Strasbourg, 19 December 2022 **CDL-AD(2022)051**

**Opinion 1115/2022** Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

# REPUBLIC OF MOLDOVA

# *AMICUS CURIAE* BRIEF

# FOR THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MOLDOVA

# ON

# DECLARING A POLITICAL PARTY UNCONSTITUTIONAL

**Approved by the Council for Democratic Elections at its 75th meeting (15 December 2022)**

**and adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)**

**On the basis of comments by**

**Mr Ben VERMEULEN (Member, the Netherlands)**
**Ms Katharina PABEL (Substitute Member, Austria)**
**Mr Cesare PINELLI (Substitute Member, Italy)**
**Mr Pieter VAN DIJK (Expert, Former Member, the Netherlands)**

**Contents**

## I. Introduction

1. By letter dated 17 November 2022, Ms Liuba Șova, in her capacity as *Interim* President of the Constitutional Court of the Republic of Moldova, requested an *amicus curiae* brief of the Venice Commission. The request refers to a pending case before the Constitutional Court initiated on 11 November 2022 by the Prime Minister of the Republic of Moldova Ms Natalia Gavrilița requesting the verification of the constitutionality of the "Șor" political party pursuant to Article 41 (4) of the Constitution of the Republic of Moldova.

2. Mr Ben Vermeulen, Ms Katharina Pabel, Mr Cesare Pinelli and Mr Pieter van Dijk acted as rapporteurs for this *amicus curiae* brief.

3. This *amicus curiae* brief was prepared in reliance on the English translation of the Constitution and laws. The translations may not accurately reflect the original version on all points.

4. This *amicus curiae* brief was drafted on the basis of comments by the rapporteurs. It was approved by the Council for Democratic Elections at its 75th meeting (Venice, 15 December 2022) and adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022).

## II. Background

### A. In general

5. On 11 November 2022, the Government of the Republic of Moldova lodged an application with the Constitutional Court of Moldova to verify the constitutionality of the "Șor" political party in the light of Article 41 (4) of the Constitution of Moldova which provides that *"Parties and other socio-political organisations, whose objectives or activities are the engagement in fighting against political pluralism, the principles of the rule of law, sovereignty, independence, and territorial integrity of the Republic of Moldova are declared unconstitutional."*

6. According to the Government, the verification of the constitutionality of the "Şor" party is justified for three main reasons: 1) alleged criminality of the party founder, members of parliament representing the "Şor" party and its members, 2) repeated irregularities related to political party financing sanctioned by the Central Election Commission and 3) exhaustion of other legal mechanisms to correct the behaviour of the "Şor Party". In its application, the Government claims that Parliament has received 22 requests for lifting the parliamentary immunity of various deputies of the Şor Party. Mr Ilan Șor, the founder of the party, is currently a justice fugitive having been already sentenced to a prison term by a first instance court for crimes related to deception, abuse of trust and money laundering in large proportions. Ms Marina Tauber, who is a member of parliament for the Șor Party, is undergoing criminal charges for alleged illegal financing of the party by an organised criminal group. In addition, the Government claims that the state authorities are investigating several individuals who participated in the illegal financing of the party. Lastly, the Government mentions that on 26 October 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control by Executive Order No. 14024 designated Ilan Şor, leader of the Şor Party, as being responsible for or complicit in or having directly or indirectly engaged or attempted to engage in interference in a foreign government election, for or on behalf of, or for the direct or indirect benefit of the Government of the Russian Federation.[1]

7. Furthermore, the Government notes that the Central Election Commission (CEC), since 2016 onwards, has applied various measures against the Şor Party for violation of legal

[1] Response to Corruption and Election Interference in Moldova at https://www.state.gov/response-to-corruption-and-election-interference-in-moldova/.

provisions related to the financing of electoral campaigns. *Inter alia,* the CEC imposed various sanctions on the party including but not limited to, ordering the return of funds received through unauthorised financing of the campaigns, suspension of public funding to the party and de-registration of party candidates. According to the Government, the appeals of the Şor Party against the CEC have been rejected by the courts through final decisions.

8. Finally, the Government alleges that state authorities have exhausted all the means available to prevent the illegal financing of the Şor Party and its election campaigns to no avail. According to the Government, the alleged criminality of the party leadership, the cooperation of the Şor Party with representatives of a foreign country and its financing by the Russian Federation undermine the sovereignty and independence of the Republic of Moldova.

9. The request for an *amicus curiae* brief raises two related questions 1) *What are the applicable European standards in the field of declaring a political party unconstitutional? and 2) Which actions of a political party would, by their nature, affect political pluralism, the principles of rule of law, sovereignty, independence and territorial integrity of the state and could lead to the declaration of a political party as being unconstitutional?*

10. The intention of this *amicus curiae* brief for the Constitutional Court is not to take a stand on the issue of the constitutionality of the relevant political party, which is subject of the ongoing constitutional proceedings, but only to provide the Constitutional Court with material on the applicable European standards to facilitate its own consideration under the Constitution of the Republic of Moldova. It is for the Constitutional Court to have the final say as regards the interpretation of the Constitution in the present case.

### B. Domestic law on declaring a party unconstitutional

11. The declaration of unconstitutionality of a political party is regulated by the Constitution of the Republic of Moldova and the Law on Political Parties of 2007 (LPP). Under Article 135, paragraph 1 point (h) of the Constitution, the Constitutional Court decides over matters dealing with the constitutionality of a party. The grounds for declaring a party unconstitutional are listed under Article 41 of the Constitution which regulates the freedom of parties and other socio-political organisations states in paragraph 4: "*Parties and other socio-political organisations, whose objectives or activities are the engagement in fighting against political pluralism, the principles of the rule of law, sovereignty, independence and territorial integrity of the Republic of Moldova are declared unconstitutional."*

12. The Law on Political Parties of 2007 (most recently amended in April 2022) envisages several grounds for limitations on the activity of political parties.[2] The prohibition of political parties is envisaged under Article 3 (1), of the Law, which states " (*1) Political parties that, through their statute, program and/or activity, militate against the sovereignty, territorial integrity of the country, democratic values and the legal order of the Republic of Moldova, use, to achieve their goals, illegal or violent means, incompatible with the fundamental principles of democracy, are prohibited."*

