

DR. IGOR MUNTEANU
IDIS - VIITORUL

POLITICAL
REVIEW AND
PARTIES
RECOMMENDATIONS
LEGISLATION
FOR REFORM
IN MOLDOVA



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Preface

The importance of political parties as fundamental elements of modern democratic governance cannot be overstated. Our modern understanding of representative democracy, as codified and defined in international standards, foresees an essential role for political parties: representing, shaping, leading, transmitting, and coalescing citizens' ideas, interests and views. Indeed, it is quite clear that this vision of political parties was essential to the commitments laid out twenty years ago when the Conference on Security and Cooperation in Europe (CSCE) adopted the *Charter of Paris for a New Europe* and the *Copenhagen Document on the Human Dimension of the CSCE*.

At Paris, the participating States proclaimed that “democracy, with its representative and pluralist character, entails accountability to the electorate”, affirming some of the essential functions of political parties. In the Copenhagen Document, the participating States unanimously affirmed the “importance of pluralism with regard to political organizations”, and committed themselves to “vigorous democracy... [with an] ... extensive range of democratic institutions” and declared that they would achieve this by sharing information and co-operating in “developing political parties and their role in pluralistic societies”.

Building on this legacy, the OSCE Office for Democratic Institutions and Human Rights' (ODIHR) Democratic Governance work strongly emphasizes the importance of political parties as a key mechanism in fulfilling commitments in the human dimension of security. Parties are a collective platform for the expression of individuals' fundamental rights to association and expression, and the most widely utilized vehicle for political participation. They ensure an informed and participative electorate, and serve as a bridge between the executive and legislative branches of government.

Legislation on political parties needs to respect and balance their dual nature: they are private associations that play a critical role as political actors in the public sphere, which requires well-crafted and tailored legislation considering a wide range of issues. Legislation should not interfere with the freedom of association and political parties must be protected as an integral embodiment of the individuals' right to freely form associations. However, given political parties' unique and vital role in the political process, it is commonly accepted for states to regulate their functioning insofar as is necessary to ensure effective, representative, and fair democratic governance.

The approach to political party regulation varies greatly across the OSCE space: from states that lack particular legislation on political parties (regulating such bodies only under general laws governing associations) to the incorporation of provisions relating to the function of parties in an array of different laws (including specific political party laws, constitutions, general election laws, and laws relating to issues such as media and party financing). We should be cautious about seeing the reform of political parties laws as a panacea for political party development. Nevertheless, addressing the legislative framework for political parties must surely go hand in hand with wider efforts towards political party development.

This project – funded by the European Union – was undertaken by ODIHR with the fundamental objective of strengthening democratic processes in Moldova and Ukraine by increasing the analytical capacity of local think-tanks. The ODIHR recognized that the fundamental relationship between political parties and the democratic institutions in Moldova and Ukraine, presented some key challenges and opportunities for reform. The ODIHR recognized that a targeted approach to addressing these challenges would have to address the legislative and regulatory framework which shapes and constrains the operations of all political parties in Moldova and Ukraine.

The ODIHR decided to join forces with local think tanks – in the case of Moldova, the IDIS-“Viitorul” – combining ODIHR resources, methodologies and convening authority together with local expertise and analytical capacity. IDIS “Viitorul” used an ODIHR-developed unique analytical methodology recently (adapted from its forthcoming *Guidelines for Political Parties Legislation*), to form the basis for an analytical study of national political party legislation. IDIS “Viitorul” then used this study as a reference document to lead a process of consultation, discussion, reflection and discussion, through a participatory series of workshops and focus group meetings, involving leading civil society experts, activists, legal academics, parliamentarians, political party officials, and ministers, as well as international donors and stakeholders. The process also featured opportunities for engagement

with peers in the parallel process in Ukraine, through peer reviews and commentaries on the analyses developed. In this way, the participants were able to discuss deficiencies and difficulties in political party legislation, and develop recommendations for reform.

The result is *Political Parties Legislation in Moldova: Review and Recommendations for Reform*, a comprehensive report which thoroughly analyses the particular problems and issues in Moldova's legislative and regulatory framework for political parties. Looking forward, and based on the results of the consultations, it sets out an agenda for reform, based on international and European standards and best practice, useful to both national legislators, policy makers and advocates, as well as international partners and donors.

As will be clear from the report, this publication would not have been possible without the strong leadership, hard work and expertise of the Institute for Development and Social Initiatives (IDIS) 'Viitorul', its staff, and its Executive Director Dr. Igor Munteanu. Further thanks and acknowledgements go to ODIHR's partners in Ukraine, Ihor Kohut and Denys Kovryzhenko, of the Agency for Legislative Initiatives, and political party legislation expert Daniel Smilov. The ODIHR would also like to acknowledge the valuable support and assistance of the OSCE Mission to Moldova.

Last, but not least, the ODIHR would like to express its deep gratitude to the European Union for its generous support in funding this project, a truly non-partisan effort to assist Moldova to further consolidate its young democracy.

Denis Petit

Acting Head,

Democratization Department

OSCE ODIHR Warsaw, June 2010

Introduction

Moldova is presented regularly as a vivid example of ‘procedural democracy’, which meets many – but not all – of the criteria defined by Robert Dahl in his definition of a ‘substantive democratic process’¹. Although better-off in terms of political pluralism, electoral records and the propensity of its elites to negotiate than in other post-Soviet successors, Moldova’s transition has been marked by considerable instability and challenging decisions. It inherited a territorial conflict in the eastern bank of the Dniester, which was used from the onset by the Soviet centre to counter Moldova’s stated desire to become independent. It went also through a painful economic transition, which resulted in increasingly high costs of living for the population. This has resulted in a rather volatile institutional landscape, forcing the elite to invest disproportionate efforts in election procedures rather than on long-lasting domestic reforms.

Populist leaders and obvious inefficiencies of the government have flourished in the quicksand of the political realities of the last decade². Since its Declaration of Independence (August 27, 1991), Moldova replaced eleven Cabinets of ministers, and held four early elections. It experienced a dramatic power shift, in 2009, but with considerable tensions and political splits amongst the elites and the population. Nevertheless, pluralist elections in Moldova were one of the most applauded successes for the country, which transited from a ‘one-party’ to a ‘multi-party democratic’ system, based on a functioning market economy. Regular changes of the governments in power kept Moldova far from the usual temptations of the political elite to win elections before they are held. Turnout in elections remained high (62–64%), although early elections also produced frequent changes in the Prime Ministers and short-lived cabinets.

