appreciation under Article 3 Protocol 1 and has accepted restrictions in voting rights for citizens residing abroad, in particular with residence requirements. It appears from this case law that the test under Article 3 Protocol 1

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<sup>18</sup> This could include removing persons who died and adding persons who turned 18 in between the two rounds.

<sup>19</sup> Venice Commission and ODIHR, Urgent joint opinion on the draft Law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audio-visual Media Services of the Republic of Moldova, [CDL-AD\(2020\)027](#), para. 25.

<sup>20</sup> See Venice Commission and ODIHR, CDL-AD(2017)016, Bulgaria, Joint Opinion on Amendments to the Electoral Code, para. 68.

<sup>21</sup> See for an appraisal of relevant practice CoE/Congress of Local and Regional Authorities, Electoral lists and voters residing de facto abroad, 28 January 2015 (CG/MON/2015(27)8), p. 15; cf. Venice Commission, Summary report on voters residing de facto abroad, [CDL-AD\(2015\)040](#).

<sup>22</sup> There is no obligation under Article 3 Protocol 1 of the European Convention of Human Rights for states to allow this; see in this respect Sitaropoulos and Giakoumopoulos v. Greece [G.C.], 15 March 2012, application no. 42202/07, par. 75. The same follows from the Code of Good Practice in Electoral Matters, item I 1.1 c. See also the Venice Commission's Report on out-of-country voting (CDL-AD(2011)022), III. A.

concerning voting abroad is whether or not there has been an arbitrary or unreasonable restriction on the right to vote.<sup>23</sup> In other words, while the state is free to decide whether or not to allow voting from abroad, if voting from abroad is allowed, restrictions stemming from organizational matters should be justified. Allowing citizens residing abroad to vote entails organisational challenges, which may justify certain restrictions in the exercise of the right to vote.<sup>24</sup> Limiting the number of polling stations or restricting voting to embassies or consulates may be necessary due to the extra cost and resources required for organising elections abroad as well as the limitations imposed by the host countries.

60. Moldovan citizens abroad represent a considerable portion of the active electorate for the parliamentary and presidential elections (by law, they are also eligible to vote for national referendums).<sup>25</sup> The legislative changes introduce additional rules to address significant controversies related to the arbitrary formation of polling stations abroad. Article 39 provides that polling stations abroad are organised at least 35 days before elections. Apart from organising one or more polling stations in diplomatic missions, in case there are at least 500 voters located abroad, polling stations may also be organised outside diplomatic missions, subject to agreement with the relevant authorities of the host country. Positively, article 39(5) also determines how the number of polling stations in a given locality is established, namely by first determining the potential number of voters, by consulting the consular records, the information provided by the Ministry of Foreign Affairs and European Integration, and the voting history in a given location abroad in the last three elections.

61. For in-country polling stations, Article 38(2) establishes that the number of voters may not, as a rule, exceed 3,000 registered voters; such provision is not stipulated in Article 39, regulating the formation of polling stations abroad. It remains unclear in the draft Code what would be the basis for determining how many voters would be allocated (or projected to be allocated) in each polling station in a given location abroad. Therefore, it appears it will not be possible for election stakeholders to determine how many polling stations will be formed abroad with any level of certainty and well ahead of the elections. This information will be available only after the CEC decides on the formation of polling stations abroad.

62. The draft Code does not elaborate on the specific mechanisms for forming and updating the lists of voters residing abroad. According to Article 39(5), the CEC approves the rules on establishing the polling stations abroad, and, additionally, according to Article 61(6), the CEC will develop the procedure on the voter lists for voters abroad. The lack of express rules does not guarantee legal certainty and is problematic given a generally high number of citizens voting from abroad. Given the importance and the political sensitivity of the vote abroad, to increase its overall transparency, the Code could include a requirement for the CEC to maintain and periodically update and publish the relevant information related to voting abroad. In addition, the key aspects of voter registration of those residing abroad could be incorporated into the law rather than left to administrative regulations.<sup>26</sup>

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<sup>23</sup> See European Court of Human Rights judgements, *Hilbe v. Liechtenstein* (dec.), 7 September 1999, application no. 31981/96; *Doyle v. United Kingdom* (dec.), 6 February 2007, application no. 30157/06; *Sitaropoulos and Giakoumopoulos v. Greece* [G.C.], 15 March 2012, application no. 42202/07, par. 69; *Shindler v. the United Kingdom*, 7 May 2013, application no. 19840/09, par. 105, 116.

<sup>24</sup> See Venice Commission, Report on out-of-country voting (CDL-AD(2011)022), para. 75.

<sup>25</sup> In the 11 July 2021 parliamentary elections, 14.3 per cent of all votes cast were in polling stations organised in the diplomatic missions abroad.

<sup>26</sup> See Venice Commission Report on Out-Of-Country Voting, [CDL-AD\(2011\)022](#), para. 34 and 96; ODIHR [Final Report](#) on the 11 July 2021 Early Parliamentary Elections, p.10.

#### **4. Localities on the left bank of the Nistru river (Transnistria)**

63. The draft Code (Article 40) retains the rules for establishing polling stations for voters residing in localities in Transnistria, as in the current Code, to vote in polling stations organised on the territory of Moldova under the constitutional jurisdiction of the central public authorities, for voting in parliamentary and presidential elections and the national referendums. Notably, as an exception, the text of the draft Code defines that polling stations may be organised by the CEC rather than providing an explicit obligation to the CEC to do so (as in the current Code). Considering the sensitive circumstances for voting of citizens residing in Transnistria, as well as the international standards protecting the universality of the vote for all citizens, the Code (or the CEC regulation) could specify under which circumstances the polling stations for voters residing in Transnistria would not be formed.

#### **D. Nomination and registration of candidates**

64. In a welcome development that ensures greater plurality in the election process and freedom of expression and association, and in line with good practice and addressing a previous ODIHR recommendation, the draft Code provides voters with a right to sign in support of more than one candidate (Article 65).<sup>27</sup>

65. Provisions on registering initiative groups and collecting support signatures could be improved to enhance clarity. It is proposed that forms for signature collection be issued by the CEC, a valid measure adding to the uniformity of procedures (Article 65(5)). The deadline to collect signatures is set to run from the day of registration, but the actual start is contingent on the provision of the forms by the CEC. Protracted issuance of these forms may unduly limit the time for signature collection. It is recommended to mention that subscription list forms are to be issued at the same time as the registration of the initiative group or the independent candidate.

66. As in the current Code, Article 63 provides that all registered political parties and, by extension, electoral blocs registered in advance of elections may participate in parliamentary and local elections without a need to collect support signatures, regardless of their membership in the parliament or local councils, respectively. This means that, once registered, any political party can participate in any future elections without further conditions to ensure that it has minimum support to be listed on the ballot in advance of elections. On the other hand, the nomination of independent (individual) candidates for any elections, as well as presidential candidates, must be supported by a certain number of signatures. To ensure equal opportunity for participation, it could be considered that all parties, blocs and individual candidates not represented in the body to be elected or a higher body confirm minimum support under the same or similar conditions. This recommendation must be viewed together with the proposition that voters may sign in support of more than one electoral contestant.

67. Article 64 sets out new rules and deadlines for registering electoral alliances (blocs). This is a welcome step from the position of legal certainty, as it formalises the regulations previously adopted by the CEC as bylaws. However, it should be borne in mind that excessive formalisation may pose a barrier to the formation of pre-election alliances, and such barriers should be avoided. For example, requiring the agreement on an electoral alliance to include provisions already regulated by the law, such as the procedure for nominating candidate lists and setting up the initiative group, appears excessive. It should also be clarified that the denial of registration to an electoral alliance by the CEC (Article 64(6) of the draft Code) should not

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<sup>27</sup> Paragraph 96 of the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation recommends that “it should be possible to support the registration of more than one party, and legislation should not limit a citizen or other individual to signing a supporting list for only one party. Any limitation of this right is too easily abused and can lead to the disqualification of parties that in good faith believed that they had fulfilled the requirements for sufficient signatures.”



prevent its constituent political parties from nominating candidates in their name (Article 64(7) of the draft Code).

68. Positively, Articles 65-67 introduce several detailed criteria related to the collection, submission and verification of support signatures. Article 65(12) restricts signature collection to the locations within the constituency being elected, but for presidential elections, it also requires that signatures are collected from at least half of the administrative-territorial districts to ensure wider support in geographical terms. In principle, this provision appears excessively restrictive, as it unduly hinders parties or candidates with concentrated support regionally, particularly those that draw supporters from regions with concentrated ethnic minority populations and should be reconsidered.

69. The draft Code does not stipulate the grounds for the rejection of candidate registration, nor does it seem to explicitly provide an opportunity and time to remedy shortcomings in the documents presented for the registration. This is not fully in line with international standards stipulating that the candidate registration procedures should not be designed in such a way as to potentially lead to an unreasonable barrier to candidacy.<sup>28</sup> In order to set firm legal grounds for registration and possible rejection and ensure that the legal framework creates the necessary conditions for inclusiveness of candidate registration for each type of election, it is recommended to add such provisions in the Code.

