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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT JOINT RECOMMENDATIONS ON THE ELECTORAL CODE OF MOLDOVA

as amended on 22 July and 4 November 2005

on the basis of comments by

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Introduction

1. History

1. The Moldovan electoral system and its electoral code have been subject to a number of recommendations for improvement, by the OSCE/ODIHR and the Venice Commission of the Council of Europe over the past years. The most comprehensive set of such recommendations is found in the document called Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova of 12 July 2004 (CDL-AD(2004)027), hereinafter called "the Joint Recommendations". The document, however, makes it clear that it focuses on the questions arising from local elections and will in general not develop aspects specific to parliamentary elections, such as the existence of a single constituency[1]. Another set of recommendations is given in the Venice Commission Opinion on the Election Law of the Republic of Moldova, 16 January 2003 (CDL-AD(2003)001), hereinafter called "the Opinion on the Election Law".

2. Mandate

2. The present recommendations were elaborated following the amendments to the Electoral Code, passed on 22 July 2005. The 2005 OSCE/ODIHR Needs Assessment Mission report specifically mentions the Joint Recommendations and notes that "none of the Venice Commission - OSCE/ODIHR Joint Recommendations have been addressed". Even the last OSCE/ODIHR EOM 2005 Final Report makes reference to the Joint Recommendations: Both institutions take this opportunity to call once again on the authorities of the Republic of Moldova to consider prompt implementation of the Joint Recommendations issued in July 2004 by the Council of Europe's Venice Commission and the OSCE/ODIHR. The benefits of implementing the Joint Recommendations were recognised by the CEC, and relevant amendments to the legislation should be considered for adoption, in the course of a broadly inclusive process, well in advance of the 2007 local elections. Review of thresholds for eligibility for parties, blocks and independent candidates to participate in seat allocation merits particular consideration. Provisions for accreditation of international observers should also be clarified.[2] The OSCE/ODIHR and the Venice Commission considered necessary to assess these amendments in the light both of the previous Joint Recommendations (CDL-AD(2004)027) and of the OSCE/ODIHR EOM Final Report as well as the Report of the Parliamentary Assembly, which followed the Parliamentary Elections of 6 March 2005.

3. Reference documents

3. The report is based upon:

- *English translation (informal) of the Electoral Code of the Republic of Moldova (EC), as amended by the law published on 12 August 2005 in the Monitorul Oficial (CDL-EL(2005)023), and by the Law n.276/XVI amending the Election Code adopted on 4 November 2005;*

[1] *See on these questions document CDL-AD(2003)001, points 17ff.*
[2] *OSCE/ODIHR EOM Final Report, 6 March 2005, Parliamentary Elections, page 22.*

- *Opinion on the Election Law of the Republic of Moldova, Venice Commission (CDL-AD(2003)001),*
- *Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova (CDL-AD(2004)027),*
- *OSCE/ODIHR Election Observation Mission (EOM) Final Report, 6 March 2005 Parliamentary Elections in Moldova,*
- *OSCE/ODIHR Needs Assessment Mission Report 20-24 January 2005 (NAM),*
- *OSCE/ODIHR Election Observation Mission Report, 25 May and 8 June 2003 Local Elections*
- *OSCE/ODIHR Election Observation Mission Final Report, 22 March 1998 Parliamentary Elections in Moldova,*
- *Short Term Observer pack for 1998 Parliamentary Elections in Moldova, with annex the Electoral Code in a translation provided by IFES Moldova,*
- *Parliamentary Assembly of the Council of Europe, Observation of the parliamentary elections in Moldova (6 March 2005), Doc. 10480,*
- *Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev.*
- *OSCE/ODIHR Guidelines to assist National Minority Participation in the Electoral Process (2001)*

4. Framework

4. On 22 July 2005, the Moldovan Parliament approved a number of changes to the Electoral Code[3] that address some of the mentioned recommendations, and others that stem from internal political debate or technical suggestions of the CEC. The purpose of this review is to provide an overview of how the recently adopted amendments might address the issues raised in the Joint Recommendations, the Opinion on the Election Law and past OSCE/ODIHR reports. The structure of this document will to a large extent follow the list of areas for improvements to the legal framework provided in the Joint Recommendations (par. 116), with some modifications made on the basis of other documents referred to, and will refer to the following topics:

1. *Secrecy of the vote – Better mechanisms to secure the secrecy of the vote, in particular avoid the stamp provision or allow it before the vote itself,*
2. *Representation – Thresholds and Constituencies,*
3. *Electoral administration – A change of the composition of the Central Elections Commission, including a proportional representation of political parties,*
4. *Political parties – A change of the registration criteria for political parties,*
5. *Voters' lists – A better procedure for the scrutiny of the voters' lists,*
6. *Count – Better safeguards in the law to ensure that records of every step in the vote count are kept,*
7. *Results publication – Clearer obligations for publishing detailed results of polling stations immediately and as part of the full tabulation,*
8. *Supplementary voters' lists – Introduction of better control of those adding their names to so-called supplementary voters' lists,*
9. *Residence – Introduction of good mechanisms allowing persons with temporary residence outside their permanent one, such as soldiers and students, their right to vote,*
10. *Campaigns – More detailed rules for use of public infrastructure during campaigns,*

[3] *Published in the Monitorul Oficial of the Republic of Moldova on 12 August 2005.*

11. *Media coverage – Better regulation of the editorial coverage of the incumbents in the electronic media during the campaign,*
12. *Polling stations – Reduced size of the polling stations to increase the efficiency of voting and counting,*
13. *Political rights – Limitation of the deprivation of political rights to mental incapacity or a criminal conviction for a serious offence, in conformity with the principle of proportionality.*
14. *Candidacies – Cancellation or revocation of candidacy should take place only in conformity with presumption of innocence, the right to a fair trial and the principle of proportionality.*
15. *Other issues*
16. *Amendments not related to previous recommendations*

1. Secrecy of the vote

5. The 2004 Joint Recommendations read as follows:

> *90 - Secrecy of the vote is a fundamental principle. This principle was violated in Moldova by the fact that it was possible to see the marked ballot during the stamping of the rear side of the ballot before entering it into the box, by not stopping people from deliberately showing their marked ballot, and by family voting.*
>
> *91 - Article 54 (5) should be changed, so that the stamp is applied before handing the ballot over to the voter. A paragraph explicitly stating that the ballot shall not be displayed before placing it in the ballot box should also be added. Even if its display may seem to be by choice, one cannot rule out pressure on voters to show the right choice before dropping the ballot (in the ballot box).*

6. An amendment made to Article 49.2 touching upon the preparation of ballot papers attempts to address the problem, by providing that "*after printing, ballots are folded in such a way that the face on which the voter votes should not be visible*".