¹ Robert Dahl, A preface to democratic theory, University of Chicago Press, 1990

² Daniel Kaufman, A.Kraay and M.Mastruzzi, Governance Matters V, Aggregate and individual Governance Indicators for 1996–2005, September 2006, The World Bank, www.worldbank.org

Democratic parties winning in 1990/1991 were defeated in 1994 by a leftist Bloc of Agrarians and Socialists. The Agrarians were defeated in 1998 by a rejuvenated centre-right Alliance of Democratic Forces. Alternation in power and the competitive political environment, in which the ruling parties were losing elections, has ascribed to Moldova a reputation for a 'successful transition'³. However, all former presidents lost power via free and democratic elections, and not via violent 'coups' or 'sudden dismissals', as in other parts of the CIS. The first President, M. Snegur, lost the presidency to the head of the legislature, Petru Lucinschi, in 1996. Lucinschi's party had a minority in Parliament from 1998 to 2001. Lucinschi in turn lost his presidency to Vladimir Voronin, leader of Communists, winning elections in 2001.

By 2000, the Moldovan Parliament had rejected a proposition by the incumbent President, Petru Lucinschi, to strengthen his power attributes, voting instead in favour of a parliamentary system, overtly with the aim of reducing the presidential role and making him more accountable to Parliament. In fact, Parliament only changed the method of electing the Head of State (Art. 78), leaving almost intact his main constitutional attributes and powers. As a result, this only increased his already substantial power, and even gave him an effective Executive power, exercised formally by the Cabinet of Ministers and its Prime Minister. Under a traditional parliamentary system, the President (or Head of State) holds a position that is largely ceremonial.

In a presidential (or semi-presidential) system, the President has substantial authority; however, he/she receives a mandate directly from the people, giving him his legitimacy. This situation produced a sort of hybrid constitutional system that has removed vital checks found in the previous semi-presidential system, but has not replaced them with the corresponding balances of a veritable parliamentary system, where the Head of State's role is largely nominal and the head of government is responsible to the executive branch. The problem here is that a branch of government with significant powers (the President) is now being directly appointed by another branch (the legislature) without being responsible to the legislature.

The constitutional changes of 2000 preceded a significant change in the political landscape in Moldova. Immersed in the aftermath of the Russian 1998 crisis, the ADF lost its power, to the Communist Party, which gained an overwhelming majority (71 out of 101 seats) at the 2001 early parliamentary elections. Building up a strong centralistic rule in Moldova, the Communists met with resistance of a pluralistic society: opposition parties, academia and civil society, which protested against the

³ Pre-Election Technical Assessment: Findings And Recommendations, IFES/Adept Association, 2004, <http://www.e-democracy.md/en/publications/peta/>

imposition of a pattern of 'sovereign democracy' that was unacceptable to them. While the ruling party attempted to challenge most sensitive issues (language issues, as well as school handbooks of history used in the general curricula), this generated unambiguous reactions from the political elites, stirring up public discontent and street protests. Irrespective to the social reactions, the Communists continued to strengthen a State with almost no public accountability, a subordinated and weak judiciary, ritualistic exercise of elections coupled with the disproportionate role of the Presidential office over the executive (Government) and the legislative affairs. However, 'pluralistic by default' Moldovan society could not simply acknowledge its defeat. Already by March 2005, the incumbent Communist Party gained less than the necessary votes to elect a President and, under the 'threat' to repeat the example of 'orange' power shift in Ukraine or 'rose' revolution in Georgia, it agreed to 'turn westwards', integrate Moldova into the EU, and democratize society through dialogue and consensual policies. In 2007, the ruling Communists lost their control over the largest municipality– the capital city Chisinau. The defeat infuriated the leadership of the ruling Communists, who decided to suspend the previous 'package deal' with the political opposition, and resumed the practice of systematic harassments of their opponents. In early 2008, the Communists decided unilaterally to amend the acting Election Code, banning election blocs and increasing the hurdles for upcoming elections, after adopting a new Law on Political Parties in 2007, which called for automatic re-registration of all parties existing at that time in Moldova. Many understood this as an attempt to keep the opposition parties weak and fragmented prior to the April 5, 2009 elections, which ended the 2nd mandate of the Communist leader, Vladimir Voronin. This election was actually perceived as a critical test for Moldovan democratic standards.

Although the April 5, 2009 elections met many international standards, the outcome was marred by multiple irregularities, political harassment and illegal use of administrative resources. Massive protests turned violent in the aftermath of elections. Failing twice to elect a new President, the Moldovan Parliament was dissolved on June 3, 2009, and early general elections were held again on July 29, 2009. Although, they obtained only 53 seats against 48 mandates to the Communist Party, the opposition parties formed a thin political majority in the new Parliament, and created thus an emerging governing coalition – the Alliance for European Integration (AIE)⁴. In the following months, the constitutive parties of the AIE installed quickly a new coalition-based Cabinet of Ministers, which announced its five strategic priorities, i.e. restoring the rule of law, EU integration, market reforms, decentralisation, and territorial reintegration (Transnistria). Nevertheless, the newly

⁴ Deca – press News Agency, 17.09.09, Chisinau

created governing coalition failed again to get the necessary votes for the election of a new President of Moldova.

Since Art. 78 of the Moldovan Constitution demands 61 votes to install the new president, a new dissolution of the Moldovan Parliament appeared to be imminent, after a second failed attempt of elections in December 5, 2009. However, the Moldovan Constitution bans a second (repeated) dissolution of the Parliament in the same year (Art. 85–3). Since both ways to settle political crisis touched upon real political interests, various interpretations of the possible resolution of the growing political crisis caused new political disputes. Disagreements reached even the Alliance for European Integration (AIE), which appeared to be split between two parties that would have preferred a comprehensive constitutional reform, already in 2010, and other two parties that favoured the organisation of anticipated parliamentary elections, leaving constitutional reform outside of the existing mandate of the current Parliament of Moldova.

On 15 March 2010, the Venice Commission responded to the Constitutional Court of Moldova with an *amicus curiae* brief, in which it stated clearly that ‘the election date should be decided not later than June 16, and elections are to be held at a reasonable date later’, calling Moldovan legislators ‘to amend Art. 78 of the Constitution only, through legislative negotiations’, in order to avoid any further deadlock in the future. The Venice Commission did not dispute in principle the idea of revising the Constitution, but questioned the intention to replace the existing Constitution in order to avoid early elections. Instead of taking sides, the Venice Commission protected the integrity of the political process, but admitted that a comprehensive constitutional reform is needed in Moldova.