70. The lists of candidates for parliamentary and local elections must include a minimum of 40 per cent of candidates of each sex. In addition, candidates shall be placed on the lists according to the formula: a minimum of four candidates of each sex for every ten seats, resulting in a so-called double quota system. Positively, these two provisions are unchanged from the current Code and have led to a significant increase of women MPs, i.e., equalling slightly less than 40 per cent in the current parliament. Any changes to the candidate lists requested by the list submitted must satisfy the quota requirement (Articles 115(4) and 165(4) of the draft Code).

71. It should be noted that regardless of the double quota system, the percentage of women MPs and councillors from smaller parties (parties with fewer members elected) might be considerably smaller, which may lead to a reduced representation of women for some segments of the electorate, for example, of the minorities represented by a parliamentary party. In the worst-case example, if a party wins six councillor seats and the women are positions 7-10 on the list for the first ten candidates of that party, the percentage of women elected from that party would be zero. ODIHR and Venice Commission recommend that further consideration is given to strengthening measures to achieve better representation of women in the parliament and local councils.

72. Articles 72, as well as Articles 115 and 165, detail conditions for adjusting candidate lists. Political parties can register or replace candidates before the start of the election campaign. Afterwards, changes to the ordinal number, exclusion of individual candidates from the list or a withdrawal of entire lists are permitted, but no later than ten days before an election (the current Code allows for replacement of candidates until 14 days before elections). This measure is intended to prevent the last-minute replacements and reintroducing candidates back on the list after withdrawing.<sup>29</sup> However, the existing possibility for the list submitters to change the order on the lists between registration and up until ten days before elections directly impacts which candidates, if any, would get elected. This introduces uncertainty for both voters and candidates and should be reconsidered.

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<sup>28</sup> See, for example, Article 17 of General Comment 25 to Article 25 of the 1996 International Covenant on Civil and Political Rights (ICCPR).

<sup>29</sup> See ODIHR [Final Report](#) on the 30 November 2014 Parliamentary Elections, recommendation #17.

73. In addition, the draft Code appears to suggest that while the list submitters may request the removal of individual candidates, the candidates themselves are not entitled to remove their name from the list, in breach of their freedom to withdraw, especially since the list submitters are permitted to change the list order in the course of the campaign. Articles 115(4) and 165(4) ensure the CEC would refuse any changes to the lists that deviate from the prescribed gender quota. However, the draft Code does not stipulate what action should be taken in case the number of candidates on the list falls below the allowed lower limit of 51 (for parliamentary elections) after the start of the campaign, due to withdrawals or possible death.

## **E. The conduct of election campaigns**

### **1. Campaign rules**

74. Chapter VIII of the draft Code devoted to the election campaign addresses some of the previous ODIHR recommendations, which is a positive change. In particular, Article 70(3) clarifies when campaigning resumes after the first round.

75. Positively, Article 70(5) of the draft Code introduces a prohibition on planning and organising transportation of voters on election day in an effort to prevent the inducement of voters to vote in a particular way. Additionally, Article 28(2)(d) mandates the Ministry of Infrastructure and Regional Development to engage in “preventing, countering and detecting infringements” related to the transportation of voters. This addresses a priority recommendation by ODIHR related to the transportation of voters in connection to vote-buying, and it is a welcome change. ODIHR and the Venice Commission call on the authorities to continue their efforts to build confidence in the integrity of the elections and discourage cases of illegal inducements and vote-buying.

76. The draft Code removes the restriction on using Moldova's national symbols and historic personalities. It also removes the ban on participation of foreign citizens in the campaign as previously recommended by ODIHR. However, as in the current Code, Article 70(4) prohibits the use of “symbols of foreign states or international organisations” in the campaign. As an exception, the article allows using foreign symbols in cases concerning “commitments undertaken by the Republic of Moldova under international agreements concluded with the European Union”. As previously noted in the ODIHR reports in 2015 and 2016, banning the use of foreign symbols may be a disproportionate measure challenging freedom of expression. On the other hand, the use of certain symbols (for example, Nazi insignia or raising foreign flags to call for territorial separatism or in the context of war) may, in cases, be reasonably viewed as situations in which symbols are used to promote “war of aggression, national, racial or religious hatred” or “the incitement to discrimination, territorial separatism, public violence”, forbidden by Article 32.3 of the Constitution. In this respect, and in line with the Constitution and the case law of the European Court of the Human Rights on freedom of expression, the draft Code should be amended to more closely define the possible situations and types of symbols that are not permissible in the campaign.

77. Article 70(13) prohibits electoral competitors from organising concerts, competitions, other events or demonstrations “involving interpreters, creative and artistic staff both in the country and abroad”, to display slogans or other messages, to distribute material containing the electoral competitor's symbols or other identifiers, as well as to participate in such events for political promotion. While such restrictions may be aimed at guaranteeing a level playing field, they also restrict freedom of expression and limit campaign opportunities. The aim of increasing the level playing field could also be achieved through explicitly regulating the accounting and reporting of the financial aspects of such events, including any in-kind donations. In effect, such restrictions impose limitations on the choice of communication and are difficult to justify even under the draft Code's list of permissible grounds for restricting freedom of campaigning provided in Article 70(2), i.e., those which are necessary for a

democratic society, national security, territorial integrity or public security, for the prevention of disorder and crime, for the protection of health or morals, etc.<sup>30</sup> It is recommended to reconsider the prohibitions of various types of events, as prescribed in Article 70(13) of the draft Code).

78. Under Article 16(3), the list of public officials who must suspend their service and official functions during candidacy is extended to include additional high-ranking officials in the government, deputy heads of central public authorities and secretaries of the local councils. These restrictions seek to eliminate potential conflicts of interest and undue advantages in campaigning, in line with an ODIHR recommendation to enforce the separation of official functions and party activity of public dignitaries. A requirement stated in Article 16(3)(h) concerns the 'civil servants/employees who are required to suspend their service/employment relationships, in accordance with the specific legal rules governing their work'. This category is framed in rather broad terms and could cover a wide range of civil servants, whereas some civil servants might be uncertain whether they fall under this category. Additional clarification or a reference to a defined list of public posts affected by this provision would be of benefit.

## **2. Financing of election campaigns and initiative groups**

79. The newly formulated chapter on financing initiative groups and electoral campaigns (Chapter V) contains a significant number of new provisions on funding campaigns, as well as oversight and control of campaign finance. Positively this chapter (Chapter V) is separated in the draft Code from issues related to the financing of elections. The newly introduced Article 59 contains several paragraphs detailing the responsibilities of the CEC in verifying the compliance of election and referendum participants with the regulatory framework. This is in line with ODIHR's 2021 recommendation to provide the campaign finance oversight body with the requisite legal authority and capacity.

80. Article 50 of the draft Code offers several valuable high-level guiding principles for the financing of campaign activities, including legality and proportionality of legal measures taken to ensure legality, equal opportunities (including in terms of gender and access), transparency of income and expenditures, independence from donors, and integrity of the election campaign. However, to ensure a free campaign, some of these principles could be further elaborated, especially in terms of the intended meaning of independence from donors and the integrity of the election campaign.

81. Positively, the draft introduces regulations relating to financing electoral campaigns or initiative groups set up by political parties. In this respect, Article 51(10) establishes a maximum of 50 per cent of funds possible to transfer by the political parties obtained from the state budget to the electoral fund and the fund of the initiative group. It would be beneficial to have further clarity on how this applies to an electoral alliance (bloc).

82. Article 52 of the draft Code establishes the obligation of the elected mayor or President to repay "the cost incurred by the state budget in connection with the organisation and conduct of elections" if the elected office is vacated within less than a year, with the exception for doing so based on a reasoned request. This is an atypical provision that appears to tackle the issue of resignation from the office of elected officials after they spent public money in the campaign. However, it may be practically difficult to calculate the costs incurred "in connection with the conduct of elections" by a particular candidate, and it would not be proportionate to demand from one candidate to reimburse the cost of an entire election. This may be particularly problematic for the president or mayors who might have had significant support from a political

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<sup>30</sup> See also Venice Commission, Opinion on amendments to the Audiovisual Media Services Code and to some normative acts including the ban on symbols associated with and used in military aggression actions (CDL-XXX).

party to finance his or her campaign but does not enjoy such support after the elections. Additionally, the 2017 Constitutional Court judgement states that the position of president is incompatible with being a member of a political party as the president “assumes a legal commitment towards the entire people of the Republic of Moldova. Thus, the President of the Republic must prove his impartiality and political neutrality”, which may further aggravate the possibility to return resources.<sup>31</sup> It also calls into question the freedom to step down from a function in case personal, professional or political circumstances have changed in a way that some (including the elected official), but not others, may consider stepping down as justified. It is recommended to review this provision and consider a better-defined measure proportionate to the negative consequences of elected officials stepping down.