7. However, Article 54.5 was amended not along the lines of the recommendations, but in such a way that it can now potentially and even more seriously undermine the secrecy of the vote.
The measure, presented as a way to prevent possible multiple voting, must be read in conjunction with Article 48.2. As amended, Article 48.2 provides that ballot papers are to be divided into two detachable parts: the ballot itself and the ballot counterfoil. The ballot counterfoil will contain a serial number, and the name of the voter to whom the ballot is issued and number of the voter's ID, the name, surname and signature of the person issuing the ballot paper will be added by hand in the polling station (Article 53.1). The voter then takes the entire ballot paper to the booth, with the counterfoil still un-detached, and fills his/her ballot paper in secret.

8. Then, the new Article 54.5 reads: "*Before the voter introduces the voting ballot into the box, the latter will tear off the ballot's counterfoil, whereas one of the members of the polling station's electoral office, who will always stand next to the box, will apply on the other side of the ballot and of the counterfoil the special stamp of the polling station's electoral office.*" Article 54.7: "*The voter shall introduce into the ballot box the ballot paper with the stamp "Voted" on it. Member of the polling station's electoral bureau, who continuously stands close to the ballot box, is obliged to keep coupons of all ballot papers introduced in the ballot box.*"

9. These provisions, although devised to counter possible problems of multiple voting due to the possible abuses of registration on election day on supplementary lists, create a serious risk of breaches of the secrecy of the vote. One may wonder whether a need really exists to write on

each ballot counterfoil the name of the voter, since the reconciliation of ballot papers and voters who voted can be achieved in other ways (for example through counting signatures on voter lists and compare with the number of ballots found in the ballot box) which do not create the same risks.

10. On this point, the new amendments are in contradiction with the Venice Commission's Code of Good Practice in Electoral Matters which recommends that "*the signing and stamping of ballot papers should not take place at the point when the paper is presented to the voter, because the signatory or the person affixing the stamp might mark the paper so that the voter could be identified when it came to counting the votes, which would violate the secrecy of the ballot. The voter should collect his or her ballot paper and no one else should touch it from that point on.*" [4]

2. Representation –Thresholds and Constituencies

a. The lowering of the thresholds

11. One of the most controversial issues has been the threshold set by the Electoral Code for taking part in the allocation of mandates:

> *The threshold for parliamentary representation is six percent for parties running individually, nine percent for electoral blocs of two parties, 12 percent for coalitions of three or more parties, and three percent for independent candidates. Mandates are awarded to parties and blocs using the d'Hondt allocation method[5], and candidates are awarded seats in the order of their inclusion on a candidate list. For a parliamentary election to be valid, there must be at least a 50 percent voter turnout. The high thresholds can lead to the non-representation in Parliament of a large part of the electorate. In the 2001 elections, the share of votes cast for contestants who failed to clear the thresholds amounted to 28.3 percent. In the 6 March elections, it dropped to 16.4 percent, to some extent due to the partial consolidation of the party system.[6]*

12. The adopted amendment to Article 86 of the Electoral Code addresses the problem for political parties and blocs, setting for them only two thresholds in place of the previous three: a reduction of the threshold for single parties (from 6 to 4%) and for coalitions, from 9 and 12% to a single 8%[7]. The recommendation was for a single threshold for parties and coalitions at 3-4%, but the amendment is certainly an improvement over the recent past.

13. The threshold for independent candidates has been kept in Article 87 at 3%. This has been an issue since the adoption of the Code, when all contestants were supposed to overcome a 4% threshold, in order to win any seat[8]. It was soon disputed that the proportional distribution system, *combined with the threshold*, achieved an unfair outcome when applied to both party lists and independent candidates: while a party list passing the threshold would receive at least 3

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[4] *Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD (2002)023rev, paragraphs 34 and 35.*

[5] *Also known as highest average method.*

[6] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, page 5; Doc. 10480 of the Parliamentary Assembly, par. 14, 46.*

[7] *The 9% figure of the informal translation made available to the author seems to be a printing mistake.*

[8] *These thresholds have since then been differentiated. In 2000, the threshold was lowered for independent candidates to three per cent but increased for political parties and electoral blocs to six per cent. In 2002, the threshold for electoral blocs consisting of two formations was increased to nine per cent and for blocs consisting of three or more parties to twelve per cent.*

to 5 seats, an independent candidate with the same amount of votes would get only his/her own seat. The issue was taken to the Constitutional Court and debated several times in parliament. It still stands as it is. On the issue, the comment of OSCE/ODIHR 1998 EOM Parliamentary Elections Final Report reads: "*It should be noted that the rule as it stands makes it difficult for an independent candidate to win a seat in the Parliament. This is, however, an intended effect and it is also the case in many countries that the representation from parties is the main rule, but an opening for independent candidates is being kept for exceptional cases.*"

b. Geographical constituencies

14. …
15. …
16. …
17. …

(…)

Please cf. in Appendix both proposals by the ODIHR of the OSCE and by the Venice Commission.

3. Election Commissions

a. CEC composition and appointment of members

18. The 2004 Joint Recommendations read as follows:

> *38 - Article 16 (2) vests in the President of the Republic, the Parliament and the Magistracy High Council, the choice in the composition of the Central Electoral Commission. There does not seem to be any mechanisms to ensure that the commission is truly independent of political forces.* ***Either one should ensure that the composition is non-political or make provisions to ensure a politically balanced composition.***

19. Article 16 has been amended along these lines and the new provision reads as follows:

> *Article 16.2: The Central Electoral Commission consists of 9 members with a deliberative vote: 1 member is appointed by the President of Republic of Moldova, 1 by the Government of Republic of Moldova, 7 by the Parliament, including 5 by the opposition parties, according to the percentage of the mandates they hold. The Central Electoral Commission's members may not be members of parties or other socio-political organizations*[9]*. The nominal composition of the commission is confirmed through the Decision of Parliament with the vote of the majority of elected parliament members.*

20. Through the new formula, the Code provides for a politically inclusive composition, with 5 out of 9 members appointed by the opposition parties. If implemented in good faith by all political forces, this formula can address the shortcomings observed in the last parliamentary elections, namely a lack of transparency, and a strongly dominating position guaranteed to the ruling party. The concern many stakeholders had expressed about lack of confidence in the impartiality of the CEC may now have been addressed.[10]

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[9] *This provision is redundant being already stated in Article 19.*

[10] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, pages 2, 6 and 7.*

21. The question of the method of appointment of the CEC Chair, which was not clear after the 22 July amendments, has been addressed in the 4 November amendments.

b. Dismissal of CEC members

22. The Joint Recommendations (paragraph 41) also commented upon the question of the cases of dismissal of CEC members and commenting on Article 20.2, asserted that: *The ability to dismiss members of the Central Electoral Commission for deeds incompatible with their position could lead to abuses. It would be preferable to provide a limited and precise list in Article 19 (2), possibly including a list of penal and administrative offences.*

23. The problem has been partly addressed by Article 16.3, that reads as follows:

> *(3) The members of the Central Electoral Commission are irremovable. The vacancy of the function can appear in the case of the mandate expiry, resignation, dismissal or decease. Dismissal can be executed by the Parliament in the following cases:*
>
> *a) adoption on his/her regard of final judicial decision in a criminal case;*
>
> *b) the loss of Republic of Moldova citizenship;*
>
> *c) the person is declared functionally limited or functionally incapacitated by a final court decision;*
>
> *d) serious violation of the Republic of Moldova Constitution and of the present Code.*