13. Procedures imposing less restrictive measures on the activity of political parties are detailed under Article 21- 23 of the LPP. Under Article 21 (1), the activity of a political party can be limited if its actions cause serious damage to political pluralism or fundamental democratic principles. The law envisages a step-by-step procedure initiated by the Ministry of Justice with a view to address irregularities in the activity of a party which may lead to temporary limitations of a party's

[2] Law on Political Parties No. 294-XVI from 21.12.2007 (in force from 29.02.2008), Official Gazette No. 42-44 Article 119 from 29.02.2008. An unofficial translation including recent amendments of April 2022 was provided to the Venice Commission by the Constitutional Court of Moldova in November 2022.

activity. Based on Article 21 (7), the Ministry of Justice can ask the competent court to dissolve a political party if, during the first year from the date of the last limitation of the activity of the party, it commits similar violations. The termination of the activity of political parties and their liquidation is regulated in Article 21 through 23 of the LPP.

14. Read in conjunction, these relevant constitutional and legal provisions suggest that a ruling of the Constitutional Court of the Republic of Moldova declaring a political party as being unconstitutional, shall pave the way for the termination of the activity a political party, liquidation, and party closure. In accordance with Articles 21-23, once the Constitutional Court renders a declaration of unconstitutionality against a political party, that party will subsequently face the measures of termination of activities, dissolution and liquidation.

## III. Question 1 - International standards on declaring a party unconstitutional

### A. International (hard and soft) law

15. The founding, operation, prohibition and dissolution of a political party is generally covered under the right to freedom of association and freedom of assembly. In the view of Venice Commission, these rights are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, must be able to fully enjoy such rights which are protected both in international law and at the national level.[3]

16. At the universal level, fundamental rights afforded to political parties and their members are found in Articles 18 to 21 of the Universal Declaration of Human Rights[4] and Articles 19 and 22 of the International Covenant on Civil and Political Rights (hereinafter ICCPR).[5] Moreover, Article 25 of the ICCPR provides individuals with the right to take part in the conduct of public affairs, either directly or through freely chosen representatives. UN human rights bodies have also developed standards and "soft law" which states should take into consideration when regulating political parties.[6]

17. At the European level, Articles 10 and 11 of the European Convention of Human Rights (hereinafter "ECHR") protect the rights to freedom of expression and opinion and the right to freedom of assembly and freedom of association respectively.[7] The right to free elections, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature, is likewise set out in Article 3 of Protocol 1 to the ECHR.[8]

---

[3] Venice Commission and OSCE/ODIHR, CDL-AD(2010)024, Joint Guidelines on Political Party Regulation, para.1; Venice Commission and OSCE/ODIHR, CDL-AD(2020)032, Joint Guidelines on Political Party Regulation, 2nd edition, para.35-36.

[4] United Nations Declaration of Human Rights https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

[5] ICCPR https://digitallibrary.un.org/search?ln=en&as=0&p=subjectheading:[International+Covenant+on+Civil+and+Political+Rights+%281966%29].

[6] See paragraph 25 of General Comment 25 of the UN Human Rights Committee at https://digitallibrary.un.org/record/221930?ln=en and "Best practices that promote and protect the rights to freedom of peaceful assembly and of association" a Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association at https://www.ohchr.org/en/special-procedures/sr-freedom-of-assembly-and-association/annual-thematic-reports and the Report of the Office of the United Nations High Commissioner for Human Rights, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and wats to overcome them at https://www.ohchr.org/en/documents/thematic-reports/ahrc3026-promotion-protection-and-implementation-right-participate.

[7] European Convention of Human Rights https://www.echr.coe.int/documents/convention_eng.pdf.

[8] First Protocol to the European Convention of Human Rights (Article 3) https://rm.coe.int/168006377c.

18. On the issue of political party funding, relevant instruments that the Constitutional Court may find pertinent to consider the case at hand are the United Nations Convention against Corruption, Article 7(3),[9] the Council of Europe Criminal Law Convention on Corruption, in particular, Articles, 4, 13, 18[10] as well as the OSCE Copenhagen Document, articles 5.4, 5.9, 7.5, 7.6, 9.1, 9.2, 9.3, 9.4.[11]

19. The Council of Europe has adopted Recommendation Rec(2003)4 of the Committee of Ministers to Member States on common rules against corruption in the funding of political parties and electoral campaigns.[12] In considering the case at hand, the Constitutional Court of Moldova may also find it useful to consider the Parliamentary Assembly of the Council of Europe (PACE) Resolution 1308 (2002) on "Restrictions on political parties in the Council of Europe member states" and other resolutions and reports on political parties.[13] PACE has also compiled reports on extra-institutional actors exerting influence in the democratic systems.[14] In addition to the Venice Commission opinions, studies and reports covered in Section C below, GRECO has periodically conducted evaluations and reports on Moldova's rules on transparency of party funding.[15]

20. It is worth noting that the ICCPR and the ECHR represent legal obligations upon states, having undergone a process of ratification. The Republic of Moldova is a party to the ICCPR and the ECHR. According to Article 4 of the Constitution of Moldova, the human rights provisions in the Constitution shall be interpreted and enforced in accordance with international conventions such as the ICCPR and ECHR. While documents like the Universal Declaration of Human Rights and the Copenhagen Document do not have the force of binding law, the nature of these political commitments make them persuasive upon signatory states. Opinions, studies and reports developed by the Venice Commission or jointly with OSCE/ODHIR generally describe the emerging consensus on the relevant international standards and are often used by the states to develop their laws and policies.

### B. Case law on dissolution and prohibition of political parties

21. Although Article 11 of the ECHR does not mention specifically the freedom to form political parties, the European Court of Human Rights (hereinafter; "ECtHR") has repeatedly held that

---

[9] UN Convention against Corruption, adopted by the UN General Assembly on 31 October 2003. The Republic of Moldova ratified the UNCAC on 1 October 2007 at https://www.unodc.org/unodc/en/treaties/CAC/.