83. Positively, the newly introduced Article 55 contains stipulations describing the qualifications and methods of registering a treasurer of electoral contestants, referendum participants or the initiative groups with the CEC. This clarifies for the political parties the requirements they will have to put in place in terms of resources and accountability.

84. Article 56(5) of the draft Code leaves a possibility to campaign without any financial expenses, i.e., without opening a campaign bank account. However, in line with requirements for transparency and accountability of campaign financing, all contestants should have an account and be required to report even if they do not incur any expenses, especially for nationwide electoral contests and republican referendums. This provision should be reconsidered and possibly include only specific, well-defined exceptions, such as campaigning of independent candidates or initiative groups in local council elections or local referendums.

### **3. Campaign donations**

85. Like the current Code, the draft Code sets donation limits (Article 57). In general, donation limits aim to avoid political actors' dependency on wealthy interests and prevent buying political favours through campaign donations. These purposes need to be achieved without jeopardising the political parties' ability to raise funds from citizens and the freedom of citizens to donate as a form of civic engagement and democratic participation.

86. For citizens, the donation limit is up to 6 average monthly salaries set for that year but not exceeding 30 per cent of the annual income of the citizen for the previous calendar year (Article 57(4)(1)(a)). Similar considerations apply to the 10 per cent of annual income restriction for public persons and civil servants (Article 57(4)(1)(b)). Compliance with the latter restriction requires verifying the annual income of every private donor (it is not clearly stipulated in the Code who must verify the compliance to this rule, i.e. if the political party receiving donations has such responsibility). The intention of the legislator appears to be to ensure that the donations are made from the citizens' own funds rather than the money received from a third person to make a donation, in an attempt to circumvent donation limits. However, implementing this provision might produce a chilling effect on citizens genuinely wishing to donate if it, by default, results in comprehensive financial checks by the authorities.

87. It should be noted that verifying all individual donors is a resource-intensive undertaking that may be difficult to enforce and overly intrusive. Also, Article 57(4)(1)(f) introduces a possibility for citizens abroad to donate from their accounts in banks abroad under the same conditions. While the CEC is mandated to establish further regulations related to donations (Article 57(6)), it is unclear how it would enforce control that the means from abroad come from the citizens' income. As an alternative method, as previously recommended by ODIHR, the legislator could consider mandating that the donor sign a declaration that the donations are provided in compliance with the law under the penalty of perjury. To be effective, there

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<sup>31</sup> [Prohibition by the Constitutional Court judgement](#) imposed on the President of the state to hold membership within a political party.

also needs to be a mechanism to check the veracity of declarations against the income and property of at least several donors. Therefore, it is advisable that the law requires the CEC to establish a transparent methodology for performing checks, both in case of complaints, and *ex officio*, for example, random checks, and in case there is a reasonable suspicion of wrongdoing in specific cases.

88. The draft Code retains the possibility of donations by legal persons, with a donation limit of up to 12 average monthly salaries per year (Article 57(4)(2)(a)). While international standards do not prescribe whether donations from legal entities should be permitted, the possibility of donations by legal persons such as corporations, in practice, poses several challenges and allows wealthy financial interests behind different legal persons to channel considerable funds into election campaigns while maintaining the opacity of the sources of such donations. In this respect, the international good practice calls for limitation to such donations.<sup>32</sup> The Venice Commission and ODIHR recommend introducing additional safeguards in the draft Code to prevent channelling donations from the same beneficial owners and possibly illicit funds into political campaigns.

#### **4. Campaign finance reporting requirements**

89. The draft Code provides for regular reporting on the financing of initiative groups and election campaigns, including information on their accrued income and expenditure (including full name and surname of the donor, personal identification number, residence, day, month and year of birth, place of work, position held (occupation/type of activity), party membership, income or donor financing sources, state identification number and name of the legal person), with copies of the primary documents attached, in accordance with the procedure approved by the CEC (Article 58(1) of the draft Code). For all types of elections and referenda, such reports are to be submitted to the CEC on a weekly basis (Article 58(3) of the draft Code). The draft Code (Article 58(5)) introduces the possibility of electronically submitting the campaign finance documents. This is in line with the 2020 ODIHR and Venice Commission Guidelines on political party regulation which state that “Digitalising information and submitting it to the regulatory body in its digitalised, easily searchable and reusable form can facilitate oversight and therefore minimise the need for paper-based procedures”.<sup>33</sup>

90. While reporting on large donations is regarded as useful for voters before an election, imposing weekly reporting requirements on election contestants may prove to be burdensome for some electoral or referendum contestants. Moreover, reporting on expenditure on a weekly basis in a nationwide campaign may be challenging, given the multiple regional centres where significant expenditures may occur in parallel and the realisation of framework contracts with continuous delivery. Such reporting risks being a pro forma exercise at best, without any benefit to the public. While there are no international standards related to financial reporting before elections and how often they should occur (and there is a variable practice in the participating States), the international good practice recommends that the “reporting requirements should be such that smaller parties can also fulfil them, and should not hinder such parties’ participation in political life”.<sup>34</sup>

91. Similar considerations apply to the final reports, which are due three days after the voting day (Article 58(3)(b) of the draft Code). It is a good electoral practice to submit final financial reports after elections “in a timely manner, but with a reasonable deadline that allows parties to compile data, invoices, information on reimbursements of loans, etc.” The possibility of

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<sup>32</sup> See Recommendation 1516(2001) of the Parliamentary Assembly of the Council of Europe, according to which “the following rules should apply: (...) strict limitations on donations from legal entities” (8.v.c).

<sup>33</sup> Venice Commission and ODIHR of the ODIHR and Venice Commission [Guidelines](#) on political party regulation (Second edition), paragraph 258.

<sup>34</sup> *Ibid.*

compiling a comprehensive report of campaign incomes and expenses within such a short timeframe may be unrealistic and should be extended.

92. The deadlines for reporting requirements of campaign finances could be reconsidered to best serve the interests of transparency and accountability without imposing overly burdensome requirements on the electoral contestants.

## **5. Campaign coverage in the media**

93. In line with an ODIHR recommendation from 2021, a newly introduced provision in Article 90(2) defines what constitutes the coverage of the election campaign in broadcast media by listing and further detailing the various types of programmes that may include campaign coverage. The same paragraph provides that the contestants or their representatives “may not intervene directly or indirectly or be targeted by third parties in audio-visual programmes other than those of an electoral nature, expressly set out in statements of editorial policies of media service providers”. This appears to confine the discussion of policy issues related to elections to the specifically enumerated programmes, as listed in the information provided by the media to the Audio-visual Council (AVC), which monitors the media’s compliance with the law and regulations. While this provision is intended to ensure the media respects principles of “fairness, balance and impartiality”, the law could also include well-defined exceptions to this rule and other mechanisms, such as, for example, an obligation of the media outlet to self-report any election coverage outside the well-defined programs and provide the recording to the AVC as soon as possible.

94. Similarly to the current Code, Article 90(6) stipulates that all national media service providers who submit to the AVC a statement on editorial policy to cover the elections/referendum shall be required to organise one or more electoral debates, to be broadcasted. As noted in previous ODIHR reports, the resulting high number of debates devalues these programmes and leads electoral competitors to delegate participation in the debates to rank-and-file members rather than party leaders. Consideration should be given to finding an optimal balance for the number of debates while allowing some media service providers to produce other analytical programmes instead of debates.

95. Article 90(6) requires that electoral debates be broadcast at peak hours, as laid down in the Audio-visual Media Services Code. The requirement to broadcast all debates in prime time, including those with candidates who do not have high support, may result in decreased viewer interest in such programmes. This may be problematic from the point of view of voters making an informed choice, as the media should be allowed to offer the most relevant programming in given timeslots. A better solution may be to leave it at the discretion of the media to decide when the debates between election competitors who are not polling high should be broadcast.

96. The draft Code places an obligation on the CEC to examine complaints related to the “dissemination of false information placed by electoral subjects in the print media or online space” (Article 97(2)(e)). The Code does not further define what constitutes false information and does not reference any other piece of legislation containing a definition of the same or similar concept. Relatedly, the Code of audio-visual media services (amended in June 2022) defines disinformation as “the intentional dissemination of false information designed to harm an individual, a social group, an organization or the security of the state.”<sup>35</sup> However, it is unclear whether this definition would apply to the draft Electoral Code.