Accepting to dissolve Parliament (within a reasonable period, as the Venice Commission spelled out), the Moldovan Parliament has decisively moved towards a new round of elections to be held in late November 2010, but preceded by a Constitutional Referendum, to be held in September, which will consult among the citizens of Moldova whether they want to elect their President directly or indirectly. On July 6, the Constitutional Court agreed to endorse the organisation of the Referendum on the proposed changes to the Constitution in September 5, 2010⁵. Existing polls suggest a wide national support of almost 75.5% for the direct election of the president⁶, while the anticipated elections could potentially re-legitimize the political process, and provide further stability to the Moldovan reformers.

⁵ Unimedia, Constitutional Court declared the constitutional referendum possible – <http://unimedia.md/?mod=news&id=20933>

⁶ Public Opinion Barometer, May 2010, Institute of Public Policy – Moldova

Since its installation (September 27, 2009), the Moldovan Cabinet of Ministers has confirmed its capacity and willingness to apply the rule of law principle, acting in a concerted manner in consultations with the Council of Europe, the OSCE and the European Union bodies. On 12 January 2010, Moldova launched groundbreaking talks to conclude an Association Agreement with the European Union, which is primarily based on a package of agreements, incorporating a Visa Free Regime, coupled with a Comprehensive Free Trade Agreement. On March 24, 2010, Moldovan authorities have launched a challenging political reform program, entitled 'Rethink Moldova', focused on the reformation of the judiciary, strengthening the functional market economy institutions, and consolidation of the municipal governments and the central public administration, all pieces of the wider programme of governance 'European Integration; Freedom, Democracy, Welfare'.

This further strengthens the imperative to give more weight to pluralist institutions, the rule of law and increase the transparency of the most active actors of the political landscape, political parties, and civil service reform.

I. The emerging multi-party system in the Republic of Moldova: origins and causes

1.1. ASSESSING THE ORIGINS OF THE PLURALISTIC SYSTEM IN MOLDOVA AFTER SOVIET DISSOLUTION

The multi-party system of the Republic of Moldova traces its roots back to late August 1989, when the Presidium of the Supreme Soviet of the MSSR issued a decree regulating the existence of the 'informal movements (titled 'On the procedure of registration for public associations of citizens of the MSSR'). The decree was followed immediately by a Decision of the Cabinet of Ministers of the MSSR (No. 254–256)⁷ of October 26, 1989, aiming to enforce this decision by quickly registering the first four political groups: the Popular Front of Moldova, the Internationalist Movement 'Unitate – Edinstvo' (known also as "Interfront"), the Popular Movement 'Gagauz Halki' and the Cultural Bulgarian Society 'Vizrojdienie'⁸.

In fact, the Soviet administration had to recognize the reality of the momentum for the emergence of 'informal movements' and attempted to establish a role as mediator between competing political groups in a society in turmoil. In less than two years after the first decree on 'public associations', over 130 entities, 14 out of which declared activities of a political character were registered. Although most of the leaders presented their associations as 'apolitical', their stated aims called for political actions, aiming to challenge the basic injustices of the Soviet regime in the MSSR, then part of the USSR⁹.

⁷ Decree of the Presidium of the Supreme Council of SSRM 'Regarding the provisional procedure of registering public associations of citizens of SSRM', August 25, 1989, № 3459-X // published in Вештиле Советулуй Сунпрем ши але Гувернулуй Р.С.С.М., 1989, № 8, арт. 204).

⁸ Current Archives of the Government of the Republic of Moldova, 1989

⁹ Programme, Statute, Decisions of the Popular Front of Moldova, "Argedava". – Chişinău, 1989, p. 3

On June 23, 1990, Moldova declared its 'sovereignty' within the USSR, which implied in fact that no laws or decisions of the Soviet centre could have primacy over laws or decisions adopted by the MSSR's authorities. Once Russia decided to distance itself from the 'Soviet Centre' and proclaim its national sovereignty, other republics followed suit. In September 1990, the first President of the MSSR was elected¹⁰ with the aim of increasing political independence and acquiring a limited degree of autonomy from the rapidly imploding Soviet centre.

The first parliamentary elections, in 1990, were held on a rather competitive basis, since the political scene of the MSSR was already the home of two national-wide antagonist forces: the Communist Party of MSSR, and the Movement for Reform and Democratization, the latter aiming to challenge the fundamentals of the Soviet regime, rather than increasing its viability or legitimacy. Originally, the main demands of the 'informal groups' displayed a relatively fuzzy menu of different claims, including an elevated status of the language spoken by the titular group, in reaction to the Soviet policies of ethnic assimilation, but also claims in favour of free speech, the democratization of society, as well as environmental demands necessitated by centralist planning mistakes of the Soviet centre. Very soon, however, the most active wings of the 'informal groups' became widely known and recognized in the MSSR, notwithstanding the exceptionally great role played by the cultural intelligentsia, taking the lead in recovering national memories and cultural identities suppressed by the USSR.

The Popular Front (established in 1988) was seen as the most cohesive and trusted formation, bringing together several cultural, student and professional associations, but also some parts of the administrative and party elite. Already by February 25, 1990, the Moldovan Popular Front (FPM) won almost 30% of the total number of seats in the Supreme Soviet of the MSSR, providing alternative candidates to the official ones backed by the Communist Party in 373 out of 380 existing election districts¹¹, a confirmation of its capacity for mobilizing voters. This allowed it to secure a strong position in the first legislative elected through pluralist elections, and even participate in the creation of the first Cabinet of Ministers, with the support of the second largest political group "Viata Satului". Already in May 1990, the new Supreme Soviet of the MSSR repealed completely Articles 6, 7 and 49 of the Con-

¹⁰ "Act from September 3 1990, nr.250-XII regarding of the creation of the President of Soviet Socialist Republic of Moldova

¹¹ Charles King, 'Moldova', in Bogdan Szaikowski, ed., *New Political parties of Eastern Europe, Russia and the Successor States*, London: Longman, 1995, pp. 293–311

stitution of the MSSR, which stated that the Communist Party was the 'core of the political system', and a 'leading and guiding force of Soviet society'¹².

Thus, the new legislators succeeded in progressively separating the Communist Party from its instruments of pressure and power, providing the necessary conditions for a fair competition, and recognizing in fact the existence of multiple parties and political organisations, as different from public associations. As a next step, the Supreme Soviet of the MSSR adopted in July 1990 a decree on 'state power', by which it banned the creation of party branches at the state-owned enterprises, as well as within the State authorities, setting expressly the separation of power principle, and detaching the bureaucracy from membership of political parties.¹³ Starting in July 1990, the CPSU branches in many of the fifteen Soviet republics began to split into large pro-sovereignty and pro-union factions, further weakening central party control, since they were seen throughout the national republics as 'anachronistic and unable to lead the country'. In a series of public speeches and gatherings of the most active groups of society, the CPSU was separated from the government and stripped of its leading role in society and its function in overseeing the national economy.