[10]Council of Europe Criminal Law Convention on Corruption at https://www.coe.int/en/web/impact-convention-human-rights/criminal-law-convention-on-corruption#/. (not yet ratified by the Republic of Moldova).

[11] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE). https://www.osce.org/odihr/elections/14304

[12] Council of Europe, Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns at https://rm.coe.int/16806cc1f1.

[13] Parliamentary Assembly of the Council of Europe (PACE), Resolution 1308 (2002), Restrictions on political parties in the Council of Europe member states http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17063&lang=en and the Report on incompatibility of banning democratically elected political parties with Council of Europe standards, Doc. 8467 (1999) https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8710&lang=EN.

[14] PACE, Resolution 1744(2010) on Extra-Institutional actors in the democratic system, 23 June 2010 at https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17884&lang=en.

[15] Greco RC-III (2015) 8E, para. 21. See also the previous GRECO reports on transparency of party funding in the Republic of Moldova (Third Evaluation Round) https://rm.coe.int/16806c9b08.

political parties come within the scope of Article 11 of the Convention.[16] In the same understanding, the Venice Commission and OSCE/ODIHR have noted that political parties are associations and as such they – and their members – enjoy freedom of association as defined by Article 11 of the ECHR and other international human rights treaties.

22. In its case-law, the ECtHR has underlined the primordial role played by political parties in a democratic regime.[17] In view of this role of political parties, any measure taken against them affects both freedom of association and, consequently, democracy in the State concerned.[18] The ECtHR has also held that the protection of opinions and the freedom to express them within the meaning of Article 10 of the Convention is one of the objectives of the freedoms of assembly and association enshrined in Article 11, particularly in the case of political parties, so that Article 11 must be considered in the light of Article 10.[19]

23. According to the settled case-law of the ECtHR, the prohibition and dissolution of a political party is not generally excluded by Article 11 of the ECHR. However, the limitation clauses set out in paragraph 2 of Article 11 must be interpreted and implemented strictly.[20] Article 11, paragraph 2 states that "*No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."* To be compatible with the international standards applicable to the right to freedom of association and assembly any interference needs to: a) be prescribed by law, b) pursue a legitimate aim, and c) be necessary in a democratic society. The burden of proof to establish that these requirements are met rests with the state.

24 The ECtHR has repeatedly held that provided that they do not harm democracy itself,[21] a party's programme,[22] its critical views on the country's constitutional and legal order or even shocking and unacceptable views or words by party leaders and/or members[23] should not automatically be regarded as a threat to public policy or to the territorial integrity of a country that justifies a prohibition or dissolution. The Court has set out two conditions on the way in which a political party may promote a change in the law or the legal and constitutional structures of the State: 1) the means used to that end must be legal and democratic and 2) the change proposed must itself be compatible with fundamental democratic principles. Thus, in the absence of

[16] ECtHR United Communist Party of Turkey and Others v. Turkey, Application No. 19392/92, 30 January 1998, § 25; ECtHR, Socialist Party and Others v. Turkey, Application No. 21237/93, 25 May 1998, § 29; ECtHR, Parti nationaliste basque – Organisation régionale d'Iparralde c. France, Application No. 71251/01, § 33.

[17] ECtHR Refah Partisi (the Welfare Party) and Others v. Turkey [GC], Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 87.

ECtHR United Communist Party of Turkey and Others v. Turkey, Application No. 19392/92, 30 January 1998, § 31.

[19] ECtHR Refah Partisi (the Welfare Party) and Others v. Turkey [GC], Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 88-89; ECtHR, The United Macedonian Organisation Ilinden and Others, Nos. 34960/04, 8 March 2012, §§ 59-61; ECtHR, Parti nationaliste basque – Organisation régionale d'Iparralde c. France, Application No. 71251/01, § 33.

[20] ECtHR, Cumhuriyet Halk Partisi v. Turkey, Application No. 19920/13, 26 April 2016, § 64.

[21] ECtHR, Socialist Party and Others v. Turkey, Application No. 21237/93, 25 May 1998, § 47; Freedom and Democracy Party (ÖZDEP) v. Turkey [GC]. Application No. 23885/94, 8 December 1999.

[22] ECtHR United Communist Party of Turkey and Others v. Turkey, Application No. 19392/92, 30 January 1998, § 57.

[23] ECtHr, Tourkiki Enosi Xanthis and Others v. Greece, Application No. 26698/05 29 September 2008, § 51.

evidence of undemocratic intentions in the party's programme or activities, drastic measures taken in respect of political parties have led the ECtHR to find violations of Article 11.

25. By contrast, a political party whose leaders incite violence or put forward a policy which fails to respect democracy, or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on the grounds mentioned in the restriction clause above.[24]

26. In the view of the Court, the competence of state authorities to dissolve a political party should concern only exceptional circumstances, must be narrowly tailored and should be applied only in extreme cases**.** Even if the measure is clearly prescribed by law, accessible and foreseeable (*principle of legality*), in order to satisfy the proportionality principle in cases of dissolution, the ECtHR has also held that authorities must show that there are no other means to achieve the stated aims that would interfere less seriously with the right of freedom of association.[25]

27. Furthermore, the ECtHR has also held that the programme of a political party is not the sole criterion for determining its objectives and intentions. The content of the programme must be compared with the actions of the party's leaders and the positions they defend. Taken together, these acts and stances may be relevant in dissolution proceedings, as they can disclose its aims and intentions.[26] Continued action and speeches supportive of violence and destruction of democracy, and a refusal of party leaders and members to distance themselves from terrorist acts and beliefs may, in specific cases, justify dissolution.[27] In the case of Refah Partisi v. Turkey, the ECtHR took the position that, *"While it is true that [Refah's] leaders did not, in government documents, call for the use of force and violence as a political weapon, they did not take prompt practical steps to distance themselves from those members of [Refah] who had publicly referred with approval to the possibility of using force against politicians who opposed them. Consequently, Refah's leaders did not dispel the ambiguity of these statements about the possibility of having recourse to violent methods in order to gain power and retain it."*[28]