97. It is worth noting that regulating disinformation (or false information) is an evolving subject, not elaborated on in the available international standards and other instruments. However,

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<sup>35</sup> [Law on amendments to the Code of audio-visual media services.](#)

any restriction on the freedom of speech and imparting of information raises questions in relation to Article 10 of the ECHR. In a recent joint opinion,<sup>36</sup> the Venice Commission and ODIHR summarised the European legal standards and competing interests concerning the regulation of false information: “Restrictions must be provided by law, have a legitimate aim and be necessary and proportionate. As underlined in the long-standing case law of the ECtHR, there is little scope under Article 10 of the ECHR for restrictions on political speech.<sup>37</sup> Politicians must accept closer public scrutiny of their statements and actions both in relation to their office and their private life.<sup>38</sup> For this reason, the ECtHR has in several cases found that the application of legislation aimed at preventing the spread of false information in the electoral context amounted to a disproportionate interference with the freedom of expression in the light of Article 10 of the ECHR.<sup>39</sup> While the ECtHR has recognised the importance of combatting the dissemination of false information in the electoral context, it has, at the same time, emphasised the particular importance of the free circulation of information and opinions during the electoral period.<sup>40</sup> The electoral context therefore blurs to a certain extent the well-established distinction<sup>41</sup> between statements of facts, which can be determined by a court, and value-judgements, which are not susceptible to proof though they must be supported by a certain factual basis. As for opinions and information pertinent to elections, which are disseminated during the electoral campaign, the ECtHR has held that such statements should be considered as being part of a debate on questions of public interest, unless proof to the contrary is offered.<sup>42</sup>”

98. Even though disinformation online, especially on social networks, is a considerable issue, it is questionable whether the CEC would have the capacity and expertise to evaluate whether, for example, a political statement in the print media, or an online post, falls under the category of false information that needs to be restricted by law, even if there was a definition available, or should remain protected by freedom of expression. However, it should be noted that according to Principle 2 of the CoE and Venice Commission Principles for a fundamental rights-compliant use of digital technologies in electoral processes, “[d]uring electoral campaigns, a competent impartial Electoral Management Body (EMB) or judicial body should be empowered to require private companies to remove clearly defined third-party content from the internet, based on electoral laws and in line with international standards.”<sup>43</sup> ODIHR and the Venice Commission recommend that a definition of false information is provided, along with instruments of how false information should be dealt with, and the capacity of the CEC (or another body) is built to deal with related complaints. The legislator should make sure that the threshold set in the law to restrict the dissemination of information in the electoral context should not be set so low that it unduly limits the political debate.

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<sup>36</sup> See Venice Commission and ODIHR, CDL-AD(2021)025, Armenia, Joint Opinion on Amendments to the Electoral Code and Related Legislation, para. 74.

<sup>37</sup> See i.e. Kość v. Poland, 1 June 2017, application no. 34598/12, par. 35, Bédat v. Switzerland [GC], 29 March 2016, application no. 56925/08, par. 49, Sürek v. Turkey [GC], 8 July 1999, application no. 26682/95, par. 61 and Castells v. Spain, 23 April 1992, application no. 1798/85, para. 42.

<sup>38</sup> See i.e. Couderc and Hachette Filipacchi Associés v. France [GC], no. 40454/07, para. 119-120.

<sup>39</sup> See Kwiecień v. Poland, no. 51744/99; Kita v. Poland, no. 57659/00; Brzeziński v. Poland, no. 47542/07.

<sup>40</sup> Brzeziński v. Poland, no. 47542/07, para. 55.

<sup>41</sup> See i.e. Lingens v. Austria, no. 9815/82, para. 46; Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99, para. 76; Lindon, Otchakovsky-Laurens and July v. France [GC], no. 21279/02 and 36448/02, para. 55.

<sup>42</sup> See Kwiecień v. Poland, no. 51744/99, para. 51.

<sup>43</sup> Venice Commission, Principles for a fundamental rights-compliant use of digital technologies in electoral processes, [CDL-AD\(2020\)037](#).

## F. Complaints and appeals

99. Positively, the draft Code provides more details on complaints and appeals procedures than the current Code. Different types of complaints are linked with the bodies to which these complaints may be channelled. This partly addresses concerns regarding the clarity of avenues for timely resolution of election-related complaints by the election administration and the courts, previously raised in the ODIHR reports. Article 99 of the draft Code describes how potential conflicts of jurisdictions could be solved, prioritising judicial dispute resolution. This is a step in the right direction, but it should be reminded that, according to the Code of Good Practice in Electoral Matters, “[n]either the appellants nor the authorities should be able to choose the appeal body”.<sup>44</sup> While these provisions provide greater clarity for electoral dispute resolution, it is important to note that some elements of electoral dispute resolution are also regulated by administrative, civil and criminal legislation. ODIHR and the Venice Commission reiterate that the legislative framework for electoral dispute resolution should be consistent and coherent. When amendments are made to the electoral legislation, respective provisions of other legal acts should be harmonised with it.

100. Another fundamental requirement for a system of electoral complaints and appeals, flowing both from Article 3 of Protocol No. 1 of the ECHR and the Code of Good Practice in Electoral Matters, is that it provides an *effective examination* of the electoral complaint.<sup>45</sup> In a 2020 decision related to deregistration of a political party in 2014 elections in Moldova, the ECtHR found in that “the procedures of the electoral commission and the domestic courts did not afford the applicant party sufficient guarantees against arbitrariness, and the domestic authorities’ decisions lacked reasoning and were thus arbitrary.”<sup>46</sup> The positive changes to the complaints and appeal system in the law would mean nothing if the courts make no effort to consider evidence brought by the appellants and if they do not act with sufficient independence and impartiality. The professionalisation of the CEC would enable it to continuously monitor the election campaign and provide better evidence in future election complaints. Finally, the rapporteurs were informed that new time limits and appeals on CEC decisions going directly to the Chişinău Court of Appeal (Article 91(5)) rather than through the first instance courts, would allow for better reasoning and assessment of evidence in the courts. ODIHR and the Venice Commission welcome these developments, though their effectiveness remains to be seen and should be evaluated after the first elections under the new law.

101. Article 94(1) lists those eligible to submit electoral appeals. In addition to voters and candidates, the changes extend the right to appeal to initiative groups, candidate nominees, referendum participants and registered political parties (entitled to participate in elections). However, there is no mention of the bodies of election administration, members of these bodies, or domestic election observers. Given that actions of the election administration at all levels may become subjects of appeals and that the draft Code contains provisions on personal liability of members of the election administration (e.g., under Article 102), it is recommended to explicitly provide the right to appeal for these subjects as well, in order to avoid situations when their appeals may be declared inadmissible and provide for an effective remedy.

102. While ODIHR previously assessed the deadlines for the electoral complaints as in line with good electoral practice, the draft Code (Article 100) further shortens them from five to

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<sup>44</sup> Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), II.3.3.c.

<sup>45</sup> For details on this requirement, see Eirik Holmøyvik, “The Right to an Effective (and Judicial) Examination of Election Complaints”, in: *European Yearbook of Human Rights 2021*, Philip Czech, Lisa Heschl, Karin Lukas, Manfred Nowak, Gerd Oberleitner, eds., European Yearbook on Human Rights 2021, Intersentia: Cambridge 2021, pp. 541-567.

<sup>46</sup> ECtHR, [Political Party “Patria” and Others v. the Republic of Moldova](#), nos. 5113/15 and 14 others, 4 August 2020, para. 38.



three days to consider complaints (the deadlines for submission remain the same). Expedited deadlines are generally encouraged for electoral dispute resolution; however, it should be borne in mind that the rationale for setting short deadlines is to provide a timely and effective legal remedy given the nature of the election processes. An expedited resolution should not compromise the quality of examining complaints and appeals. The information note accompanying the draft Code mentions the uniformity of deadlines, including for the examination of complaints. In this regard, it should be noted that different kinds of disputes raised during an electoral process may require different times for resolution. While the general deadline of three days is in line with good practice, it would be advisable for legislation to allow for more time when there is a need to conduct a more thorough investigation and examination of the facts.

103. According to Article 95(1), the calculation of deadlines for lodging appeals is linked to the day the action was committed, rather than the day an applicant became aware of the action committed, in all cases in which the applicant can demonstrate that it is not reasonable to expect knowing the action when committed. Since Article 96 establishes an applicant's responsibility for timely application submission, ODIHR and the Venice Commission recommend to link the calculation of deadlines with the moment when the action in question became known or should have become known to the applicant.

104. Article 93 newly lists the conditions for admissibility of appeals. While providing all possible reasons for inadmissibility contributes to having a defined due process, allowing for dismissal of appeals "in other cases laid down in this Chapter" leaves it too broad and possibly open to flexible interpretation, which is at odds with international good practice which prioritises the consideration of substantive grievances over opting for an overly formalistic approach. This option should be reconsidered.

105. Article 96(1) states that each objector shall establish the facts on which their claims are based and shall be liable for the veracity and quality of the evidence submitted. The draft Code thus places the burden of proof on voters and electoral contestants, including in disputes with election administration. It should be recalled that the legal relationships within the electoral period are of public nature and, with some exceptions, are regulated by public law. Placing the burden of proof on voters and electoral contestants in their disputes with public bodies may leave the former without an opportunity to substantiate their appeals when the evidence is in possession of the public bodies. ODIHR and the Venice Commission recommend to review this provision so that the election administration and other administrative bodies are required to substantiate the legality of their decisions.