These decisions certainly affected the Communist Party, which had earlier enjoyed the dominant role of a *primus inter pares*, and benefited from a large number of state resources and loyal state bureaucracy, in stark contrast with the informal movements challenging its position, and contesting the hegemony it enjoyed within the Soviet system of power. It still controlled important printed and electronic media (state TV and Radio, State news Agency and Publishing Houses, Official Newspapers, *Moldova Socialista*, regional mass media, etc), thus, exploiting the inertia of the Soviet bureaucracy and fears of the population to maintain its key-position in most of the spheres of the public life. Moreover, the Communist Party still owned important financial and material resources, state buildings and offices, cars and budget funds, which allowed it to combat the emerging groups of the informal movements, advocating for the legitimate demands of the people. By 1991, however, political divisions between regional (republican) and union elites had grown into a serious dispute, affecting the future of the USSR, and the continuation of 'perestroika' policy, whose architect, Mikhail Gorbachev, intended to 'restructure and modernise a Union of equal Soviet entities'.

¹² Law on the amendments of art. 6, 7 and 49 of the Constitution of SSRM, no 10-XII, May 10 1990. // *Veștile Sovietului Suprem și ale Guvernului RSSM*. – Chișinău, 1990, nr 5, Art. 86.

¹³ Decree on the state power, No. 201, June 27, 1990 // *Veștile Sovietului Suprem și ale Guvernului R.S.S.M.*, 1990, nr 8, Art. 208.

Nevertheless, military and Soviet hardliners still hoped to save the Soviet Union from collapse and freeze the course to the full-fledged separation of its republics. Old loyalties and the 'spiritual cohesion' of the Soviet apparatchiks helped many of the apparatchiks to obtain leading positions in the newly formed democratic institutions. For 70 years, the CPSU had been the cohesive force that kept the union together; without the authority of the party in the Soviet centre, the nationalities of the constituent republics pulled harder than ever to break away from the union. Thus, on August 19, 1991, a group of generals, KGB and party officials of the USSR declared a state of emergency over all the republics of the Union. Then, in a desperate attempt to reverse the logic of 'perestroika' (political reforms launched by acting President Mikhail Gorbachev), decided to call for reinstating 'Soviet order' in the USSR, instituting a GKChP (*Государственный Комитет по Чрезвычайному Положению* or *Gosudarstvenniy Komitet po Chrezvichaynomu Polozheniyu*, *GKChP*), hoping to persuade the incumbent leader of the Communist Party of the Soviet Union to give up his political ideas. The conspirators ordered 250,000 pairs of handcuffs from a factory in Pskov to be sent to Moscow] and 300,000 arrest forms, and increased, on the same day, the pay of all KGB personnel, called them back from holiday, and placed them on alert, while Lefortovo prison was emptied, ready to receive the expected political prisoners¹⁴.

The GKChP banned democratically oriented newspapers in Moscow, except for nine communist-controlled ones, claiming it was defending 'the honour and dignity of Soviet men', promised that 'the new union treaty will be discussed by all the people', that 'the streets of the cities will be purged of crime', and that GKChP would focus on 'solving the problem of food shortages'. Instead of raising the people's support, these steps were seen as a farce and tragicomedy. Informal movements in the national republics backed reformist leaders in Moscow, who were given the support of the intelligentsia and the mass media. Soon leaders of the State Committee for Extraordinary Situations GKChP ('coup d'état') found they were isolated from the rest of the State administration and national republics, who rebuked the hard-liners' attempt 'to save the USSR'. With almost no public support even in Russia, where the incumbent President Boris Yeltsin lined against the coup and policy directives of the self-appointed Soviet leadership, they were soon arrested for 'conspiracy against the State', and brought to justice¹⁵.

¹⁴ Russia at the barricades: eyewitness accounts of the Moscow coup (august 1991), ed. Victoria Bonnell, Ann Copper, and Gregory Freidin. Introduction by Victoria E. Bonnell and Gregory Freidin (M.E. Sharpe, 1994). Includes the chronology of the coup, photos, and accounts from a broad cross-section of participants and eyewitnesses, including the editors.

¹⁵ Симон Кордонский Первый военный переворот в СССР: неудача с последствиями, <http://old.russ.ru/antolog/1991/kordon.htm>

This episode served nevertheless as a catalyst towards the full-fledged independence of the national republics from the USSR, and even the most hesitant elite supported the establishment of an independent state, the Republic of Moldova, within the borders of the former Soviet Socialist Republic of Moldova (SSRM). On August 27, 1991, Moldova decided to separate from the Soviet Union, following similar decisions taken in the Ukraine, the Baltic States and Caucasus. It adopted a Declaration of Independence widely supported by the population, and then decided to ban and dismantle the Communist Party, which acted at that time as a territorially located 'clone' of the Soviet centre. A decree issued by the President of the MSSR on August 22, 1991, announced the immediate confiscation of all properties and resources belonging to the Communist Party¹⁶, putting an end to the full liquidation of the monopoly on state power in the MSSR. However, building the state on the ruins of the ex-Soviet administration caused numerous conflicts and friction on the surface of the political scene, bound up with inseparable conflicts and frictions between various linguistic and cultural constituencies of the new state, which lacked an adequate political culture.

Thus, with the imminent dissolution of the Soviet Union and growing course towards full-fledged independence of Moldova, internal tensions between the Moldovan government and the regional elites in Tiraspol, supported by the Soviet 14th Army, located in the Eastern rayons of RSSM, called Transnistria, escalated into a violent conflict. Political controversies started already by September 1990, when this thin and land-locked region announced its independence as a "Pridnestrovian Moldavian Republic (PMR)", claiming under its jurisdiction the Eastern bank of Dniester river, and the City of Bender, with its surrounding localities, on the right bank of Dniester. A considerable part of this region remained loyal to the national and legitimate authorities of the Republic of Moldova, and fought back attempts of Transnistrian paramilitary units to take over control in these localities.