28. In that same case, the ECtHR has outlined that state parties to the ECHR are entitled to take preventive measures to protect democracy *vis-à-vis* both political parties and non-party entities. They cannot be required to wait until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention. Where the danger of that policy has been sufficiently established and is imminent, a State may reasonably forestall the execution of such a policy before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime.[29]

29. In this connection, according to the ECtHR an overall examination of whether the prohibition or dissolution of a political party for posing a threat to pluralism and democratic value is justified "must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently

[24] ECtHR, Yazar and Others v. Turkey, Applications nos. 22723/93, 22724/93 and 22725/93, 9 July 2002, § 49.
[25] Adana TAYAD v. Turkey, Application No, 59835/10, 21 July 2020, § 36.
[26] ECtHR, Refah Partisi (the Welfare Party) and Others v. Turkey, Application Nos. 41340/98 and 3 others, 13 February 2003 § 101; ECtHR, Herri Batasuna and Batasuna v. Spain, Application nos. 25803/04 and 25817/04, 30 June 2009, § 80.
[27] ECtHR, Refah Partisi (the Welfare Party) and Others v. Turkey [GC], Application Nos. 41340/98 and 3 others, 13 February 2003, para. 101.
[28] ECtHR, Refah Partisi (the Welfare Party) and Others v. Turkey [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 131,
[29] ECtHR, Refah Partisi (the Welfare Party) and Others v. Turkey, 2003, § 102; ECtHR, Herri Batasuna and Batasuna v. Spain, Application nos. 25803/04 and 25817/04, 30 June 2009, § 81.

imminent; (ii) whether the act and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of 'a democratic society'."[30] There may be even situations where there are no effective alternative measures, and a prohibition or dissolution of the political party is unavoidable: in the same series of cases, the Court has recognised that there may be cases in which the choice of measures available to the authorities for responding to a "pressing social need" in relation to the perceived harmful consequences linked to the existence or activities of an association is unavoidably limited.[31] For example, the ECtHR did not find a violation in the *Ayoub and Others v. France* case where the state authorities had ordered the dissolution of two associations based on in-depth knowledge of the domestic political situation and against the backdrop of persistent and heightened racism and intolerance in France and in Europe.

30. In this context, the ECtHR has also developed the concept of a "democracy capable of defending itself" when considering cases in which the freedom of association is used to destroy the very ideals and values forming the foundations of a democratic society. In this regard, reference can be made also to Article 17 of the Convention which provides for a prohibition of the misuse of the rights guaranteed in the Convention.[32] According to Article 17 of the Convention, the applicants cannot claim the protection of Article 11 of the Convention read in the light of Article 10 if they use the exercise the rights to destroy the ideas and values of democracy and the rule of law.[33] However, it should be pointed out that the European Commission of Human Rights has applied Article 17 only in two cases concerning a prohibition of political parties; the ECtHR has never done so.[34]

31. Finally, the Commission would like to reiterate its previous opinion that the general rulings on due process and fair trial should apply to the cases of judicial proceedings involving political parties.[35] This has been confirmed in the case *"Political Party "Patria" and others v. the Republic of Moldova"* where the ECtHR found, inter alia, that the domestic courts had not afforded the applicant party sufficient guarantees against arbitrariness in the proceedings leading to its disqualification from participating in the elections.[36]

---

[30] ECtHR, Refah Partisi (the WelfareParty) and Others v.Turkey [GC], Application Nos.41340/98 and 3 others, 13 February 2003, §§ 101-104.

[31] ECtHR, Gorzelik and Others v. Poland [GC], Application no. 44158/98, 17 February 2004, § 105; ECtHR, Ayoub and Others v. France, Application No. 77400/14, and 2 others, 8 October 2020, §§ 119-120.

[32] ECtHR, Ayoub and Others v. France, Application No. 77400/14, and 2 others, 8 October 2020, §§ 119-120. The Court held that through their political views, propaganda and actions, the applicant associations had sought to use their right to freedom of association to destroy the ideals and values forming the foundations of a democratic society. See also ECtHR, Ždanoka v. Latvia [GC], no. 58278/00, 16 March 2006, § 109: Article 17 aims "to prevent totalitarian or extremist groups from justifying their activities by referring to the Convention.

[33] ECtHR, Refah Partisi (the Welfare Party) and Others v. Turkey, Application Nos. 41340/98 and 3 others, 13 February 2003, § 96.

[34] European Commission of Human Rights (EComHR), German Communist Party v. Germany (dec.), no. 250/57, 20 July 1957; EComHR, Glimmerveen and Hagenbeek v. the Netherlands (dec.), nos. 8348/78 and 8406/79, 11 October 1979.

[35] Venice Commission, CDL-AD(2007)002, Comments on the conformity of the Law on Political parties of the Republic of Armenia with international standards (amicus curiae opinion at the request of the constitutional court of Armenia), para. 9.

[36] ECtHR, Political Party "Patria" and others v. the Republic of Moldova, Application Nos. 5113/15, 04 November 2020, § 38.

### C. Opinions and Studies of the Venice Commission

32. The Venice Commission has adopted numerous opinions and reports/studies related to political parties, their activities, the financing of political parties and associations and their criminal liability for peaceful calls for radical constitutional change.[37] The Commission has also provided a detailed overview of national regulations concerning the possible criteria for dissolution and the procedures for dissolution or prohibition established in different legal systems, which led to the drafting of various guidelines.[38]

33. At the outset, the Commission would like to clarify that universal and regional human rights instruments and the case law of the ECtHR recognise that there are valid reasons for restrictions on the freedom of association such as national security and public safety (including measures intended to counter terrorism and violent extremism), the prevention of disorder or crime and the protection of the rights and freedoms of others.[39] Therefore, in principle, the Venice Commission accepts the right of the state authorities, under certain conditions, to prohibit, dissolve or impose analogous restrictive measures against political parties.