24. In case of serious violations of the Constitution and the electoral Code, it would appear that the Parliament has the power to dismiss a CEC member, even without any court decision. If it were the Parliament itself that had the power to investigate the "serious violations", a procedure for granting the defence of the charged CEC member should be stipulated, and some possibility to appeal should be foreseen.

c. Right to call a meeting and difference between CEC members' status

25. Commenting on Article 25.1, the Joint Recommendations (paragraph 42) state that "*The right to call a meeting should not require a majority in the Central Elections Commission. It should require no more than four, preferably three, members to request a meeting.*"

26. This recommendation has been followed and Article 25.1 now reads: "*Meetings of the Commission may be called by the Chairperson or upon the request of 3 Commission members. In the event a meeting is requested by the Commission members, the decision to convene the meeting shall be made within 48 hours of submission of the request.*"

27. However, a distinction set in Article 17.3 among CEC members has remained, between those working on a permanent basis (chair, deputy and secretary), and the others to be summoned by the Chair on a case by case basis. One should make clear that it is the full commission that should have the decisive powers within the CEC.

d. Publication of CEC decisions

28. The OSCE/ODIHR EOM Final Report for the 2005 elections presented as a specific recommendation (no. 3) that the CEC should publish all its decisions in the Official Gazette and on its website immediately after adoption "*in order to ensure full transparency and raise the overall confidence in the process.*"

29. A new paragraph has been added to Article 18.4 which stipulates that decisions of CEC are placed within 24 hours on the CEC website and are published within 3 days in the official gazette of the Republic.

e. Capacity of the CEC to impose sanctions

30. It has also been clarified that the CEC can impose sanctions to electoral competitors, in case of violation of the provisions of the Electoral Code, by imposing a warning or a fine (Article 69.2). Yet, consideration should be given to clarify the instances, scope and effect of the exercise of such prerogative..

f. Formation of district election commissions (DEC) and precinct electoral bureaus (PEB)

31. The provisions of the Electoral Code regulating the formation of DECs and PEBs have also been amended to ensure a broader political representation.

32. DEC members (from 7 to 11 according to Article 27.2) are still appointed by the CEC, but two members are now nominated by district courts, two others by local administrative councils and the remaining members are nominated by the parties present in Parliament, in proportion to the number of their mandates (Article 27.4). The OSCE/ODIHR EOM Final Report on the 2005 elections recommended (recommendation no. 6) that mechanisms be introduced to ensure that DEC members drawn from the judiciary are not serving as sitting judges during their term as DEC members. Of particular concern was the fact that "*this practice raises a question of a possible conflict of interest since the court where these DEC members normally work may also have to handle election-related complaints and appeals*"[11]. It is regrettable that no amendment was made to the Electoral Code to solve this problem.

33. PEB members are appointed by the relevant DEC, upon nomination by local councils for 3 members, while all the others are to be nominated by the parties present in Parliament, in proportion to the number of their mandates (Article 29.11[12]).

34. If implemented in good faith, this more inclusive method of appointment of local election administration members has the potential to address the lack of transparency and lack of confidence in the election administration structures observed in previous elections.

g. Decisions in the DECs

35. The Opinion on the Election Law stated that Article 27.7 prescribed that decisions were taken by a majority of its members, not by majority of those voting. This seems to be too strict and is not in line with decisions e.g. in the Central Electoral Commission. It could be a translation mistake, since it differs from Article 32.2, where decisions of the councils and electoral commission members only require consent from a majority of the members at the

[11] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, page 7.*

[12] *In the new amendment, the deadline for the nomination of the commission members by local councils and political parties has disappeared.*

meeting in order to adopt a decision. In sum, it is still recommended to bring Article 27.7 in line with Article 32.2 in case the comment is not based on a translation error.

h. Delimitation of electoral districts

36. The following points of the Joint Recommendations have not been followed up:

> The electoral districts below the national level are supposed to follow the boundaries of the administrative units of second level. The Joint Recommendation commented that the Articles 26 (1) c) and 27 (1) are confusing since they state that the districts should be established by the CEC. It should suffice to establish the electoral councils of the same districts.

37. Likewise, according to Article 120, the electoral districts of first level are constituted by the District Election Commission of the second level no later than 40 days before the elections, and they have to correspond to the administrative units of the first level. What does delimiting districts mean, when they must, in any event, follow the delimitation based on the administrative units that have already been established?

4. Registration criteria for political parties

38. This question relates to the Law of the Republic of Moldova on Political Parties and Other Socio-Political Organisation, rather than to the Electoral Code.

39. The Joint Recommendations read as follows:

> *48. Parties need to be registered in order to propose candidate lists (Article 41 (2)). The Law on Parties and Socio-Political Organisation requires registered parties to submit annual membership lists, with signatures of at least 5,000 members, to the Ministry of Justice. In at least half of the 32 rayons, the lists need to include at least 600 members.*
>
> *51. Moldova has gone too far in registering political opinions, **in that the membership lists have to be submitted for review every year**. It is difficult to find a justification for this. Once a party is registered and has run for elections, the results of the elections could be sufficient evidence of its support. Only the need for renewed registration of such parties, which never gained support during elections, is admissible. Submitting membership lists to the government if a party has won seats in Parliament in a number of municipalities or rayons, seems at best unnecessarily bureaucratic, at worst, abusive.*
>
> *52. Moreover, the requirement of support across the country discriminates (against) regionally based parties.*
>
> *53. It is suggested that the registration of parties to run in all elections across the country is made dependent on the submission of a number of signatures in support, but not of actual membership lists. Furthermore, it is suggested to remove the requirement of representation in a minimum number of rayons.*

40. This concern was reiterated by the OSCE/ODIHR: *"While the Electoral Code does not impede on the participation in elections of minority candidates or voters, registration requirements in the Law on Political Parties and Socio-Political Organizations, combined with legal thresholds for eligibility to participate in allocation of parliamentary seats, have proven disadvantageous for the formation of parties representing minority communities and regionally based parties."*[13]

[13] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, page 17.*

41. Any group of common interests related to a limited geographical area – whether a minority group or not – may have big difficulties in registering a party with the requirements for support across the country. It is possible that such a difficulty be an intended effect, meant to hamper the formation of locally based political parties, and to enhance the national character of a country that is composed of different ethnic groups. In such case it would be even more important to introduce geographical constituencies so that the minorities can be represented through nationwide parties. However, even if constituencies are introduced geographically concentrated parties should have a reasonable possibility to participate in elections.

42. Some of the remarks have been taken into account: in particular, the requirement that membership lists have to be submitted every year has been removed[14]. As it has been mentioned, the registration requirements are particularly adverse to ethnic minorities, especially those who are concentrated in particular areas. Specific and sound suggestions have been offered in the 2004 Joint Recommendations, such as requiring lists of support signatures, instead of membership, or removing the obligation to be represented in a minimum number of rayons (paragraph 53). None of these have been taken into consideration.