But, as soon as the Moldovan Parliament launched talks with the USSR Union Government "to put an end to the illegal occupation of the Republic of Moldova and withdraw Soviet troops from Moldovan territory", the Soviet centre responded by

¹⁶ Decree of the President of the Republic of Moldova, Regarding the ban of the organisational structures of political parties, public organisations and other mass movements in various state authorities, organisations of the republic and other institutions, No. 164, August 22, 1991 // *Monitorul Oficial*, 1991, nr 11,12, Art. 133; Decision of the Presidium of the Parliament of the Republic of Moldova 'Regarding the Communist Party of Moldova', No. 683-XII, August 23, 1991 // *Monitorul Oficial*, 1991, nr 11, 12, Art. 138; Decision of the Presidium of the Parliament of the Republic of Moldova 'Regarding the final conclusions of the Committee of Deputies assessing the work of the state institutions, leaders of the state enterprises, other organisations of the Republic of Moldova during the coup d'état in Moscow of August 19–21, 1991, No. 700-XII. // *Monitorul Oficial*, 1991, nr 11, 12, Art. 140

starting to equip the rebel guards of the PMR with munitions and heavy arms, and later on, siding with them in March 1992, when military hostilities broke out between the sides. This allowed rebels, aided by contingents of the Russian Cossacks to impose their military force over the disputed area of the Eastern Bank and Bender, while the hostilities ended only in July 1992, when the President of the Russian Federation, Boris Yeltsin and Mircea Snegur, President of the Republic of Moldova, signed a Cease-Fire Agreement, setting up a demarcation line between the two sides, as a “security zone”, controlled by Russian, Moldovan, and Transnistrian forces. As part of that agreement, a three-party (Russia, Moldova, Transnistria) Joint Control Commission supervises the security arrangements in the demilitarized zone, comprising 20 localities on both sides of the river.

Although the ceasefire has held, the territory’s political status remains unresolved: commonly considered *de jure* part of Moldova, but *de facto* it is a ‘no-man’s land’¹⁷. The military conflict in Transnistria, instigated by senior officials of the Soviet elite, challenged the independent path being pursued by Moldovan elites, and coincided with the emergence of overt resistance to the state apparatus from groups and institutions which remained loyal to the Soviet legacy and interests (security forces, union plants, former party nomenclature and administrative staff). Considerable opposition was also shared by some groups of the population and elites, who were unwilling to accept the idea of the dissolution of the Soviet Union, in which they grew up and had been educated. Divergent views on Moldova’s political future, within a larger regional context, on the eve of the complete disintegration of the Soviet state, left no other choice to the Moldovan elites than to decide for full independence. Only on a few occasions, did politicians consent to vote in unity: the election of the Prime Minister, M. Druc, in 1990, with a full majority of the MPs of the Supreme Soviet of RSSM, and the election of the first President of RSSM, Mircea Snegur. The Prime Minister, Mircea Druc, was elected on 24 May 1990 with 259 votes of the Supreme Soviet of the SSRM, with practically no votes against. He even received the endorsement of Transnistrian MPs, who were then actively participating in the work of the Moldovan legislative chamber. In the meanwhile, splits between moderates and radicals appeared to be unavoidable even amongst the main architects of the independent course for Moldova. The decision of the Popular Front, in February 1992, to transform itself from a mass movement into a political party was a turning point¹⁸. A paragraph included in the Political Programme called for the unification of the Republic of Moldova with Romania, replacing the name of the

¹⁷ Transnistria: Cooperation or Competition in Mediation? Paper presented by Dr Dov Lynch in Rome, Conference The EU and the Eastern Neighbours: Democracy and Stabilization without Accession? 29–30 May 2006, Centro Alti Studi Difesa (CASD)

¹⁸ Programme of the Christian Democratic Popular Party, , Chisinau, FPCD, 1992, p. 8

country with the name 'Bessarabia'¹⁹ everywhere in the documents of the party. The public saw this step as a deliberate action 'to accelerate reunification with Romania', and a possible departure of ways with the pro-Russian region of Transnistria'²⁰. This perception was useful to those in Moscow who wanted to hamper a possible radical movement of Moldova away from the Russian 'sphere of interest', using this as an ideological tool for the mobilization of regional elites in Transnistria, strongly tied to the Soviet legacy. This in turn created splits amongst the national-democratic politicians, several of whom attempted to balance the radical poles, by creating the preconditions for a 'civic nation' concept, aiming to exclude unnecessary 'nationalist passions' or 'isolationist attitudes' manifested by some of the ethnic national groups. President Mircea Snegur began to directly confront the Popular Front of Moldova, from September 1990 onwards, while Mircea Druc quit the Popular Front as soon as he was dismissed from his top-executive position as Prime Minister.

This placed incumbent leaders of the Popular Front of Moldova clearly on the radical wing, forcing many other leaders or supporters to join or create alternative political forces. Already by the end of 1990, a Social Democratic Party emerged in Moldova as the first programme-based political party, aiming to gain a wider social base, and recognizing the virtues of a pluralist environment and market economy. By September 17, 1991, over 13 social political groups had been registered legally by the Ministry of Justice.

1.2. ADVANCEMENT OF THE MULTI-PARTY SYSTEM IN MOLDOVA AFTER 1991 INDEPENDENCE DECLARATION

The radicalisation of the Popular Front served as an impetus for pluralist competition and political re-alignment. This caused several top-ranking leaders of the Popular Front to step down and associate with alternative groups of the right and centre-right wings, such as the Social Democratic Party, the Bloc of Peasants and Intellectuals, in counterbalance with other groups on the left and left-centre wings,

¹⁹ The name Bessarabia (Basarabia in Romanian) derives from the Wallachian Basarab dynasty, who allegedly ruled over the southern part of the area in the 14th century. According to Dimitrie Cantemir, the name originally applied only to the part of the territory south of the Upper Trajan Wall, somewhat bigger than current Budjak. The Ottomans were the first to call it "Besarabya", when they established a military presence in the area in 1484 and 1538. This was the name by which Imperial Russia designated the eastern part of the Principality of Moldavia, ceded by the Ottoman Empire to Russia at the Peace of Bucharest in the aftermath of the Russo-Turkish War, 1806–1812. The remaining western part of Moldavia united with Wallachia in 1859 in what would become the modern state of Romania.

²⁰ Charles King, *The Moldovans. Romania, Russia and the Politics of Culture*, Studies of Nationalities, Hoover Institution Press, Stanford University, 2000

such as the 'Unitate Edinstvo', and 'Viata Satului', which was registered by 1993 as Democratic Agrarian Party. After the disappearance of the largest Communist Party, banned officially in Moldova as a result of the Moscow 'putsch', divisions were now reflected in the programmes of political parties.

On the right wing, moderate parties attempted to temper the radical claims of the Popular Front, calling for actions that reflected positively on the newly established state structures in Moldova: based on the concept of the civic nation, including all citizens of Moldova, regardless of their national background, language or faith. Favouring a spiritual and language closeness to Romania, moderate parties tried to reconcile with the perceived frustration of important segments of Moldovan society, being aware of the complicated issues generated by the collapse of the Soviet centrally planned economy.