34. Comparative research conducted by the Venice Commission and OSCE/ODIHR shows that even in states with *prima facie* wide rules on prohibition of political parties there is "extreme restraint" in how these rules are applied. The threshold for applying (or even invoking) these rules is extremely high. More specifically, there is a common practice for allowing parties which advocate fundamental changes in the form of government, or which advocate opinions that the majority finds unacceptable. Therefore, political opinions are not censored by way of prohibition and dissolution of the party concerned, while illegal activities by party members are sanctioned through the ordinary criminal law system.[40]

35. Taking into consideration the fundamental role of political parties in the functioning of a pluralist democracy, the Venice Commission has underlined in its opinions the importance of some key principles concerning the prohibition or dissolution of political parties: (1) the exceptional nature of prohibition or dissolution to be used only as a means of last resort (2) the proportionality of the dissolution or prohibition in relation to the legitimate aim pursued and (3) the necessity of dissolution in a democratic society and 4) prohibition or dissolution of political parties only through independent court proceedings in which the principles of fairness, due process and openness are guaranteed.

---

[37] Venice Commission and OSCE/ODIHR CDL-AD(2020)032-e, Joint Guidelines on Political Party Regulation 2nd Edition; Venice Commission, Venice Commission and OSCE/ODIHR, CDL-AD(2010)024 Guidelines on Political Party Regulation, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e Venice Commission, CDL-AD(2009)002 Code of Good Practice in the field of Political Parties at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)002-e and Venice Commission CDL-AD(2019)002 Report on Funding of Associations at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)002-e Venice Commission, CDL-INF(2001)008 Guidelines and Report on the Financing of Political Parties, at https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(2001)008-e as well the Venice Commission, CDL-AD(2006)014 Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)014-e.

[38] Venice Commission, CDL-INF(2000)001 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)001-e.

[39] Article 11(2) ECHR, Article 21 ICCPR.

[40] Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition, para. 106.

36. In its previous opinions, the Commission has held that the dissolution of a political party shall only be used as a means of last resort and only after all less intrusive legal instruments available have been utilised. In this context, the Commission recommends that state authorities, when addressing non-compliance with laws and regulations, should make use of a broad spectrum of available sanctions which are limited in scope and dissuasive in nature.[41] Only when the legitimate aim pursued cannot be reached using less restrictive means of regulation, dissolution may be applied as an instrument of last resort. The principle of last resort is also reflected in the Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe (PACE), which states in paragraph 11 that, "a political party should be banned or dissolved only as a last resort" and "in accordance with the procedures which provide all the necessary guarantees to a fair trial."[42]

37. Moreover, any limitation on the formation or regulation of the activities of political parties must be proportionate in nature. As the most severe sanction available, dissolution should be considered proportionate only when imposed in extreme cases of the gravest violations. The exceptional nature of this measure requires states to justify the dissolution of a political party by the specific aims pursued by the authorities in line with Article 11(2) of the ECHR (namely, "in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others"). Article 22(2) of the ICCPR contains a similar provision. The scope of these legitimate aims must be interpreted narrowly.[43]

38. Not only needs the measure of dissolution to be taken in pursuance of a legitimate aim, but it must also be necessary in a democratic society, exceptions to the rule of freedom of association are to be construed strictly, and only convincing and compelling reasons can justify restrictions on that freedom."[44] Therefore, according to Article 11 ECHR and Article 22 ICCPR, any limitation imposed on the rights of political parties must be necessary in a democratic society, proportionate in nature and time, and effective in achieving its specified purpose. The state needs to prove the existence of a "pressing social need" and of "relevant and sufficient" reasons dictating the dissolution of a political party.[45] Dissolution must be objective and necessary in a democratic society and permitted restrictions may not be applied for any purpose other than those for which they have been prescribed.[46]

39. The Joint Venice Commission and OSCE/ODIHR Guidelines on Political Party Regulation envisage the possibility of imposing less intrusive sanctions upon parties found to be in violation of relevant laws and regulations, which in certain circumstances should be dissuasive. For example, donations from foreign states or enterprises may be prohibited by domestic legislation.[47] This is consistent with Article 7 of Council of Europe Committee of Ministers Recommendation (2003), on common rules against corruption in the funding of political parties

---

[41] Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition, para. 274.
[42] Venice Commission and OSCE/ODIHR, CDL-AD(2010)024 Guidelines on Political Party Regulation, para. 225. Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition, para. 274.
[43] Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition para. 49.
[44] Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition para. 51.
[45] Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition para. 51.
[46] Article 18 ECHR.
[47] Venice Commission, CDL-INF(2001)008 Guidelines and Report on the Financing of Political Parties, CDL-INF(2001)008, Guideline 6; Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition para. 229. Venice Commission, CDL-AD(2019)002, Report on Funding of Associations, para. 77.

and electoral campaigns, which provides that "*States should specifically limit, prohibit or otherwise regulate donations from foreign donors.*"[48] In fact, the Commission has noted that this restriction aims to avoid undue influence by foreign interests, including foreign governments, in domestic political affairs, and strengthens the independence of political parties.[49]

40. The Commission has noted that prohibition of foreign funding for a party may be considered necessary in a democratic society, for example, if financing from foreign states, political parties or other entities is used to pursue aims not compatible with the Constitution and the laws of the country thus undermining the fairness or integrity of political competition or leading to distortions of the electoral process or posing a threat to national territorial integrity, going against international obligations of the State and/or it inhibiting responsive democratic development.[50]

41. In its comparative research, the Commission has found that foreign funding of political parties is generally met with criticism and disapproval. Several countries in Central and Eastern Europe justify restrictions on foreign financing arguing that it could lead to distortions of the electoral process: for example, due to economic problems, national parties receiving support from abroad will have advantages in the pre-election campaign compared to other national parties without such support. This is especially true for some of the countries that emerged as sovereign countries in the post-soviet space, such as Armenia, Azerbaijan, Georgia, and Moldova. Generally, countries which prohibit financing from abroad take this measure in order to prevent the influence of other states on their internal political life.[51] The identification of "foreign funding" with "foreign intervention into domestic affairs" seems to be based on the idea that foreign funding generates "dependency" thus enabling external actors to promote their interests at the expense of the domestic constituency.[52]