5. Voters' lists – A better procedure for the scrutiny of voters' lists

43. The 2004 Joint Recommendations read as follows:

> *65. The procedure for scrutinising voters' lists should be reformed. Article 39 (1) and Article 40 (1) state that the lists will be published in at least ten days prior to Election Day. This does not give enough time for voters to examine them or for new lists to be printed after corrections.*
>
> *66. Voters should be given a real chance to review preliminary voters' lists well in advance of elections. Such reviews may include the voter him or herself, but even other entries, which may be wrong (like deceased people). Parties should also have a fair chance to review the lists. After the review period, the lists should be amended before the final lists are distributed. This means that the scrutiny period should start months before an election, not days. Therefore, it is suggested to publish the lists in each place, for instance 30 days before Election Day, to permit voters to check voters' lists. […]*

44. The suggestion has been partly addressed by adding a new paragraph to Article 39:

> *"Article 39.2: The local administrative authorities check every year (after January 1) the voter lists, updating them on the basis of the specifications made at the voters' domicile and present the respective information at the Central Electoral Commission no later than March 1."*

45. Moreover, voter lists have now to be made public 20 days prior to election day (Article 40), and appeals on the matter by citizens are provided for.

46. The amendments appear to improve partially the situation. It remains to be seen how the checking of the rolls at voters' domicile will work in practice and whether 20 days are enough to allow proper voter scrutiny and subsequent changes to the lists.

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[14] *The law on political parties' registration is not available to the authors, but such information has been delivered by the kindness of the OSCE spokesperson in place.*

47. Finally, as it appears that using the database of the central register of the Ministry for Information Development (which is presented as containing data on approximately 80% of residents in Moldova) is being contemplated to enhance the voter lists updating process, consideration should be given to provide some legal framework for the use of this database. Such framework should be in conformity with the stipulations of the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which Moldova has signed in 1998, but not yet ratified.

6. Count – Better safeguards in the law to ensure that records of every step in the vote count are kept

48. The 2004 Joint Recommendations offered some suggestions in order to make the counting process more transparent, secure, efficient and consistent.

> *97. Article 56 (2) states that all unused ballot papers shall be annulled before opening the ballot boxes. This takes a lot of time. The Article should be changed to counting, packing and sealing the pack of the unused ballots, immediately after the end of the vote and before opening the ballot box.*
> *98. During elections in Moldova, the difference between the number of voters having been issued ballot papers and the number of voters that took part in the elections have not been fully understood. The following improvements are recommended:*
> *99. Article 56 (5) should move up to after (2), and be done before opening the ballot boxes, not only before counting the votes.*
> *100. Article 58 c) (number of voters who were delivered ballot papers) and d) (number of voters that took part in the elections) should be made clearer, because they have often been misunderstood to mean the same thing. This could be done by adding to c) (number of voters who were delivered ballot papers) '... according to the voters lists', and adding to d) (number of voters that took part in the elections) '... according to the total number of ballots in the ballot boxes. A new 'j) Number of ballots issued by mobile teams' should also be added.*
> *101. There are no rules for reconciliation at the polling station. A rule should be introduced for the case that d) (number of voters that took part in the elections) is a higher number than c) (number of voters who were delivered ballot papers; the ballot stuffing situation), e.g. a recount and an entry in the protocol, and another rule if d) is substantially lower than c) (number of voters who were delivered ballot papers) (e.g. recount if there is more than 2% missing, which is less serious).*

49. Most of the reported suggestions are technical solutions meant to improve the rules that are already provided in the vote counting provisions, at chapter 10 of the Code. However, none of these recommendations have been implemented. In particular, no rule has been introduced, for example to address cases when discrepancies between the recorded numbers in the protocol and the number of ballot papers found in the ballot box differ and suggest irregularities might have occurred. Consideration should be given to make it compulsory for the relevant DEC to review the count and to take action in cases of discrepancies in the reconciliation.

50. The source of the figures entered into protocols should be made absolutely clear: Both the number based upon the number of signatures in the voters' lists and the actual number of ballots in the ballot box should be entered into the protocol separately.

7. Results publication – Clearer obligations to publish detailed polling stations results immediately and as part of the full tabulation

51. The amendments to the Electoral Code answer only partially the recommendations and are not sufficiently raising the level of transparency of the results tabulation. A new sentence has been added to Article 58.4, which reads: "*A copy of the protocol is kept at the electoral office of the voting station, a copy is presented to the electoral district council, a copy is immediately posted at the entrance into the polling station, whereas the others, are obligatorily handed to representatives of electoral competitors and observers*". As regards tabulation by the DEC, an additional provision has been included in Article 59.4, which reads: "*When submitting the protocol to the Central Electoral Commission, the District Electoral Council posts at the entrance - the table with the detailed information concerning the district elections results.*"

52. The requirement to keep a copy of the protocol in the electoral office, could have been useful at DEC level as well, and would have added transparency to the process. It is unfortunate that it has not been provided for.

53. More importantly, these amendments provide no answer to the recommendation made in the OSCE/ODIHR EOM 2005 Final Report which reads: "*The CEC should provide detailed election results, by polling stations, available on its website as soon as they have been processed in the DECs.*"[15]

54. Only such a mechanism permits the conduct of a thorough analysis of the consolidated results per polling stations, to compare the results as tabulated centrally to the results as gathered at polling station level by party representatives and observers, and as a consequence to raise the level of confidence in the overall results.

8. Supplementary voters' lists – A better control of those adding their names to so-called supplementary voters' lists

55. The 2004 Joint Recommendations read as follows:

> *64. One of the major problems of elections in Moldova is the number of people added to the supplementary voters' lists increasing the potential for multiple voting and for voting in incorrect districts….*
>
> *67. The supplementary voters' lists should not be allowed if a final register can be realised. If a mechanism for supplementary voters' lists is still needed, it should be only tolerated if a mechanism for checking multiple voting should be introduced.* ***Such a mechanism may include issuing of voters' cards, or the introduction of double envelops for such votes****. The double envelope has an outer one with the voter's name and other data, which can be checked against other voters' lists for multiple voting. After the check, the envelope is opened, and the ballot, inside a secrecy envelope, is only opened when the identity envelope is removed.*

56. The amended law differentiates between: *domicile* - a person's permanent place of residence, confirmed in the ID with the "domicile" stamp; and *residence* – a person's temporary place of residence, confirmed in the ID with the "residence" stamp. Article 9 (2) states that if a voter has both a domicile and a residence, he/she should vote at his or her place of residence, i.e.

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[15] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, page 22.*

the place of temporary residence. This change makes it easier for a voter, such as a student, to exercise the right to vote.

57. According to Article 39 (1) and (2) the main rule is still that the voter is enrolled at the place of domicile. Article 39 (8) allows voters who move to another place of residence after establishment of the rolls and before election day to receive voting right certificate to prove that they can vote at the new place of residence. Therefore the supplementary lists will still be needed to accommodate that voters can vote at their place of residence, without re-registering to such place.