Other political views crystallized in a catch-all conservative wing, associated with the Democratic Agrarian party, which found themselves affected by the quick changes after 1991, as well as by the effects of the separation of Transnistria during 1991/1992. At the extreme side of the left-wing parties, some of the political groups clearly militated against the independence course of Moldova, exploiting the unease felt by the non-titular groups, whose fears and frustrations were easily converted into political splits, often defined in terms of 'reactive nationalism'²¹.

Since the Popular Front was seen by the largest part of society as the 'main architect' of the new Moldovan statehood, many representatives of the existing ethnic minorities (Ukrainians, Russians, Gagauz, Bulgarians) perceived the growing radicalization of the Popular Front as a possible path towards 'excluding them from political decisions', fomenting fears that met no adequate responses. As a third 'force' since 1994, a group attempted to form a union of 'moderates', and thus to create a right balance between the extreme wings of the political landscape, and aiming to develop a model of statehood that will fully engage in a modernization project, but with the necessary caution to engage external actors rather than antagonize them. This group included the Party of Reforms, the Democratic Party of Labour, but also the Republican Party, the Green Alliance, as well as the Women's Association of Moldova. However, this 'third force' had to face the effects of the absorption of the key state leaders by the emerging Agrarian Democratic Party (PDAM), which succeeded in quickly removing members of the Popular Front from their top-state positions, and replacing them with more 'pragmatic', tougher, and less democratic elites.

²¹ William Crowther, The politics of Ethno-national mobilization: nationalism and reform in Soviet Moldavia, *The Russian Review* 50 (1991), 2, 183–202

The subsequent parliamentary elections of 1994 caused serious shifts in the positioning of political parties in the Republic of Moldova, changing the country's political agendas, and to a large extent – the ideological mindset of the governing elites. However, most of the political parties were still in an embryonic phase, therefore only with the adoption of the Law on parliamentary elections, in 1993²², could one see the beginning of a new stage of institutionalized political pluralism. The new legislation made, alliances and election blocs the main factor of the election campaigns, rather than independent candidates, as in the previous elections of 1989. Another innovation was the introduction of the 'proportional election system', based on a single electoral district at national level, with a representation threshold at 4% for political parties and 1% for independent candidates. It must be mentioned however that the situation of independent candidates became much more complicated: political parties had to comply with the registration procedure with the Ministry of Justice; the independent candidates had to submit to the CEC a list of at least 1000 supporters, whose signatures were checked and confirmed by competent bodies. This provided an institutional advantage to the political parties, decreasing the influence of independent candidates, to the benefit of a more stable political party system.

Another important change brought by the new law on parliamentary elections, which instituted a radical drop in the number of acting MPs – from 380 MPs in the Supreme Soviet of the MSSR (1989) to only 104 in the new Parliament of Moldova (1994 elections) – and to a slight reduction of the parliamentary term of office from five to four years. At the same time, at the end of 1993, Parliament adopted a number of changes to the Law on Political Parties and other social political organizations²³, in particular regarding the various sources of financing for political parties, prohibition of financing from joint-ventures with foreign capital (Art. 10), as well as from enterprises where foreign capital exceeds 20%, and finally – the ban on the financing of political parties by NGOs or anonymous persons. Nevertheless, political parties may receive donations from legal and physical persons, run mass media campaigns, generate revenues as a result of selling various kinds of publications or other products carrying party symbols. In legal terms, political parties were quoted as holding the same statute with organizations of 'non-commercial character'²⁴.

²² Law on the election of the Parliament of the Republic of Moldova, No. 1609-XII, October 14, 1993, Decision of the Parliament of the Republic of Moldova for the application of the Law on the election of the Parliament, No. 1613-XII, October 9, 1993; Laws adopted by the Parliament of the Republic of Moldova. – Chişinău, 1993;

²³ Law for the amendment and change of the legislation on political parties and other socio-political organisations, No. 1615-XII, October 19, 1993. // Monitorul Oficial, nr 10, Partea I, 1993, Art. 292.

²⁴ Dimitriev R. Reglementarea juridică a pluripartidismului şi elementele capacităţii de drept antreprenorial. // Pluripartidismul în Moldova: esenţa şi specificul formării. / CAPTES. – Chişinău, 2000, p. 52–57.

The first elections (after 1991) to the National Parliament (104 seats) took place on 27 February, 1994. The largest share of the votes went to the newly emerging Democratic Agrarian Party (DAP), led by Andrei Sangheli and Petru Lucinschi, which gained 43.18%. Altogether, DAP received 56 mandates, and was able therefore to negotiate a kind of 'bi-party coalition' with the second-largest political group, consisting from a Socialist Party and 'Unitate-Edinstvo' Movement Bloc (SPUEMB), which received in total of around 22% of votes, or 28 MPs.²⁵ With only 9.21% of votes, the Peasants and Intellectuals Bloc (PIB) received but 11 of seats, and could not create a stable political alliance with the Alliance of the Popular Christian Democratic Front, (7.53% or nine seats).

Thus, the 1994 elections brought a significant reshuffle of the political landscape by propelling to the forefront of the political scene two conservative, though distinct political groups, – the Agrarians and 'Unitate/Edinstvo', while substantially reducing the power of the democratic forces, including nationalistic moderates and radicals. Election results also affected the form of government, changed by the newly adopted Constitution of Moldova (July 29, 1994), with subsequent changes adopted later on by the Moldovan Parliament in 5 July 2000 and 15 June 2004. To a large extent, the success of the Agrarians resulted from the association of the first President, Mircea Snegur, with this large governing party (Democratic Agrarian Party of Moldova), but who requested a nation-wide consultative referendum to see 'if the population wants the independence of Moldova to be kept or be replaced by a different course'. Finally, the Agrarians decided to ask Moldovans, through a nation-wide referendum, the question 'if citizens want to live in a democratic, independent and free state?'

Receiving almost 96% of the support, the Agrarians presented the results as a sign of endorsement of the political line followed by President Mircea Snegur, Prime Minister A. Sangheli and Speaker of Parliament, Petru Lucinschi, in contrast to the previous unstable governments loyal to the Popular Front²⁶. Although many have disputed the interpretation of the national poll, it seems that the results of the referendum essentially helped the Agrarians to get almost 43% of votes in 1994 elections, granting them more than half of the existing legislative seats, twice as much as the democratic/nationalistic parties, which collected but 22 mandates of MPs. Only four out of 13 existing political parties entered by 1994 in the Moldovan Parliament.