106. Article 102(2)(e) defines the possibility of cancelling registration, accreditation and confirmation of electoral subjects as in the current Code. ODIHR and the Venice Commission reiterate their previously expressed view regarding de-registration of electoral contestants as a sanction applied by the election administration, namely that such severe interference with suffrage rights as de-registration should be a measure of last resort, applied only for the most serious violations, and subject to effective judicial oversight, in line with international standards and good practice.<sup>47</sup> In a 2020 decision related to de-registration of a political party in 2014 parliamentary elections in Moldova, the ECtHR found that de-registration powers were abused and that there was no effective judicial oversight.<sup>48</sup> ODIHR and the Venice Commission therefore recommend to encode that any appeal against such a decision automatically suspends it in order

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<sup>47</sup> Paragraph 7.6 of the 1990 OSCE Copenhagen Document calls on OSCE participating States to ensure that contestants are able "[...] to compete with each other on the basis of equal treatment before the law and by the authorities." The Code of Good Practice, paragraph I.2.3.a, states that "Equality of opportunity must be guaranteed for parties and candidates alike."

<sup>48</sup> See Political Party "Patria" and Others v. the Republic of Moldova, nos. 5113/15 and 14 others, 4 August 2020.

to correspond to effective judicial oversight. To respect the principle of the proportionality of sanctions, they recommend to review the list of grounds for de-registration in order to ensure that this measure is applied as a last resort against only the most serious actions that cannot be remedied by any other means, in conformity with the principle of proportionality. The international electoral practice also recommends that any cases of de-registration should be done transparently, against pre-determined criteria, and “bearing in mind the principle of equality of treatment of all political parties, as well as the principle of pluralism”.

107. Article 102(2)(f) introduces a possibility for the CEC to *ex officio* request the cancellation of the registration of political parties as the main or complementary sanction. In addition to the considerations related to the de-registration of electoral contestants, regarding the need for caution with the cancellation of registration of electoral subjects, special care should be taken with the cancellation of party registration. According to international standards, the de-registration or dissolution of a political party is a drastic measure that may not be taken lightly and may only be applied in very limited and grave circumstances, such as in cases “where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country”.<sup>49</sup> ODIHR and the Venice Commission recommend that the draft Code specify the circumstances that would lead to the de-registration of a political party.

108. The draft Code, among other provisions on liability, stipulates in Article 102 that if an observer violates the electoral regulatory framework, the electoral body that accredited the observer has the right to cancel the accreditation. According to Article 102, any propaganda action for or against a political party, other socio-political organisation or electoral competitor, initiative group, a participant in the referendum, referendum options or attempt to influence the voter’s option shall be qualified as violations. This provision is overreaching and could be contrary to the principles of freedom of expression unless it is meant to apply to the behaviour of election observers while observing. Namely, domestic electoral observers, as citizens, must have a status compatible with the status of being a voter, and the legal framework for elections should not put citizens at a disadvantage for expressing a political opinion, participating in campaign events, and discussing contestants and their platforms etc., outside of the duties of observers. In this regard, it is advisable to review this provision in order to apply sanctions for abusing the status of an observer (campaigning while observing, etc.). It is also recommended to apply gradual sanctions also to domestic observers and start with a warning rather than opt directly for revoking accreditation.

109. The evidence requirement for declaring elections null and void is not clearly set out in the law. For parliamentary elections, Article 128 prescribes that elections shall be declared null and void if violations of the Electoral Code “have influenced the voting results and the assignment of seats”. The wording is similar for presidential elections, see Article 152 (“influenced the election results”). However, the wording is not clear as to the evidentiary standard needed to establish if the election result has been influenced: i.e., whether the violations probably influenced the election result, whether this needs to be established beyond reasonable doubt, or whether a mere possibility would suffice? In case of an electoral dispute that may lead to declaring elections null and void, the level of probability for influencing the election result will be the key question to decide. It is important that the evidence requirement is clear and undisputed, regardless of whether the evidentiary standard is set out in the Electoral Code for this purpose, or the law defers this question to general principles in the Moldovan legal order, other laws, or case law. The legislator should clarify what evidentiary standard is to be applied when declaring elections null and void.

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<sup>49</sup> Paragraph 11 of Resolution 1308(2002), on Restrictions on political parties in the Council of Europe’s member States.

## **G. Ballot papers**

110. Article 73 provides for a number of positive additions concerning the ballot paper standardised template and clarifies procedures for submission and replacement of electoral symbols. The position of electoral competitors on the ballot is determined by lot, carried out daily, affecting only the electoral contestants whose registration has been accepted that day. ODIHR has previously observed that drawing lots on a continuous basis rather than after the deadline for registration may give an unfair advantage to larger and better-resourced parties and candidates who register first and thus appear higher on the ballot.<sup>50</sup> To avoid any perceived electoral advantage resulting from the order of submission of candidacies, ODIHR and Venice Commission recommend that the drawing of lots be conducted after the registration process is concluded.

111. Article 73(7) states that the ballot papers are printed exclusively in Romanian.<sup>51</sup> This threatens to adversely affect the electoral participation of national minorities by reducing the possibility of making an informed choice, especially in the case of referendums, when there may be multiple questions. International standards in this regard require that positive measures be taken to overcome specific difficulties, such as language barriers. In localities where specific such barriers exist, readily accessible information and materials about voting should be provided in minority languages.<sup>52</sup> To facilitate the effective exercise of voting rights in localities where minorities represent a certain per cent of the population, ODIHR and the Venice Commission recommend retaining the possibility that the ballot papers and the relevant voter information are produced in both Romanian and the languages spoken by national minorities.

112. According to Article 74(2), the ballot papers are to be printed in quantity corresponding to the number of voters. On several occasions, ODIHR had noted that a number of polling stations abroad had to close early, having run out of ballot papers, preventing eligible voters from casting a vote.<sup>53</sup> Special provisions to provide that polling stations abroad receive an adequate supply or reserve quantity of ballot papers could be envisaged.

## **H. Voting, counting and determination of results**

113. Provisions on voting procedures contain welcome amendments that reinforce the key principles of the voting process – accessibility, legality, transparency and efficiency (Article 77(1)). In addition, an express prohibition of taking photos or otherwise disclosing how the ballot was marked in Article 79(3) contributes to the secrecy of the vote.

114. Article 77(5) of the draft Code stipulates that the facilities designated by the local administration for electoral purposes should comply with accessibility requirements for persons with disabilities, which is also noteworthy in the light of concerns on polling station access

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<sup>50</sup> ODIHR [Final Report](#) on the 24 February 2019 Parliamentary Elections, recommendation 20.

<sup>51</sup> Under Article 53(6) of the current Code, ballot papers are prepared in accordance with the Law on the Functioning of Languages, which allowed the PEBs to request ballots printed in languages used in their locality. The law was declared unconstitutional by the Constitutional Court in January 2021 and was later repealed by the Parliament.

<sup>52</sup> General Comment of the UN Human Rights Committee to Article 25 of the ICCPR recommends that “information and materials about voting should be available in minority languages”, paragraph 12. This view has also been consistently held by the Venice Commission and ODIHR, see e.g. CDL-AD(2017)016, Bulgaria, Joint Opinion on Amendments to the Electoral Code, para. 54.

<sup>53</sup> ODIHR [Final Report](#) on the 30 October and 13 November 2016 Presidential Election, recommendation 5; ODIHR [Final Report](#) on the 1 and 15 November 2020 Presidential Election, p. 24. Similarly, the Constitutional Court has recommended changing the mechanism regarding the determination of the number of ballot papers and their distribution abroad in its judgement no. 34 from 13.12.2016.

consistently raised in the past.<sup>54</sup> It should be underlined that respect for the principle of accessibility of voting premises is effective when it is safeguarded both by law and in practice. This provision requires that local authorities do their best to identify and adjust the voting premises for independent access of persons with disabilities sufficiently in advance of elections. However, to ensure that the situation is improved, the CEC could be obliged by the law to proactively track and report after each election on the progress of identifying suitable polling station premises.

115. Voter identification documents are limited to citizen identity cards, provisional identity cards and passports, with service ID or sailor's cards no longer allowed. In addition, voting arrangements for students have been clarified to apply both in the parliamentary and presidential elections as well as in the republican referendum (Article 78(4)). These changes provide a unified approach in all national elections and referendums, and the latter addresses a previous ODIHR recommendation.<sup>55</sup>

116. Positively, a number of new provisions regarding vote counting and tabulation have added to clarity and uniform application of procedures. Article 81(7) stipulates that the opening of ballots and determination of the votes cast are to be carried out in accordance with the CEC instructions, which increases transparency and uniformity. Following an ODIHR recommendation, the ballot annulment procedure was simplified and no longer requires affixing a stamp to all unused ballot papers.<sup>56</sup>

117. According to Article 84(1), the CEC is the sole body authorised to declare elections invalid if the turnout requirement was not met, both for constituency and country-wide (invalid elections in a constituency were previously announced by the DEC's). More detailed provisions on the timeline for handing over protocols from abroad and their confirmation are now included in Article 84(1).