58. Two paragraphs have been added to Article 53. The new norms stipulate that "*voting is done on the basis of the ID and the accompanying slip which certifies the domicile*…." and that when the voter is issued the ballot, his or her ID slip[16] will be stamped. If applied thoroughly and consistently, such a procedure can prevent multiple voting.

9. Residence – Introduction of mechanisms ensuring that persons with temporary residence in addition to their permanent one, such as soldiers and students, are not disenfranchised

59. In general, voting rights of military personnel is exercised according to Articles 29.4 and 39.4, at ordinary precincts where military units are located. However, the 2004 Joint Recommendations note that:

> *19. According to the Law, Article 123 (1), conscripts cannot vote during local elections. According to the same Article, paragraph (2), voters who do not live in the respective district shall not have the right to vote during the same elections. It was probably this last paragraph, which caused the controversy about students' right to vote during the 2003 elections. In Chisinau students would be a significant group and their vote may be decisive there.*

60. This problem of disenfranchisement, limited to local elections, has not been solved for military personnel on active duty. It has been addressed in Article 9.2 for students; it appears now that a student who has a temporary residence, different from the domicile, will be entitled to vote "*in the period of the residence validity, […] in the locality in which he/she has his/her residence*." Such a rule was anticipated by a CEC decision during last 2005 parliamentary elections: voting of students became politically charged during the pre-election period. The CEC addressed the issue on 8 February 2005 by permitting full time students to vote at their places of temporary residence (place of study), even if not registered, and disseminated its decision through state media.[17]

61. While Article 39.4 and 39.5 provides for the updating of voter lists for special categories of voters such as the military and persons in hospitals or institutions, it does not provide a similar system for the students. In the absence of any specific provision, one may suppose that the issue would be dealt with through CEC instructions or that students would be able to obtain a voting right certificate by the precinct bureaus, as per Article 39.8. This may still be cumbersome since it requires a travel to the student's permanent home, but on the other hand it provides a safeguard against double voting.

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[16] *The ID slip is a foldable paper containing security features, which is separate from the ID card and bears the ID card number and information. The ID slip indicates the place of domicile and is only valid together with the ID card.*

[17] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, page 8.*

10. Campaigns – More detailed rules for use of public infrastructure during campaigns

62. Looking back at the 2003 local elections, the 2004 Joint Recommendations remark that:

> *22. The campaign was marred by the harassment of candidates and misuse of public funding. Harassment was in the form of candidates being arrested close to elections and a campaign by the government and the president's office against the incumbent mayor of Chisinau. Misuse of public funds is already illegal. Legal procedures against candidates should not be banned, however the timing of arrests, in some cases which had been investigated for years, seems to be clearly politically motivated. In these cases, the clear will of authorities not to misuse their powers is needed to avoid similar cases in future.*
> *73. Article 46 states clearly that electoral competitors should be treated equally when it comes to State support. Based upon last election's experience, it is recommended that more specific rules be drawn up. Such rules can either be included in the law or established as instructions given by the CEC.*

63. As Article 46 of the Code stipulates, electoral contestants participate in the election on an equal basis and are guaranteed equal opportunities for technical and material support and funding. The norm of Article 46 has been further improved, clarifying terms for paying the average salary to candidates released from their job during the election campaign; and stipulating that candidates may not be arrested, or detained without the agreement of the electoral body that registered them (with exception of *flagrante delicto*).

64. More specific rules can be established as instructions by the CEC, as already recommended.

11. Media coverage – Better regulation of the editorial coverage of the incumbents in electronic media during the campaign

65. As regards the media, the 2004 Joint Recommendations (paragraph 76) criticised bias in the public media in favour of ruling parties. Such a bias was again observed during the 2005 elections.[18]

66. New provisions added to Article 47 aim at addressing the issue:

> Article 47.7: *During the electoral period, all the TV shows with analytic, informative, entertaining or any other character, which mention in one way or another the electoral participants, are broadcast with the observance of the respective concept and regulations. The TV shows that deal, directly or indirectly, with the electoral participants will be broadcast only with the title "Electorala" (electoral campaign), for calculation of the air time. If damages to the reputation of one of the electoral participants are brought outside the "Electorala" TV shows, he will have the right to refutation on the same conditions."*

67. The Code of good practice in electoral matters adopted by the Venice Commission, covers in its Section I.2.3 the possibility of treating competitors, according to strict equality in some instances, but 'proportionally' in other:

"*Equality of opportunity* should be ensured between parties and candidates and should

[18] *See for example Doc. 10480 of the Parliamentary Assembly, par. 8, 35, 43.*

prompt the state to be impartial towards them and to apply the same law uniformly to all. In particular, the *neutrality* requirement applies to the *electoral campaign* and *coverage by the media,* especially the publicly owned media, as well as to *public funding* of parties and campaigns. This means that there are two possible interpretations of equality: either "strict" equality or "proportional" equality. "Strict" equality means that the political parties are treated without regard to their present strength in parliament or among the electorate. It must apply to the use of public facilities for electioneering purposes (for example bill posting, postal services and similar, public demonstrations, public meeting rooms). "Proportional" equality implies that the treatment of political parties is in proportion to the number of votes. Equality of opportunity (strict and/or proportional) applies in particular to radio and television airtime, public funds and other forms of backing."

68. The Joint Recommendations also criticised the lack of sufficient information and coverage of the campaign by the media, as resulting from the stipulations of Article 47, which go "*a long way to prevent reportages reflecting the meetings of electoral competitors with the voters and similar events for fear of giving an advantage to some competitors*." Moreover, it does not guarantee that the election cover will be equitable, critical and interesting to voters in the future. During the last parliamentary elections, this issue had been answered by a CEC (late) decision to oblige public broadcasters to organize 90-minute debates every day, including Sundays, and by clarifying that news bulletins of broadcasters covering the campaign shall air five news stories on electoral events in each newscast[19]. A similar norm has been entered as part of the Code, with amendments to Article 64 and is welcomed.

69. Both amendments are inherited from CEC regulations adopted during the last parliamentary elections, which have proved useful in improving the balance of the information in the media. The interpretation the CEC will give to these provisions will be crucial during the next elections.

70. The Joint Recommendations also suggested that the ten days term prior to election day, during which Article 47 prohibited the publication of results of opinion polls, be reduced. The norm has been abrogated altogether.

71. An amendment to the Electoral Code also introduces a new instrument: the Code of Conduct. Its legal status is somewhere between a public instrument and a private convention. It is defined in Article 1 as "*a convention concluded between electoral competitors and representatives of mass-media regarding the modality of unfolding and coverage of the electoral campaign in a way that excludes the harming of dignity and reputation of electoral competitors*."

72. Its private character stems from the private parties that agree on it; while its public nature is drawn from the specific role vested with the CEC to organise consultations and to assure the signing of such a code of conduct.