42. As the Commission has noted in the past opinions, the most important purpose of restrictions on the "use of externally donated monies" is to prevent or stop clandestine political influence on national politics from unknown or uncontrollable sources abroad as distinguished, for example, from open and transparent support by international organisations as the Council of Europe or the European Union or even by other states when based on international agreements.[53] On the other hand, sanctions imposed on political parties in the area of finance violations should include a consideration of the amount of money involved, whether there were attempts to hide the violation, and whether the violation is of a recurring nature.[54] As a general rule, irregularities regarding the fulfilment of reporting or public disclosure obligations cannot be qualified as "serious misconduct" which would justify the dissolution.[55]

43. On the issue of alleged criminality of party leaders, representatives in parliament and members of a party, guideline 4 in the Guidelines on the Prohibition and Dissolution of Political Parties and Analogous Measures states that *"A political party as a whole cannot be held responsible for the individual behaviour of its members not authorised by the party within the*

[48] Article 8 of the Appendix to Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.
[49] Venice Commission, CDL-AD(2019)002, Report on Funding of Associations, para. 77.
[50] Venice Commission, CDL-AD(2006)014 Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, para. 33.
[51] Venice Commission, CDL-AD(2006)014 Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, paras. 8, 11, 33.
[52] Venice, Commission, CDL-AD(2019)002 Report on Funding of Associations, para. 98.
[53] Venice Commission, CDL-AD(2008)002, Opinion on the Law on the Financing of political parties of Bosnia and Herzegovina, adopted by the Venice Commission at its 74th Plenary Session (Venice, 14, 15 March 2008), para. 15.
[54] Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation, 2nd Edition Joint Guidelines on Political Party Regulation 2nd Edition, para. 280
[55] Venice Commission, CDL-AD(2019)002 Report on Funding of Associations, para. 148

*framework of political/public and party activities*[56]*.* For the dissolution to be justified as a lawful restriction, it must be shown that it was the party's statutory body (not individual members) or the *de facto* leadership that set objectives or authorised activities justifying such dissolution.[57]

44. Furthermore, the Commission notes that guideline 4 affirms the principle that the responsibility for criminal behaviour should generally remain at individual level and the party, as an entity should not be held responsible for its members' isolated actions, especially if such actions are contrary to the party constitution or party activities.[58] The guideline refers to situations when the criminal behaviour of individual members is incidental and not of such a pervasive and/or recurring nature that it may, under certain conditions, justify harsh measures. Only where a party as such is a habitual offender with regard to legal provisions and makes no effort to correct its behaviour, restrictive measures such as dissolution or loss of registration may be called for.[59] Clandestine methods of political party financing from a foreign country might then, not in themselves, but in combination with other activities such as illegal or subversive activities funded through such unauthorised sources, justify harsher measures, including prohibition.

45. Lastly, in earlier opinions the Commission has observed that the role of the judiciary is essential in safeguarding that the prohibition or dissolution of political parties takes place in a procedure offering all guarantees of due process, openness and fair trial."[60] This implies that the requirements of a public hearing and other guarantees of Article 6 of the ECHR should be respected.

### D. Conclusion on Question 1

46. The Venice Commission recalls that the declaration of unconstitutionality of a political party will constitute an interference with the right to freedom of association and assembly as protected by Article 11 of the ECHR and will amount to its prohibition. Such prohibition must be covered by the restriction clause of Article 11(2) ECHR, interpreted narrowly. The restriction needs to comply with the three requirements of lawful restrictions, i.e., the requirements of legality (prescribed by law), legitimacy (pursues a legitimate aim) and strict necessity and proportionality (is it necessary in a democratic society). According to the Constitution of the Republic of Moldova, the Constitution and the relevant laws will have to be interpreted in agreement with these requirements.

---

[56] Venice Commission, CDL-INF(99)015 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures.

[57] In certain cases of the ECtHR, the acts and speeches of a political party's leaders were considered as capable of being imputed to the whole party in the particular circumstances: ECtHR, Refah Partisi (the Welfare Party) and Others v. Turkey [GC], Application Nos. 41340/98 and 3 others, 13 February 2003, para. 101. See also ECtHR, Party for a Democratic Society (DTP) and Others v. Turkey, Application Nos. 3840/10 and 6 others, 12 January 2016, para. 85, where the Court noted that in this context, the role of a party leader, often an emblematic figure of a party, differed from that of a simply party member.

[58] Venice Commission, CDL-INF(2000)001, Venice Commission, CDL-INF(99)015 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures., paras. 4 and 13. The ECtHR held the dissolution to be disproportionate where this was based on remarks of a political party's former leader (ECtHR, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, Application No. 25141/94, 10 December 2002, para. 64).

[59] Venice Commission and OSCE/ODIHR, CDL-AD(2020)032 Joint Guidelines on Political Party Regulation 2nd Edition, para. 272.

[60] Venice Commission, CDL-INF(99)015 Venice Commission, CDL-INF(99)015 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, para.4. Venice Commission, CDL-AD(2003)008 Opinion on the proposed amendment to the law on parties and other socio-political organisations of the Republic of Moldova, para. 10.

47. Based on the foregoing, the Constitutional Court of the Republic of Moldova should closely scrutinise the actions of the political party in accordance with the applicable European standards summarised as follows:

- The declaration of unconstitutionality of a party which leads to the cessation of its activities is an exceptionally restrictive measure which must be used with utmost restraint (exceptional nature).

- In determining the grounds for declaration of unconstitutionality, states do not have a wide margin of appreciation, as these are subject to European legal standards set by Article 11 (2) of the European Convention of Human Rights.

- A party that aims at a peaceful change of the constitutional order through lawful means cannot be prohibited or dissolved because of that aim as this would be in violation on freedom of opinion and association.