118. The rules for recording counting and tabulation results remained largely unchanged. Results protocols prepared at PEBs and DEC's must be signed by all the members, respectively. The absence of signatures, in principle, will not affect the validity of the protocol "unless the number of signatures is below the absolute majority" (Articles 83(3) and 84(3)). However, the draft Code does not specify how the protocols will be treated if the absolute majority is not reached. The draft text could be amended to clearly regulate this important element.

119. Previous ODIHR reports also noted a lack of specific provisions on handling recount requests.<sup>57</sup> Positively, the revised Code provides additional detail on the procedure in Articles 85(3), 95(10) and 100(5), stipulating *inter alia* a deadline of three calendar days both for submission and examination of recount requests. The Constitutional Court orders the recount of votes (in the case of national elections or referendums) or the CEC (in the case of local elections or referendums), where irregularities have likely influenced the results of voting and the distribution of seats.

120. Under Article 87(2), certain electoral materials, including ballot papers, voter lists and absentee voting certificates, are now to be temporarily kept at the territorial police inspectorates (previously local courts) and destroyed three months after the confirmation of election results

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<sup>54</sup> ODIHR [Final Report](#) on the 1 and 15 November 2020 Presidential Election, recommendation 22; ODIHR [Final Report](#) on the 24 February 2019 Parliamentary Elections, recommendation 31; ODIHR [Final Report](#) on the 30 October and 13 November 2016 Presidential Election, recommendation 25.

<sup>55</sup> ODIHR [Final Report](#) on the 30 October and 13 November 2016 Presidential Election, recommendation 8.

<sup>56</sup> ODIHR [Final Report](#) on the 24 February 2019 Parliamentary Elections, recommendation 33.

<sup>57</sup> ODIHR [Final Report](#) on the 11 July 2021 Early Parliamentary Elections, p. 8; ODIHR [Final Report](#) on the 1 and 15 November 2020 Presidential Election, recommendation 23.

(previously six months). This provision would benefit from additional safeguards for secure storage of electoral material and personal data protection considerations.

121. The draft Code repeats the provision from the current Code to include turnout requirements for various elections to be valid, which is one-third of all registered voters for the presidential election – first round and one-fourth for local elections.<sup>58</sup> Otherwise, the voting is to be repeated (with the same candidates). The draft Code specifies that a turnout requirement does not apply to repeat voting in parliamentary and local elections; however, such provisions are missing for the presidential election. This could lead to a cycle of failed elections and an inability to elect the authorities. Furthermore, the draft Code also does not clearly prescribe whether a turnout requirement applies for the second round of presidential elections, although Article 146(6) seems to imply that there is no such requirement.<sup>59</sup> ODIHR and the Venice Commission recommend reviewing the turnout requirements.

## **I. Provisions specific to different types of elections**

### **1. Parliamentary elections**

122. Citizens with voting rights who have reached 18 years of age can stand as candidates on party or bloc lists and independently. Independent candidates may collect signatures to support their candidacy individually or through initiative groups (Article 114). The possibility to form initiative groups is a new and welcome provision for facilitating the participation of independent candidates.

123. According to Article 122(2), the thresholds for parliamentary representation remain the same: 7 per cent of the total vote nationwide for an electoral bloc, 5 per cent for a political party and 2 per cent for an independent candidate. On the question of a threshold for electoral blocs, ODIHR and the Venice Commission have previously noted that there is no automatic reason to set it to a higher value.<sup>60</sup> The CEC informed the delegation of its intention to lower the threshold for independent candidates to 1 per cent, which would meet prior recommendations by international observers and the text of Article 123 of the draft Code stipulates that an independent candidate is elected upon securing one per cent of the valid votes cast, in contradiction with Article 122(2). This should be clarified. On the other hand, the Judicial Committee informed the ODIHR and Venice Commission delegation that a consensus was not yet reached in the parliament on specific threshold values for parliamentary elections, despite the text approved in the first reading and that this issue will be revisited. While the issue of thresholds is within the political purview of the legislator, it is worth noting that the international good practice, as a principle, advises the states to keep the threshold levels low.<sup>61</sup>

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<sup>58</sup> Articles 1, 127, 151, 175

<sup>59</sup> Article 146(5) states that “The candidate who obtained the highest number of votes in the second ballot shall be declared elected.”

<sup>60</sup> See, for example, the Venice Commission and ODIHR Joint opinion on the Draft Electoral Code of Armenia, [CDL-AD\(2016\)019](#), para. 39.

<sup>61</sup> See paragraph 22.3 of the CoE Parliamentary Assembly [Resolution 1705 \(2010\)](#), which calls on CoE member States “consider decreasing legal thresholds that are higher than 3 per cent”. See also in recent opinions, Venice Commission and ODIHR Joint Urgent Opinion on Amendments to the Electoral Code and Related Legislation in Armenia, [CDL-AD\(2021\)025](#), para 45-48; Venice Commission and ODIHR Joint Opinion on Amendments to the Electoral Legislation and Related “Harmonisation Laws” in Turkey, [CDL-AD\(2018\)031](#), paras 30-36.

## 2. Presidential elections

124. The draft Code retains the same eligibility requirements for a presidential candidate – a citizen over 40, with command of Romanian and who has resided in the country for at least ten years. In their 2016 joint opinion, the Venice Commission and ODIHR noted that: "the requirement of 10 years of residence, even if it does not imply present residence and therefore may permit candidates residing abroad to stand for election, constitutes a candidacy restriction that is overly restrictive and contrary to OSCE commitments and other international obligations and standards and should be reconsidered or reduced".<sup>62</sup> Acknowledging that the age requirement stems from Article 78.2 of the Constitution and that altering it would require amending the Constitution, this recommendation is reiterated and remains in place for the future legislative changes. A rather high age requirement restricts participation of young people, while limiting the pool of candidates for presidency. The legislator should be mindful of the fact that age in itself is not a qualification for the office of President.

125. Moreover, Article 136 imposes a new condition that an eligible candidate must have a completed higher education supported by "a bachelor's degree or equivalent". This condition does not follow from the Constitution. Article 78.2 of the Constitution allows "any citizen" to run for the office of President of the Republic of Moldova provided that he or she fulfils the requirements listed in the provision. Given the clear wording of the Constitution, which establishes a right to stand for election as long as specific conditions are met, it appears doubtful that introducing additional restrictions on the constitutional right to stand for election would be in conformity with the principle of legality. An education requirement is also at odds with international standards.<sup>63</sup> Furthermore, the right to stand for election is protected by Article 3 of Protocol 1 of the ECHR, and while the states have a wide margin of appreciation, restrictions should nonetheless have a legitimate aim and not be disproportionate to the aim pursued. It is very hard to see what the legitimate aim of an education requirement for the office of President would be. A limitation based on education is an unreasonable restriction that may negatively impact the electoral rights of some citizens or groups of citizens and should be reconsidered.

126. Regarding language proficiency requirements, the Venice Commission and ODIHR have previously recommended to "provide that the testing of language [...] be reasonable, objective, verifiable, and subject to effective review".<sup>64</sup> It seems that to address this recommendation, a reference is added to Article 18(1) of the Law on Citizenship of the Republic of Moldova, which outlines general criteria for language fluency. These include the ability to follow, understand, read, write and speak the language in everyday and official contexts. It remains unclear, however, how verification based on these criteria will be carried out procedurally (whether the language certificates will be collected or testing will be organised, and if so, under which conditions). In any case, the verification mechanism must be clearly laid down to ensure objective and uniform application to avoid arbitrary disqualification. The amended article fails to address previous concerns, and the previous recommendation stands.

127. Article 68(1)(g) states that a presidential candidate should present, among other documents, a health certificate issued by a medical institution. The nature and the purpose of

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<sup>62</sup> Venice Commission and ODIHR, Joint opinion on the draft law on changes to the electoral Code of the Republic of Moldova, [CDL-AD\(2016\)021](#), para 10. On residency restrictions, see also Code of Good Practice in Electoral Matters, paragraph I.1.1.c.iii.

<sup>63</sup> General Comment 25 to Article 25 of the ICCPR stipulates that "[p]ersons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation."

<sup>64</sup> Venice Commission and ODIHR, Joint opinion on the draft law on changes to the electoral Code of the Republic of Moldova, [CDL-AD\(2016\)021](#), para.11; See also ODIHR [Final Report](#) on the 1 and 15 November 2020 Presidential Election, recommendation 12.

this document are unclear and, in any case, should be removed as it infringes on the right to privacy.