In the meantime, the Agrarians confirmed that they were ready to lift the ban on the Communist Party, imposed through a decision of the Presidium of the Supreme

²⁵ Political Parties of the Republic of Moldova, 1994 Parliamentary Elections <http://www.parties.e-democracy.md/en/electionresults/1994parliamentary/> (last accessed on January 14, 2006).

²⁶ Moldova Suverana, March 12, 1994

Soviet of the MSSR²⁷, suspending thus the existing restrictions on the freedom of association. Considering the on-going discussions on the first draft of the Moldovan Constitution before its adoption on July 29, 1994, most of the members of Parliament largely supported 're-legalization' of the Communist Party of the Republic of Moldova (CPRM). Lifting the ban on this party was perceived by the newly-created ruling party as a sign of 'democratic behaviour', confirming that Agrarians would apply democratic rules strictly to all political actors. It is true also that new leaders of the Agrarian Democratic Party were tied emotionally with this party so that the decision to re-include Communists as a newly established political party was seen as a 'deserved reparation'.

Table No. 1 Moldovan Elections (2001–2009)

1991 Presidential elections		
Mircea Snegur (single candidate) – 98.7%		
1994 Parliamentary elections	Votes	Seats allocated
Democratic Agrarian Party	43,2%	54 seats
Socialist Unity Election Bloc	19,7%	27
Peasants and Intellectuals Election Bloc	15,7%	11
Christian Democratic Popular Party	7,2%	9
1995 Local elections	No of Mayors	No of Councilors
Democratic Agrarian Party	520	7147
Democratic Forces Alliance	43	1054
Party of Moldovan Communists (CPRM)	83	2585
Socialist Unity Election Bloc	13	368
Social Democratic Party	23	312
1996 Presidential elections	Votes – 1st round	Votes – 2nd round
Petru Lucinschi	27,7%	54%
Mircea Snegur	38,8%	46%
Vladimir Voronin	10,2%	
Andrei Sangheli	9,5%	
Valeriu Matei	8,9%	
1998 Parliamentary elections	Votes	Seats allocated
Party of Moldovan Communists (CPRM)	30,1%	40 seats
Democratic Convention	19,4%	26
Movement for a Democratic and Prosperous Moldova	18,1%	24
Democratic Forces Party	8,8%	11

²⁷ Decision concerning the notification of 91 MPs and appeals received from the groups of citizens on the Communist Party of Moldova, No. 1595-XII, September 7, 1993.

1999 Local elections	No of Mayors	No of Councilors
Communists, Agrarians and Socialists Election Block	124	2,235
Centrist Alliance of Moldova	93	1,214
Democratic Convention	87	859
Democratic Forces Party	51	505
Christian Democratic Popular Party	24	341
Furnica-Speranta Social Democratic Union	18	249
National Liberal Party	21	227
Socialist Party of Moldova	5	102
Democratic Popular Party	13	40
Ravnopravie Republican Social Political Movement		25
Social Freedoms and Justice Party		
New National Liberal Party	1	4
National Youth League		8
Independent Candidates		4
	191	292
2001 Parliamentary Elections	Votes	Seats allocated
Party of Moldovan Communists	50,07%	71 seats
'Braghish Alliance'	13,36%	19
Christian Democratic Popular Party	8,24%	11
2003 Local elections	No of Mayors	No of Councilors
Democratic Party	73	936
Party of Moldovan Communists	368	5416
Social Alliance Our Moldova Election Block	191	2402
Democratic Agrarian Party of Moldova	18	268
Socialist Party of Moldova	3	21
Christian Democratic Popular Party	20	570
Social Democratic Party – Social Liberal Party	40	500
Republican Popular Party	2	22
Ravnopravie Social Political Movement	2	35
Centrist Union of Moldova	17	167
Independent Candidates	157	479
2005 Parliamentary elections	Votes	Seats allocated
Party of Moldovan Communists	45,98%	56 seats
Our Moldova Alliance	28,53%	34
Christian Democratic Popular Party	9,07%	11

2007 Local elections	Mayors	City and village councilors
Democratic Party of Moldova	74	1,131
Party of Moldovan Communists	334	4,040
Our Moldova Social Liberal Block	157	1,987
Law and Justice Party	3	57
Christian Democratic Popular Party	59	798
Liberal Party of Moldova	13	156
Social Liberal Party	26	316
Social Democratic Party	15	276
Green Alliance Environmental party	2	14
Republican Popular Party	19	250
Centrist Union of Moldova	14	153
European Party of Moldova	—	2
Humanist Party	1	40
Social Democratic Party	28	401
Conservative Party	—	5
National Liberal Party	5	75
Patria Rodina Ravnopravie Election Block	10	137
Patria Rodina Labour Party	—	81
Socialist Party of Moldova	—	1,052
Democratic Agrarian Party of Moldova	—	3
Independent Candidates	135	326
2009 Parliamentary elections	Votes	Seats allocated
5th of April elections		
Party of Moldovan Communists	49,5%	60 seats
Liberal Party	13,1%	15
Liberal Democratic Party of Moldova	12,4%	15
Our Moldova Alliance	9,8%	11
29th of July elections		
Party of Moldovan Communists	44,7%	48 seats
Liberal Party	14,7%	15
Liberal Democratic Party of Moldova	16,6%	18
Our Moldovan Alliance	7,4%	7
Democratic Party of Moldova	12,5%	13

* Election data provided by the Central Election Commission of Moldova, and Adept Association²⁸

The Elections of 1994 confirmed the existence of a large group of political actors that could easily mobilize voters in national election campaigns in a rather competitive environment and change existing regulations in order to incorporate the standards and norms of the Council of Europe. Since 1994, political parties have become in practice an indispensable part of the democratic process, strengthen-

²⁸ Web site: www.parties.e-democracy.md

ing horizontal and vertical ties through the political landscape. Already by 1994, Moldova adhered to the principles of 'free and democratic standards in elections', inviting foreign observers, mainly from the OSCE, to observe upcoming elections, and decided to increase the role of specialized bodies in the scrutiny of elections (Central Election Commission). Soon after upholding parliamentary elections in February 27, 1994, Moldovan Parliament adopted a Regulation on the law-making procedures²⁹, setting the basic conditions for the functioning and interaction between parliamentary groups.