- As the most severe of available restrictions, prohibition and the dissolution should only be deemed justified when all less restrictive measures have on good grounds been considered to be inadequate (last resort). The declaration of unconstitutionality should be strictly proportionate and state authorities must show that no less restrictive means would suffice.

- In addition to meeting the requirements of legality and proportionality, the dissolution of a party must be necessary in a democratic society. State authorities need to prove the existence of a "pressing social need" and of "relevant and sufficient" reasons dictating the declaration of a political party as unconstitutional.

- With regard to the assessment of the pressing social need (i.e., threats to democracy or serious imminent threats to security), states may have a somewhat wider margin of appreciation due to their better understanding of the context and details of the case concerned. However, state authorities must show convincingly based on sufficient evidence that the policies and/or activities of the party represent a serious and imminent threat to democracy, security or human rights.

- The proceedings should take place in full adherence to the requirements of procedural fairness and the Court should afford the political party with an opportunity to rebut the claims made by the state authorities.

## IV. Question 2 - Actions which could lead to the declaration of a party unconstitutional

### A. General remarks

48. In the request for the amicus curiae brief, the Constitutional Court has specifically asked the Venice Commission to provide advice on which actions of a political party would, by their nature, affect political pluralism, the principles of the rule of law, sovereignty, independence and territorial integrity of the state and could lead to the declaration of a political party as being unconstitutional. The terms of the request correspond to those of Article 41 (4) of the Constitution of the Republic of Moldova, according to which *"Parties and other socio-political organisations, whose objectives or activities are the engagement in fighting against political pluralism, the principles of the state governed by the rule of law, sovereignty, independence and territorial integrity of the Republic of Moldova shall be declared unconstitutional."*

49. The Commission takes note of the fact that following the unprovoked and unjustified military aggression of the Russian Federation on Ukraine from 24 February 2022 onwards, the Parliament of Moldova has declared the state of emergency envisaging a series of exceptional measures to respond to the heightened threats to its independence, territorial integrity, and national and energy security due to its proximity to the conflict and the special impact the developments in Ukraine have on Moldova. On 1 December 2022, the Parliament of the Republic of Moldova decided on the prolongation of the state of emergency on the entire territory of the Republic of Moldova for the period 6 December 2022 to 3 February 2023 taking into account the situation related to the regional security and the menace to the national security.[61]

50. In this context, the Commission recalls that "a*ny limitations to the exercise of the above-mentioned fundamental human rights through the activity of political parties shall be consistent with the relevant provisions of the European Convention for the Protection of Human Rights and other international treaties, in normal times as well as in cases of public emergencies"*.[62] Thus, even in the case of a state of emergency, international obligations of the State should be observed.

51. Moreover, since a declaration of unconstitutionality is a far-reaching measure leading to the cessation of the activities and liquidation of a political party, the Venice Commission points out that, based on the applicable international standards and relevant soft law principles, any such intrusive measures against political parties such as prohibition, dissolution or analogous measures should be applied with utmost restraint.[63] This position is consistent with PACE Resolution 1308(2002), on "Restrictions on political parties in the Council of Europe's member States", stating that "restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country;" and that "as far as possible, less radical measures than dissolution should be used."[64]

52. In the case at hand, the Government of Moldova alleges that it has exhausted all other means to address irregularities and repeated violations of the political party under proceedings. The Venice Commission is not able to confirm or disconfirm the claims of the government but recalls its earlier opinions holding that as the most severe of available restrictions, the prohibition and the dissolution should only be deemed justified when all less restrictive measures have been considered to be inadequate on the basis of a complete and factually based analysis.

53. Since the Constitutional Court has asked a specific question in its request about the actions of a political party which would justify its declaration as being unconstitutional, the Commission deems it appropriate to provide some general observations which may contribute to the forming of a judgment by the Court on the issue at hand in conformity with applicable European standards, relevant jurisprudence, and best practices.

---

[61] Reservations and Declarations for Treaty No.005 - Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005) under Article 15 ECHR at https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=005&codeNature=1&codePays=MOL and the Decision for Extension of the State of Emergency by the Parliament of Moldova at https://rm.coe.int/1680a878d2

[62] Venice Commission, CDL-INF(99)015 Venice Commission, CDL-INF(99)015 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, pp. 3-4.

[63] CDL-AD(2003)008 Opinion on the proposed amendment to the law on parties and other socio-political organisations of the Republic of Moldova, para. 10.

[64] PACE, Resolution 1308 (2002), 18 November 2002, para. 11.

### B. Political pluralism

54. In principle, the establishment and functioning of any political party, be it large or small and be it welcomed or not by (some of the) other parties and by a large or small part of the electorate, contribute to political pluralism. When a state invokes the activity of a party as a justification for its prohibition, clear links with the legitimate aims indicated in the second paragraph of Article 11 ECHR must be clearly established. In the case at hand, the Constitutional Court may choose to assess the evidence if the political party has used the (alleged) crimes related to deception, abuse of trust and money laundering for the purpose of damaging the political pluralism and democratic values discussed above on the basis of the case law of the ECtHR.

55. The Commission has previously observed that Central and Eastern European countries in particular, due to their recent history as sovereign democracies, are sensitive to *external political influence* and for this reason, it is understandable that, in the process of nation-state building particular regulations have limited or banned foreign funding of political parties. Consequently, the evaluation by the Constitutional Court, for example, should determine whether the party receiving support from abroad established competitive advantages in the election campaign compared to other national parties without such support or whether such support poses a threat to the national independence, sovereignty or territorial integrity. In this regard, the Commission has held that "*it is perfectly understandable that a state should be reluctant to allow a foreign country to interfere with its domestic politics by making funds available on a discretionary basis to certain of its political parties*".[65] Obviously, the general situation in the country is an important factor in evaluating if a party used inappropriate or even illegal means to detract voters from other parties or even used the resources to undermine the fairness or integrity of political competition leading to distortions of the electoral process through the unjustly achieved advantage supported by unauthorized foreign funding.