### 3. Local elections

128. Local elections foresee an additional tier of election administration in towns and villages as first-level DEC. Electoral councils at the level of districts, the municipalities of Chişinău and Balti and the autonomous territorial unit of Gagauzia are operating as second-level DECs. Article 174 introduces one notable change to their competencies by delegating the power to certify election results, previously held by local courts. Recognising that the composition of these councils is determined by political actors (first-level DECs could be entirely comprised of political representatives), their impartiality and objectivity could be called into question. Moreover, DECs might lack sufficient expertise to decide on the legality of results. While establishing local election results should be kept with the lower-level councils, the task of ascertaining the validity of results could be retained with the local courts.

129. Positively, the final results for constituencies can only be confirmed after all post-election appeals are settled (Article 100(8)). However, the process of adjudicating complaints could be made clearer as it is difficult to understand what authority is competent to resolve challenges to voting or election results. According to Articles 97-98, decisions of local electoral councils can be appealed to the second-level DECs, the CEC or the district courts in administrative proceedings. The proposal to give priority to a higher electoral body (if a complaint is filed with election administration) or to a court (if a complaint is simultaneously filed with an electoral body and a court) does not offset the potential conflict of jurisdiction and takes away from the certainty of procedures. Good electoral practice suggests that the dispute resolution process is simple and clearly regulated and that neither the appellants nor the authorities are able to choose the appeal body.<sup>65</sup>

130. In line with international standards, the number of required support signatures for independent mayoral candidates is lowered from 5 to 1 per cent. Together with better-elaborated rules on signature collection and allowing voters to support multiple candidates (Articles 65-67), these changes address previous ODIHR recommendations.<sup>66</sup> Lowering the minimum age to be eligible to stand for mayor from 25 to 23 years is also a welcome change. However, the requirement for a candidate to have completed general secondary education could be considered discriminatory. ODIHR and the Venice Commission recommend removing it (see also paragraph 126 of this opinion related to presidential elections).

131. Article 156(2) of the draft Code provides that the number of members of local councils is to be determined by the CEC in accordance with this Code and the 2006 Law on local public administration. In the current Code (Article 130(2)), the number of local councillors is set by law. The draft Code's intention to vest the CEC, an administrative body, with the power to determine the number of local councillors does not appear to be aligned with the Constitution, which provides in Article 112(3) that "[t]he procedure of electing local councils and mayors, as well as their powers and scope of competence, shall be established by the law", suggesting that this power belongs to the Parliament. It may also be questioned to what extent vesting such power with the CEC is in line with the European Charter of Local Self-Government.<sup>67</sup>

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<sup>65</sup> Venice Commission, Code of Good Practice in Electoral Matters, paragraphs II.3.3.b. and II.3.3.c.

<sup>66</sup> ODIHR [Final Report](#) on the 14 and 28 June 2015 Local Elections, recommendation 16.

<sup>67</sup> [European Charter of Local Self-Government](#) provides for "the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs [...]", to be "exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage".

## J. Provisions specific to referendums

### 1. General comments on referendums

132. International standards assign particular attention to respect for equality of opportunity during elections and referendums. The Code of Good Practice on Referendums further notes the distinctive nature of referendums in that they may not necessarily entail a divide along party lines; therefore, simply replicating the same equality provisions for elections and referendums may lead to an unsatisfactory situation.<sup>68</sup>

133. The draft Code applies a rather restrictive approach toward actors participating in a referendum campaign. The definition of referendum participants does not extend beyond political parties and blocs and, in the case of a recall referendum, the President or a mayor. The right of initiative groups to conduct campaigns is not prescribed in Chapter VIII. Furthermore, participation of civic groups or civil society organisations in favour of or against the proposal is not in any way regulated. The ODIHR and Venice Commission recommend granting the status of a referendum campaign participant to a more exhaustive list of possible actors, including civic groups and organisations supporting or opposing the issue put to a referendum or otherwise enabling their participation in a referendum campaign.

134. The principle of equality also calls for a balanced representation of both supporters and opponents of the proposal at different levels of referendum commissions.<sup>69</sup> The possibility to observe referendum-related operations by supporters and opponents of the initiative must be granted at all levels of referendum commissions.<sup>70</sup>

135. There is no obligation in the draft Code for the CEC to provide voters with information reflecting different viewpoints on the referendum issue. As the purpose of a referendum is to engage citizens directly in "leadership and administration of state affairs" (Article 181(1)), the principle of free suffrage requires that voters have access to reliable and balanced information that will help them decide on the question put to the vote. On account of informed public opinion, ODIHR and the Venice Commission recommend obliging and entrusting the CEC, or another body responsible for impartial education on the referendum question, with the duty to provide balanced and objective information to voters sufficiently in advance of the vote. As recommended by the Code of Good Practice on Referendums, this could be effectuated by making an explanatory report or balanced campaign materials from the proposal's supporters and opponents available at least two weeks before the vote.<sup>71</sup>

136. As regards the referendum campaign, Article 202 offers a general cross-reference to Chapter VIII, dealing with the conduct of the election campaign. It would be beneficial to add details specific to referendums, clarifying in particular whether the principle of equality in campaigning applies to each referendum participant individually or cumulatively to those supporting a "yes" or "no" option. General rules on election campaign finance apply to referendum campaigns and are incorporated in Chapter V, albeit without an explicit reference made in the chapter on referendums.

137. Under Articles 184(2) and 216(2), neither national nor local referendum can be held on the same day as parliamentary, presidential or local elections. This is a positive change which

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<sup>68</sup> Venice Commission, Revised Code of Good Practice on Referendums, [CDL-AD\(2022\)025](#), Explanatory Memorandum, paragraph 5.

<sup>69</sup> Venice Commission, Revised Code of Good Practice on Referendums, paragraph, II.4.1.e; see also the assessment of similar provisions in Chapter D of Venice Commission and ODIHR Urgent Joint Opinion on Draft Law 3612 on Democracy through All-Ukraine Referendum, [CDL-AD\(2020\)024](#).

<sup>70</sup> Venice Commission, Revised Code of Good Practice on Referendums, paragraph II.4.1.e.

<sup>71</sup> Revised Code of Good Practice on Referendums, paragraph I.3.1.e., Explanatory Memorandum, 12.



contributes to voters' informed choices.<sup>72</sup> Another amendment requires that questions submitted to a referendum allow replies by “yes” or “no” (instead of “in favour” or “against”), a preferred voting modality for binary questions.<sup>73</sup>

138. Along with a simple majority required for the proposal to be passed, Article 208 provides for an approval quorum when the referendum concerns the issues of sovereignty and the form of government (half of the registered voters, see Article 142(1) of the Constitution) and the dismissal of the President or a mayor (equal or a greater number of voters that elected the President/mayor but no less than half of the voters who cast ballots in the referendum). Moreover, a one-third participation quorum is required for a constitutional, legislative or local referendum to be valid (Articles 211 and 240). The Code of Good Practice on Referendums notes that introducing an approval quorum for referendums on matters of fundamental constitutional significance is acceptable but advises against a turnout quorum as it encourages disengagement campaigns and may lead to failed referendums, frequently observed in Europe.<sup>74</sup> ODIHR and the Venice Commission recommend reviewing referendum quorum requirements.

## 2. National referendums

139. Article 182 distinguishes four types of national referendums – constitutional, legislative, on dismissal of the President and a consultative referendum. This seems to mean that constitutional and legislative referendums are binding and specifically worded, while consultative referendums would be generally worded or on a question of principle – possibly of a constitutional nature.<sup>75</sup> This could however be made more explicit.

140. A referendum on constitutional revision may be called by the Parliament, the government or through a popular initiative. Before the matter is put to the vote, the Constitutional Court must review the draft text, followed by considerations in the Parliament (Article 187). This is an important safeguard to protect the proposal's substantive validity. The Constitution provides that the court's opinion is advisory, but the questions have to be raised whether the Parliament can disregard it or if a qualified majority vote in the Parliament is needed.<sup>76</sup> This could be clarified.

141. Provisions regulating the legislative referendum should be developed more thoroughly. In a legislative referendum, either the Parliament or a citizens' initiative group may propose draft laws or their provisions to a national vote. The draft law proposed by a popular initiative is subject to the assessment and approval of the Ministry of Justice (Article 193). This responsibility should

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<sup>72</sup> See [Resolution 2251 \(2019\)](#) of the Parliamentary Assembly of the Council of Europe, para. 4.2: "in order to allow voters to make well-informed decisions while casting their votes, it should not be possible to hold referendums at the same time as other elections". Cf. Venice Commission, Revised Code of Good Practice on Referendums, [CDL-AD\(2022\)025](#), III.9.c. For certain challenges in holding elections and referendums simultaneously, see also ODIHR Final Report on the 2019 Parliamentary Elections.

<sup>73</sup> Revised Code of Good Practice on Referendums, paragraphs I.3.1.c. and III.5.a.