73. The problem of negative campaigning has been highlighted in the 2005 parliamentary elections as very problematic, as well as addressed inconsistently.[20] The adoption of a code of conduct could be a mechanism to counter negative campaigning. It will be up to the parties and media representatives to find a balance between freedom of expression and the right to dignity

[19] *Ibidem, page 12.*

[20] *Ibidem, page 13.*

and reputation of electoral competitors. Moreover, it will be up to the ensuing practice, to assess how the CEC will value such a code of conduct and possible violations of its commitments. In other words, as long as it will be used as guidelines for the media coverage, there should be no problem. If it were to be considered as legally binding for the signatories, and used as a reference to apply sanctions, then the constitutional freedom of expression would be challenged.

74. The Joint Recommendations[21] also suggested that the ten days term prior of election day, during which Article 47 prohibited to publish results of opinion polls, be reduced. The prohibition on opinion polls has been removed altogether.

12. Reduction of the size of polling stations

75. Article 29.2 of the Electoral Code still reads: "[…] Each precinct shall have no less than 30 and no more than 3,000 voters. In elections at any level and in republican referendum, precincts shall be established in the same term."

76. The provision had been criticised for the number of potential voters being too high. Although the problem had been considered in the case of the 2003 local elections as being mostly hypothetical, the Joint Recommendations stated that "had the turnout been higher, this would have created a problem".[22] As noted in the OSCE/ODIHR 2005 EOM Final Report, observers noted during parliamentary elections that there was overcrowding in nearly 15 % of the polling stations visited, and the final report specifically recommended reducing the number of voter per polling station[23].

77. The recommendation has not been taken into consideration. It is a matter of particular concern, considering that the new voting procedures commented above and referred to in Article 53 to Article 55 have been substantially increased and made more complex. Finally, in addition to the above, the fact that voters waiting in line at the time of closure of polling stations are not being allowed to cast their ballot[24], can generate cases of disenfranchisement.

13. Political rights – Limitation of the deprivation of political rights to mental incapacity or a criminal conviction for a serious offence, in conformity with the principle of proportionality

78. Under paragraph 69, the 2004 Joint Recommendations commented Article 13 of the Electoral Code, which provided the loss of voting rights for people sentenced to imprisonment (Article 13.1.c), and of being elected if his/her "*criminal record is not extinguished*" (Article 13.2.c). They suggested that the norm be amended in conformity with the principle that deprivation of political rights is admissible only if it is based on a criminal conviction for a serious offence and in conformity with the principle of proportionality.

79. On the right to run as a candidate, Article 13.2.c has been reformulated and now reads: "*persons convicted to deprivation of liberty by a final court decision serving their sentence in detention centers.*" No amendment has been made, however, to the provision related to limitations of the right to vote.

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[21] *CDL-AD(2004)027, par. 81.*
[22] *2004 Joint Recommendations (CDL-AD(2004)027) paragraph 24.*
[23] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, page 22.*
[24] *Ibid.*

80. And yet, the infinite cancellation of voting rights that is stipulated for people that have been sentenced to imprisonment, regardless of the reason or the seriousness of the offence, is not acceptable. In addition, it is not certain that the formulation of Article 13.1.c according to which "*those sentenced to imprisonment by a final decision of a court of law*" cannot vote is in line with a recent jurisprudence of the European Court of Human Rights, who ruled that restrictions of the right to vote affecting all convicted prisoners in a general, automatic and indiscriminate manner, were incompatible with Article 3 of the First Protocol (Right to free elections) to the Convention for the Protection of Human Rights and Fundamental Freedoms.[25]

81. Finally, the Code contains a further technical shortcoming, which has to be addressed: Article 13.1.a lists as persons deprived of the right to vote "*those who do not meet the requirements specified in Article 11"*; and Article 11 stipulates that citizens over 18 have the right to vote, "*except for those deprived of this right*". Article 11 should be amended in order to avoid what could be read as a "vicious circle".

14. Candidacies – Cancellation or revocation of candidacy should take place only in conformity with presumption of innocence, the right to a fair trial and the principle of proportionality

82. The Joint Recommendations (paragraphs 59 to 63) raise concerns over three Articles of the Code that sanction some violations of the Code with the cancellation of the candidate registration. Candidacy can be cancelled in cases when:

Article 36: "a contestant in an election receives on his/her account undeclared funds from abroad or has knowingly used such funds […]"; in such a case, the CEC will ask the Supreme Court to nullify the registration of the contestant.

in case of repeat elections following nullification of elections by the Constitutional Court (Article 93) or the CEC (in Article 138), both articles stipulate that "electoral candidates who committed fraud shall be excluded from the voting ballots".

83. The Joint Recommendations stressed the need that any proceedings that should lead to such a sanction should abide by the principle of presumption of innocence. The code should also specify that such decisions should not lead to the cancellation of the mandate of an elected candidate. No amendment has been entered to the mentioned norms. It can be held that the existing norms can, and indeed have to be, interpreted in a way that is consistent with the evoked principles.

15. Other issues

a. Observers

84. A new paragraph 6 has been added to Article 63, clarifying that: "*the observers can be accredited before the beginning of the electoral period and can perform their activity on election day and also in the periods before, during and after the election.*" This new provision does not address the need to establish clear rules, including criteria and deadlines, for the submission, examination and adjudication on requests for international and domestic observer accreditations.[26]

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[25] *ECHR, Hirst v. United Kingdom (n.2) – 74025/01 – 6 October 2005.*

[26] *OSCE/ODIHR EOM Final Report on 6 March 2005 Parliamentary Elections, page 23. See also the Venice Commission Code of Good Practice in Electoral Matters, point II.3.2.*

85. Even though the observers can now start their duties before election day, their right to observe election commissions should be clearly established as stated in the Opinion on the Election Law.

86. When observers' roles are mentioned, the word 'assist' is being used, e.g. in Article 63 (5). This can be misleading, and 'observe' should rather be used.

87. The comment to Article 15 (2) that the grounds allowing refusal of the representatives of the electoral contesters should be specified in the law, has not been taken into account.

88. Article 63.4 has been amended and the provision that copies of electoral documents should be given to observers "at their expenses", has been removed. It now provides that such documents are "issued on the basis of a verbal request". This amendment is welcome.

b. Complaints procedures

89. In the 2005 Final Report, the OSCE/ODIHR also recommended that "*Consideration should be given to ensure that the law clearly defines the powers and responsibilities of the various bodies responsible for the review of complaints and appeals, to avoid conflicts of jurisdiction, and should not grant the appellants or the authorities the right to choose the appeal body*." The current complaints and appeals system would benefit from a clearer definition of the responsibilities and appears not to be in line with the recommendations of the Venice Commission Code of good practice in electoral matters[27].

c. Campaign finance

90. Article 36 (1) states that "Direct or indirect funding or material support in any kind for electoral campaigns of candidates in an election and electoral contestants by foreign countries, foreign, international or joint enterprises, institutions, organisations as well as by natural persons who are not citizens of the Republic of Moldova is prohibited. Such funds shall be confiscated to the state budget." The Joint Recommendations commented that the Article is very broad.