### C. Rule of law

56. The Commission has previously elaborated the core elements of the Rule of Law as follows:

- legality, including a transparent, accountable and democratic process for enacting law;
- legal certainty;
- prohibition of arbitrariness;
- access to justice before independent and impartial courts, including review of administrative acts;
- respect of human rights; and
- non-discrimination and equality before the law.[66]

57. In assessing whether the actions of a party are intended to damage the principles of the rule of law, the Constitutional Court may consider if the party governing bodies and responsible officials have undertaken actions which gravely undermined one or more principles of the rule of law. The assessment could be that the actions may seriously affect public trust in the rule of law system including the balance of powers and checks and balances (i.e., causing harm to the transparent, accountable and democratic process for enacting laws or enabling arbitrariness). Furthermore, it could be that these actions are aimed at overthrowing the legitimate government and thereby targeting democracy and human rights. These activities must have been proven by an independent tribunal and should not be merely determined on the basis of the claims adduced by the state authorities.

---

[65] CDL-INF(2001)8 Guidelines and Report on the Financing of Political Parties, adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001). Venice Commission CDL-AD(2006)014, Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, para. 10.

[66] Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, para. 18.

### D. Sovereignty, independence, and territorial integrity

58. Regarding the nature of the offences that may damage the sovereignty and independence and territorial integrity of the Republic of Moldova, the Venice Commission acknowledges that the proximity to the ongoing war exacerbates Moldova's overall security situation. The Commission is also conscious of the very difficult situation the Republic of Moldova is facing, both internally and in view of threats of foreign interference with the internal democratic process, that may undermine the sovereignty and independence of the country.

59. The Constitutional Court must consider the allegations of the government with great caution and afford the said political party all guarantees of a fair trial in order to arrive to a conclusion that balances the important societal interest for independent and self-regulating political parties with the state's interest to protect and defend the sovereignty and independence of Moldova.[67] As noted in the ECtHR cases cited above, caution should be exerted in assessing whether the party leader continues to have a sustained and decisive influence on the party activities and if the senior leadership of the party and its structures have not openly distanced themselves from acts of the leader that are deemed to constitute an imminent threat to independence and sovereignty of the Republic of Moldova.

60. The Venice Commission cannot replace the Constitutional Court in assessing if a dissolution serves a "pressing social need" as the Court itself has a better understanding of the likely impact of foreign intervention on the political pluralism, sovereignty and independence of Moldova, in the context of major national security threats in the immediate vicinity of the land border between the Republic of Moldova and Ukraine, including those of humanitarian, economic, energy and military nature, as a result of the continuing war on the territory of Ukraine, and if such measure is critical in protecting the sovereignty and independence of Moldova. To evaluate whether the requirements of proportionality and necessity in a democratic society have been satisfied, the Constitutional Court should closely scrutinise the claims of the Government about the exhaustion of the available legal instruments based on a thorough contextual analysis.

61. In considering the claims of the Government that the leader of a party is allegedly complicit in an interference in a foreign government election or is acting on behalf of a foreign power, the Court will need to evaluate if the totality of evidence is sufficient to determine not only if the political party is under foreign influence but also that through its actions it is actively damaging the sovereignty and independence of Moldova. In the specific circumstances of the case, the Court shall analyse all the evidence to conclusively assess if the funding is proven to have led to interference in the national politics in a way that it endangers the sovereignty and independence of Moldova taking due consideration of the state of emergency on the territory of the Republic of Moldova. Should the fact be established that the party's leader is responsible for or complicit in or having directly or indirectly engaged or attempted to engage in interference in a foreign government election, for or on behalf of, or for the direct or indirect benefit of the foreign country, this might pose a threat to national security.

### E. Conclusion on Question 2

62. In assessing which actions of a party and/or party leadership would justify its declaration as being unconstitutional in the context of Moldova, the Venice Commission cannot replace the Constitutional Court. It finds itself unable to formulate all hypothetical scenarios going against pluralism, rule of law, sovereignty, independence, and territorial integrity which would justify the dissolution of a party in conformity with the Constitution and international standards. The

[67] ECtHR, Ayoub and Others v. France, Application No. 77400/14, and 2 others, 8 October 2020, paras 119-120. Venice Commission, CDL-INF(2000)001 Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, para. 16.

Commission does not have detailed information on the multiple legal proceedings against party leaders and members which may be at various stages in different competent courts/institutions. The Constitutional Court is in a better position to assemble and evaluate all the relevant facts, in particular the objectives and activities of political parties, and to weight them in a judgment on their constitutionality.

## V. Conclusion

63. In an *amicus curiae* brief, the Venice Commission provides the requesting Constitutional Court with relevant international and European standards and comparative practices on the questions raised in the request so as to facilitate the Court's consideration of the issue(s) at hand. It is, however, for the Constitutional Court to have the final say as regards the interpretation of the Constitution and the compatibility of national legislation and/or the decisions and acts of state institutions with it.

64. The Venice Commission recalls that states are not generally prevented from regulating the activities of the political parties, or even prohibiting, dissolving and/or imposing other measures of a restrictive nature against certain political parties. That said, the Venice Commission notes that the declaration of unconstitutionality of a political party will constitute an interference with the right to freedom of association as protected by Article 11 ECHR, and consequently it needs to comply with the three requirements of lawful restrictions, i.e., the requirements of legality (prescribed by law), legitimacy (pursues a legitimate aim) and necessity and proportionality (is necessary in a democratic society). More detailed elements for the assessment of these criteria based on international standards and soft law that should guide the overall assessment of the case are to be found in the reply to the first question (ch. III).

65. Regarding the actions which could lead to declaring a party unconstitutional and the question if the declaration of unconstitutionality would be in conformity with "necessary in a democratic society" requirement, the Venice Commission considers that the Court is better positioned to assess if there is a "pressing social need" to declare the party unconstitutional on one or any of the grounds listed under Article 41 (4) of the Constitution of Moldova. Therefore, on the second question, the Venice Commission confined itself to the general observations outlined above (ch. IV).

66. The Venice Commission remains at the disposal of the Constitutional Court of the Republic of Moldova for any further assistance in this matter.