<sup>74</sup> Revised Code of Good Practice on Referendums, para. III.7.a and b, Explanatory Memorandum, para. 62-65; See also Parliamentary Assembly Updating guidelines to ensure fair referendums in Council of Europe member States Report, [Doc. 14299](#), paras 75-76, and Venice Commission Report on Referendums in Europe, [CDL-AD \(2005\)034](#), para. 162.

<sup>75</sup> Cf. Venice Commission, Republic of Moldova - Opinion on the proposal by the President of the Republic to expand the President's powers to dissolve Parliament, CDL-AD(2017)014, paras 46ff. The Constitution addresses national referendums at several instances (Articles 75; 88(f); 89(3) – recall of the President -; 142(1) - provisions regarding the sovereignty, independence and unity of the state, its permanent neutrality. On the types of referendums, see Revised Code of Good Practice on Referendums, CDL-AD(2022)015, paras 13-15.

<sup>76</sup> For example, in its Report on constitutional amendment, the Venice Commission recommended that “a good amendment procedure will normally contain [...] a qualified majority in parliament, which should not be too strict”, [CDL-AD\(2010\)001](#), para. 241.

rather be vested with the CEC or another impartial authority.<sup>77</sup> It is also advisable to inform the public about the Parliament's position on a legislative proposal originating from the people's initiative. In this regard, the Code of Good Practice on Referendums recommends that the Parliament should be allowed to issue an opinion or submit an alternative proposal to the referendum.<sup>78</sup>

142. Signatures for referendums held at the request of a section of the electorate have to collect for a period which is "not less than 2 months and more than 3 months" (Article 192(2)). ODIHR and the Venice Commission does not see why the collecting period should vary on a case-to-case basis. They recommend clarifying this provision by providing for the set period signature collection. Regarding the initiation of the referendum, Article 191 provides for a cumbersome process involving first an assembly with 300 persons and then an initiative group with 100 persons. ODIHR and the Venice Commission recommend reconsidering this too.

143. In the past, the Venice Commission and ODIHR expressed concerns that procedures for dismissal of the President, notably as regards the grounds for removal, are not formulated with sufficient precision in any laws.<sup>79</sup> The draft amendments have left this issue unaddressed. The recommendation to lay down precise conditions for initiating dismissal of the President is therefore repeated.

144. In addition, the proposed extended timeline of 60 days for holding a dismissal referendum, while not unreasonable, appears to conflict with Article 89.3 of the Constitution, which requires that a national referendum is organised within 30 days after a motion to suspend is adopted. The question of including the extended deadline should be carefully weighed concerning the principle of legality. This change should be enacted in the Constitution before it is incorporated into the Electoral Code.

145. As regards a consultative referendum, it can be called by all of the subjects mentioned above and the President. Its legal effects, however, are not entirely clear. Article 181(3) stipulates that all acts adopted by a republican referendum have the legal power and are enforceable throughout the country. This could be interpreted that the results of all types of referendums, including a consultative referendum, could give rise to legally binding effects. The good practice recommends that the effects of legally binding or advisory referendums be clearly specified in the Constitution or by law.<sup>80</sup> The Code should clarify the consequences of a consultative referendum, including decisions to be taken after the referendum. Similarly, to facilitate voters' informed choice, the follow-up actions to binding referendums could also be stipulated. In addition, the procedures for calling a referendum at the request of the Government or the President are missing in the draft Code and would benefit from further elaboration.

146. Positively, the draft Code includes specific provisions requiring a referendum proposal to be drafted neutrally, without ambiguity, misleading or suggesting answers (Article 182(5)); questions of a different nature and mutually exclusive questions are not allowed (Article 183(4)), providing for the unity of content.<sup>81</sup> Provisions on procedural validity could be further strengthened by expressly tasking the CEC (or a court or another appropriate body) to scrutinise the clarity of the questions submitted to a referendum and verify whether the unity of form and content is respected.

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<sup>77</sup> Revised Code of Good Practice on Referendums, para. II.4.1.b.

<sup>78</sup> Revised Code of Good Practice on Referendums, para. III.6.

<sup>79</sup> Venice Commission and ODIHR Joint opinion on the draft law on changes to the electoral Code of the Republic of Moldova, [CDL-AD\(2016\)021](#), paras 20-21.

<sup>80</sup> Revised Code of Good Practice on Referendums, para. III.8.a., Explanatory Memorandum para. 66-69

<sup>81</sup> Revised Code of Good Practice on Referendums, para. III.2.

147. The provision requiring invalidation of signatures collected in a different second-level electoral constituency than the voter's place of registration (Article 197(7)(d)) seems to be meaningful only in the event of a constitutional referendum, and this should be more clearly stated.

148. The date of the republican referendum is to be fixed at least 60 days before the day of the vote (Article 190), allowing sufficient time for a reflection in line with international good practice.<sup>82</sup> However, the maximum deadline for organising a referendum is not provided. Taken together with a rather long period of six months for the Parliament to announce the vote, this may lead to extended delays, possibly rendering the question irrelevant. The law should provide a maximum period between the submission of signatures for a referendum by a popular initiative and the vote.<sup>83</sup> For the same reasons, the deadline for the Parliament to adopt a decision on a referendum should be reconsidered.<sup>84</sup> In addition, clarification on the question of the Parliament, rejecting a proposal, and what will happen if it fails to take a decision should be added.

149. Article 207 sets a deadline for the CEC to forward referendum results to the Constitutional Court, which is missing in the current Code. However, the proposed deadline of three days diverges from that for presidential and parliamentary elections (24 hours). The longer deadline does not seem justified and should be harmonised with the relevant provisions for parliamentary and presidential elections.

### 3. Local referendums

150. A local referendum is defined as a form of consultation with local communities on issues of particular interest for their territorial administrative unit, as provided in the Law on Local Public Administration and regulated in Chapter XV of the draft Code. Except for recall referendums which lead to new elections (see Article 239(2)), the draft does not say clearly whether local referendums are advisory or binding, or if they concern specifically worded or generally worded proposals. ODIHR and the Venice Commission recommend clarifying these issues).

151. Article 218 deals with "problems that may not be subject to the local referendum". Most of them concern issues which do not belong to the competences of municipalities. It would be much simpler to write that the local referendum may address only issues under the competence of the municipalities, and then to exclude some of them if appropriate. It might be useful to simplify this provision.

152. Similar to what is provided for national referendums, variable time limits are set up for collecting signatures in Article 221(3). According to information provided during the meetings in Chişinău, this would depend on the number of voters in the municipalities. The law should however be more precise to avoid any ambiguous situations. ODIHR and the Venice Commission recommend setting the exact number of signatures required in each municipality, rather than tying it with the percentage of voters registered (i.e. 10 per cent, as set in the draft Code).

153. Certain aspects of organising a local recall referendum are not clearly regulated. It can be concluded that the question of termination of the mandate of local executives will no longer be subject to citizen's initiative. This is a welcome development, particularly given concerns raised by the Congress of Local and Regional Authorities in its 2019 report.<sup>85</sup>

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<sup>82</sup> Revised Code of Good Practice on Referendums, para. III.8.a., Explanatory Memorandum, para.70

<sup>83</sup> Revised Code of Good Practice on Referendums, para. III.9.b

<sup>84</sup> See also the assessment of similar provisions in Venice Commission Urgent Opinion on the Draft Law on the Referendum and the People's Initiative in Serbia, [CDL-AD\(2021\)033](#), para. 34.

<sup>85</sup> The Congress *inter alia* stressed that the "lack of precision of the grounds to activate the mechanism of recall referendum deteriorates the conditions of office of local elected representatives and entails a

154. However, the grounds and the mechanism for mayors' early removal from the office do not meet appropriate standards of certainty and foreseeability. Article 217(3) stipulates that dismissal of the mayor may be initiated "if he/she fails to respect the interests of the local community, to exercise properly the powers of locally elected official provided by law, [or] violates moral and ethical rules, facts confirmed in the prescribed manner". The Venice Commission previously emphasised that the practice of an early recall is only acceptable under specific and clear conditions, "coupled with adequate and effective procedural safeguards to prevent its misuse".<sup>86</sup> It is recommended that the mechanism for an early recall of mayors is clarified, providing for restrictive grounds under which it may occur.

155. The draft Code significantly redefines the distribution of roles in local referendum procedures, designating more responsibilities to the CEC. In particular, it follows from Articles 225(6) and 226(1-2) that a local council is to call a referendum at the institutional initiative (1/2 of councillors or a mayor), whereas the CEC is a deciding body regarding a referendum by popular initiative. In addition, competencies in registration of local initiative groups and verification of supporting lists, previously done by local public administration, are now transferred to the CEC (Articles 221(1) and 225(6)). These changes are in line with good practice.

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serious dysfunction of local democracy as mayors work under the permanent threat of a revocation referendum", see [CG36\(2019\)15final](#), Recommendation 436 (2019) para. 4f.

<sup>86</sup> Venice Commission Report on the Recall of Mayors and Local Elected Representatives, [CDL-AD\(2019\)011rev](#), para. 122.