91. The limitation mentions support to electoral contestants and should not be used to restrict support to NGOs involved in election related activities, such as observation.

92. This Article may also prohibit any contribution to a party of a person living permanently in Moldova if the person is a citizen of another country.

93. Article 38(5) (a) still prohibits a person who is under the age of 18 years from contributing to a political campaign. This is contrary to Articles 32 and 41 of the Constitution of Moldova and Articles 13, 14, and 15 of the UN Convention on the Rights of the Child.

94. Article 38(5) (d) prohibits the charity funds of religious organisations from being used in political campaigns. This is likely contrary to OSCE commitments, international standards, and domestic constitutional law. The issue of revocation of tax exemption or other state benefits due to political activities is a separate issue. Although the state may revoke special tax treatment as a result of political activities, it cannot simply single out and prohibit a religious organization from expressing political views and opinions (via campaign contribution support) when such a

[27] *Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev, paragraph 97.*

prohibition is not applicable to all other organisations. Article 38 singles out religious organizations and, as a result, is discriminatory. OSCE participating states commit to "take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers."[28]

d. Participation in the campaign

95. The Joint Recommendations stated that paragraph (1) of Article 47 limited campaign rights to "*Citizens of the Republic of Moldova, parties and other social-political organisations, electoral blocs, candidates and representatives of these candidates*". This limitation is contrary to international instruments and domestic constitutional law ("*…aliens and stateless persons shall enjoy the same rights and shall have the same duties as the citizens of the Republic of Moldova.*").[29] Paragraph (1) of Article 47 also prohibits "*unethical*" campaigning. This prohibition is too broad and could be applied in a manner that would violate a person's right to free speech and expression. This limitation on free expression and speech could prevent a robust and vigorous campaign, which is critical to election campaigning in a democracy. Such a broad prohibition is not in compliance with OSCE commitments, international standards, and domestic constitutional principles.[30] Paragraph (12) of Article 47 has a similar prohibition against "unethical" campaigning that is troublesome as well. None of these paragraphs has been changed.

e. Invalid elections

96. The following recommendation has not been implemented:[31]

> *"Article 136 provides a turnout criterion for valid elections. It is a question whether there should be a turnout requirement at all for elections. Such criteria may end up in a stalemate, and the re-run of the election often give even lower turnouts.*

97. In order to avoid entering endless cycles of failed elections, as seems to be the case for the 2005 Election of the Mayor of Chisinau, a removal of the turnout requirement is recommended.

f. Election offences

97. The following recommendations of the Joint Recommendations have not been implemented:

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[28]Inter alia, OSCE 1989 Vienna Document; OSCE 1990 Copenhagen Document; Articles 2 and 21 of the Universal Declaration of Human Rights; Articles 2 and 26 of the International Covenant on Civil and Political Rights; Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 31 of the Constitution of Moldova.

[29]Paragraph 26.1 of the OSCE 1991 Moscow Document; Paragraph 26 of the OSCE 1999 Istanbul Document; Article 19 of the Universal Declaration of Human Rights; Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Articles 19, 32, and 41 of the Constitution of Moldova.

[30]See Paragraph 9.1 of the OSCE 1990 Copenhagen Document; Paragraph 26 of the OSCE 1991 Moscow Document; Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Articles 32 and 41 of the Constitution of Moldova.

[31] CDL-AD(2004)027, par. 106-107.

[33]See Paragraph 9.1 of the OSCE 1990 Copenhagen Document; Paragraph 26 of the OSCE 1991 Moscow Document; Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and Articles 32 and 41 of the Constitution of Moldova.

"Article 69, which imposes legal liability on a person who "infringes the honour and dignity of a candidate", is too broad and could be applied in a manner that would violate a person's right to free speech and expression. This broad prohibition could lead to a violation of Article 10 ECHR, OSCE commitments, and domestic constitutional principles.[33] It should be recommended that Article 69 be reformulated in a manner that is consistent with the right to free speech and expression.
Articles 70-71. It is understood that the criminal and administrative offences mentioned in these texts are developed more in detail in the criminal and administrative offence codes. In case it is not so, therefore the penalties should be clearly stated."

g. Repetitions

98. The Opinion on the Election Law included the following comments which have not been included in the amendments:

99. Articles 22 and 26. There are repetitions of tasks in both articles. It would be better to simplify these provisions.

100. In Part III and V there is a lot of repetition of the general articles from earlier parts, which is unnecessary and confusing (e.g. Article 74).

16. Amendments not related to previous recommendations

101. A new case of annulment of the list of signatures in support of a candidate, has been added to Article 43.4: the whole list will be disqualified if more than 5% of collected signatures should be determined to be false. The disqualification of petitions "*in which names have been entered prior to the official start of the nomination period*", regardless of the number of such names, is hardly acceptable. The same goes with disqualifying valid signatures, because others have not been considered authentic.

102. This disqualification mechanism is presented as a deterrent against possible violations. However, the disqualification of a candidate seems clearly excessive and not abiding by the principle of proportionality and personal liability. Fines or other more limited sanctions would seem more appropriate against the listed violations. Finally, such a sanction would be contrary to the new amendment to Article 69.2, which states that the CEC can sanction electoral competitors for violations of the Code, by applying either a warning or a fine. No other sanction is mentioned.

103. An amendment has been entered to Article 13.3 that stipulates the suspension of public office held by electoral competitors, upon their registration as such. The adding of *Government members and civil servants* to the former and more generic formula, makes clear that members of the government and public officials have to suspend their activities during the election campaign in case they run for elections (any elections) as candidates. However, it is not certain that such a suspension would prevent those abuses of the advantages associated with the public position held, which the norm means to address. The rationale of the norm might be better accomplished by strict regulations on the use of administrative resources during the election campaign, by public officials.

104. An amendment has been entered to Article 15, which limits to the "duration of the electoral campaign" the mandate of candidates' representatives to electoral bodies. Given the

clear definition of electoral campaign in Article 1, and the duration of electoral councils and bureaus under Article 34, such a limitation could be interpreted as excluding candidates' representatives from the vote counting process and all further activities that should take place after election day. Both institutions are not aware if this is the intended meaning of the amendment, but in any case such a meaning is unacceptable, since the presence of candidates' representatives to the vote counting is paramount to transparency and confidence in the process.

Conclusion and Main Recommendations

105. On 22 July 2005, the Moldovan Parliament approved a number of changes to the Electoral Code that partly address some of the mentioned recommendations, and others that stem from internal political debate or technical suggestions of the CEC. Of particular significance is the reduction of the threshold for participating in the allocation of parliamentary seats, and provisions setting forth a new formula for CEC and lower level election commissions' composition. However, a significant number of recommendations have not yet been addressed and several newly adopted provisions raise concerns:

Distinction among the CEC members in Article 17.3: The Code should make clear that it is the full commission that holds the decisional power.

Dismissal of CEC members for "serious violations": The Code should specify the body in charge of the investigation guarantee, the rights of defence of the charged CEC member, and include some possibility to appeal.

Constituencies
(…)
Please cf. in Appendix both proposals by the ODIHR of the OSCE and by the Venice Commission.

Voting rights: The infinite cancellation of voting rights for people sentenced to imprisonment, regardless of the seriousness of the offence, is not acceptable. Article 13.1.c should be brought in line with one recent decision of the European Court of Human Rights on this issue. In addition, the combined formulations of art.11 and art.13.1.a appear to be dysfunctional and should be reviewed.

Special categories of voters: The Electoral Code should make sure special categories of voters, including students, military personnel, and persons in hospitals or institutions, can effectively exercise their right to vote at all elections.

Cancellation of candidate registration: Proceedings on cases of violations of the law that can lead to the revocation of a candidacy should abide by the principle of presumption of innocence. In addition, it should be made clear that these rules could not lead to the cancellation of the mandate of an elected candidate. As regards the validity of petitions in support of a candidate, the rules should not permit the disqualification of valid signatures because others have not been considered authentic, or because some names were entered prior to the official start of the nomination period".

Right to campaign, right to free speech and expression: Limitations to the right to campaign set forth in Art. 47 should be brought in line with international instruments and domestic constitutional law. Prohibition of "unethical" campaigning and provisions of Art. 60 which imposes legal liability on a person who "infringes the honour and dignity of a candidate", also appear to be too broad and could be applied in a manner that would violate a person's right to free speech and expression. Restrictions to these rights must be specific and follow the principle of proportionality.

Size of polling stations: The size of polling stations should be reduced as stated in previous recommendations, and voters waiting in line outside polling stations at the time of polling station closing should be allowed to vote.

Stamping of ballot papers after it is marked by the voter: Provisions in art.54 and 48 create a serious risk of breaches of the secrecy of the vote. The procedure should be amended so that once the voter has collected his/her ballot paper, no one else would be allowed to touch it, in line with § 34 and 35 of the Venice Commission's Code of Good Practice.

Publication of polling stations' results: The code (art.58) should clearly foresee that a copy of the results protocol of each polling station is kept at DEC level. This would add transparency to the process. More importantly, the code should create an obligation for the CEC to provide detailed election results, by polling stations, available on its website as soon as they have been processed in the DECs.

Complaints and appeals: As stated previously, the Electoral Code should clearly define the powers and responsibilities of the various bodies responsible for the review of complaints and appeals, to avoid conflicts of jurisdiction, and should not grant the appellants or the authorities the right to choose the appeal body.

Invalidation of elections: Turnout criteria for valid elections have remained in article 136. As shown in the last municipal elections in Chisinau, such criteria may lead to endless cycles of failed elections. Consideration should be given to remove turnout requirements.

Accreditation of Observers: The Electoral Code should establish clear rules, including criteria and deadlines, for the submission, examination and adjudication on requests for international and domestic observer accreditations.

APPRENDIX

Debated point on constituencies

ODIHR proposal

(…)

b. Geographical constituencies

14. The Electoral Code maintains an electoral system with one single constituency covering the whole country, with a proportional distribution of seats. The possibility for minorities to be represented in the Parliament is closely related to matter of constituencies. The Opinion on the Election Law quoted the Venice Commission stating that it is

> "necessary for States to take into account the presence of one or more minorities on their soil when dividing the territory into political or administrative subdivisions as well as into electoral constituencies" (Opinion on the interpretation of Article 11 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, CDL-INF (96) 4)."

15. In the Moldovan context, where a significant part of the population belong to one of the national minorities, some of which are regionally concentrated, electoral systems which give possibilities to accommodating national minorities and ensuring their effective participation in public life can be considered[34], as has been recommended in the past both by the OSCE/ODIHR[35] and by the Venice Commission[36].

16. With a nationwide constituency system, the possibilities for minorities to gain representation are limited to inclusion at prominent places on the lists of the countrywide parties.

(…)

Conclusion and Main Recommendations

105. (…)

Constituencies: Consideration should be paid to electoral systems which give possibilities to accommodating national minorities and ensuring their effective participation in public life, as described in the OSCE-ODIHR Guidelines to Assist National Minority Participation in the Electoral Process.

(…)

[34] The OSCE/ODIHR Guidelines to assist National Minority Participation in the Electoral Process (2001) provide detailed analysis of the impact of election systems on minority participation.
[35] *OSCE/ODIHR EOM Final Reports on the 1998 and on the 2001 Parliamentary Elections.*
[36] *Venice Commission Opinion (CDL-AD(2003)001, par. 17 ff).*

Venice Commission proposal

(…)

b. Geographical constituencies

14. The Electoral Code maintains an electoral system with one single constituency covering the whole country, with a proportional distribution of seats. This system may be appropriate in countries with no geographically concentrated minorities. The possibility for minorities in getting representation in the Parliament is a very important issue which is closely related to matter of constituencies. The Opinion on the Election Law quoted the Venice Commission stating that it is

> "necessary for States to take into account the presence of one or more minorities on their soil when dividing the territory into political or administrative subdivisions as well as into electoral constituencies" (Opinion on the interpretation of Article 11 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, CDL-INF (96) 4)."

15. In the Moldovan context, where a significant part of the population belong to one of the national minorities, some of which are regionally concentrated, a system that provides for political competition within regions could be considered[37], for instance by dividing the country in a number of constituencies, as has been recommended in the past both by the OSCE/ODIHR[38] and by the Venice Commission[39].

16. Several systems combining full proportionality between parties and geographical representation can also be considered, even taking into consideration the question of the breakaway region of Transdniestria[40]. Finally, as noted by the Venice Commission, "*the introduction of constituencies would not need a change of the Constitution*."[41]

17. With a nationwide constituency system, the possibilities for minorities to gain representation are limited to inclusion at prominent places on the lists of the countrywide parties.

(…)

Conclusion and Main Recommendations

105. (…)

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[37] *Proposals to introduce several regional constituencies have so far not been followed-up, possibly because of the unresolved Transdniestrian conflict. Supporters of the current one nationwide constituency solution argue that with a system of regional constituencies, the seats allocated to Transdniestria would remain empty, which could lead to impasses in Parliament as in 1993..*

[38] *OSCE/ODIHR EOM Final Reports on the 1998 and on the 2001 Parliamentary Elections.*

[39] *Venice Commission Opinion (CDL-AD(2003)001, par. 17 ff).*

[40] *Proposals to introduce several constituencies have so far not been followed-up, possibly because of the unresolved Transdniestrian conflict. Supporters of the current one nationwide constituency solution argue that with a system of regional constituencies, the seats allocated to Transdniestria would remain empty, which could lead to impasses in Parliament as in 1993..*

[41] *CDL-AD(2003)001, par. 26.*

Constituencies: Consideration should be paid to electoral systems which give possibilities for minorities to get reasonable representation in the parliament. Systems that provides for political competition within regions could be considered, for instance by dividing the country in a number of constituencies, or combining full proportionality between parties and geographical representation.