Frequent amendments to the internal regulation of Parliament reflected the permanent concern of the legislative to search for an optimum balance between the adoption and preparation of laws within an excessive fragmentation of Parliament. Thus, the Regulation stipulated that parliamentary groups could be established only by political parties that reached the threshold of 4% and received at least five MPs, as validated by the relevant national authorities. Legislative activities in the new Parliament became more complex and sophisticated, and a continuous battle to eliminate some of the concurrent parties showed the persistence of deep-seeded tensions between political groups. By 1994, all attempts to ban the Popular Front, as well as the 'Unitate-Edinstvo' for their alleged stance against the independence of Moldova failed to receive a judiciary underpinning. It must be stressed however that the adoption of the new Constitution, enshrining the 'freedom of association, freedom of political parties and other social-political organizations', has defined in fact the fundamental basis for the protection of political pluralism, finding its place and the function of political parties within the spectrum of the political system in the Republic of Moldova.

With the adoption of the Constitution, Moldova has strengthened essentially its political mainstream on central – sub-national relations. Already by December 1994, the Parliament of Moldova adopted a 'Law on the special statute of the Gagauz Yeri', defined it as a sub-national autonomous region. New legislation was followed soon by a regional referendum (organized in March 1995) with the aim to decide at the level of its constitutive parts – villages and cities – the shape of the future autonomy, thus, allowing the organization of the first elections for the Regional Popular Assembly of the Gagauz Yeri³⁰. Meanwhile, conflicts emerged between the top-three leaders of the Agrarian Democratic Party. Considering the increasing accumulation of power competencies into the hands of the incumbent Prime Minister, Andrei

²⁹ Moşneaga V., Rusnac Gh. Republica Moldova şi alegerile parlamentare (1994) şi geografia politică a electoratului. / USM. – Chişinău, 1997.

³⁰ Law regarding the special legal statute of Gagauzia (Găgăuz Eri), No. 344, December 23, 1994 // Monitorul Oficial, 1995, nr 3–4, Art. 51.

Sangheli, President Mircea Snegur, announced already by the beginning of 1996 the 'end of his personal support to the Agrarian Party', and declared he would encourage the development of other democratic forces. On the eve of new presidential elections, M. Snegur joined the Party of Rebirth and Conciliation (PRCM), while his main opponent, P. Lucinschi, announced the creation of a Movement – the 'Pro-Lucinschi Bloc'³¹.

Showing no essential doctrinal differences, both parties positioned themselves on different wings of the party landscape: PRCM declared it is closer to the 'centre-right segment', targeting voters sensitive to nationalistic ideas and values, while the 'pro-Lucinschi Bloc' positioned itself on the left, attempting to form a bridge between various competing agendas and political groups. In May 1996, the Parliament adopted a new 'Law on the election of the President of Moldova'³², thus preparing the ground for upcoming competition between the three former 'big agrarians'. The competition ended only at the termination of two consecutive rounds of elections in 1996, contested by nine candidates, six of which were proposed by political parties. First President Mircea Snegur was defeated in the second round by the Speaker of the Moldovan Parliament, Petru Lucinschi, who won together almost 54% of votes.

This election revealed an increased competition in political life, as well as the full emergence of a multi-party system, at all levels, and throughout the structures of power and State in the Republic of Moldova. By 1996, both parties faced a sudden rise in the popularity of a rejuvenated Communist Party, led by another ambitious former nomenclature member, Vladimir Voronin³³. As a confirmation of its growing vitality, the Communist Party (CPRM) reaped a first important victory by winning 30% of the votes in parliamentary election of March 22, 1998. This short, but outstanding election has allowed the Communists to set up the largest legislative group in the Parliament, holding 40 out of 101 MPs, at a distance from the Democratic Convention (19% – 26 mandates), the 'Pro-Lucinschi Bloc' (Movement for a Democratic and Prosperous Moldova) -18% – 24 seats, the Party of Democratic Forces (9% -11 seats) and the Popular Christian Democratic Party (former Popular Front – with 9%, or 11 seats). It is worth mentioning hereby that the former ruling Democratic Agrarian Party (DAPM) suffered a humiliating defeat, receiving less than 4% of votes needed to reach the existing election threshold, which served how-

³¹ Political parties of the Republic of Moldova, Historic background, www.parties.e-democracy.md

³² Law regarding the election of the President of the Republic of Moldova, No. 833-XII, May 16, 1996. / *Parlamentul Republicii Moldova*. – Chişinău, 1996

³³ Klemens Buscher, *Moldova after the parliamentary elections: a second chance for reform*, Central and Eastern European online library, www.ceeol.com

ever as a great bonus to the PCRM, being directly advantaged by the effects of the d'Hondt system on proportional distribution of votes.

Challenged by the rapid growth of the Communists (CPRM), other parties also decided to respond to this new trend by creating and cementing of a democratic, but non-communist coalition – the Alliance for Democracy and Reforms (ADR). On April 21, 1998, the Alliance for Democracy and Reforms was created as a multi-party governance coalition, established on the principles of 'algorithmic' representation of political parties included in the Alliance. This principle was applied in the appointment of the Ministers and Heads of State Agencies, where the constituent parties received the right to nominate their political candidates to the executive positions on the basis of their accumulated mandates in the latest elections. This, in practice, introduced the creation of a Cabinet of Ministers, created by delegated Ministers: two Ministers from Democratic Convention (an alliance in itself), another two Ministers from the 'Bloc for a Democratic and Prosperous Moldova', and one Minister from the Democratic Forces Party. Already by May 1998, the Alliance had settled the arrangements for the new government, led by a reformist Prime Minister, Ion Sturza.

1.3. CONSTITUTIONAL REFORM OF 2000 AND ITS IMPACT ON POLITICAL DEVELOPMENTS

However, 1998 was a year of intense challenges to the economy of the country. The Russian financial crisis badly hit Moldovan economy, in particular exporters, who suffered considerable damage and losses on their eastern markets. This, further complicated the task of the new 'algorithmic' Government to ensure macroeconomic stability and promote structural reforms, causing multiple social costs and obvious hesitation of the Cabinet of Ministers to respond to the effects and impact of crisis. The overall worsening situation in Moldova made President Lucinschi announce his own political project, aiming to acquire additional presidential powers and change the semi-presidential political regime into a pure presidential system, similar to the Russian Federation model of governance. On May 23, 1999 a national referendum was held at the initiative of President Lucinschi, carrying the following question on its title: "Do you support amending the constitution in order to introduce a presidential form of government in the Republic of Moldova, in which the President of the Republic shall be responsible for forming and leading the government, as well as for the results of the country's governance?"³⁴.

³⁴ Moldovan Economic Trend, Monthly issue, June 1999, p. 3 in Ian Jeffries, *The Countries of the Former Soviet Union at the Turn of the Twenty-first Century: The Baltic and European states in transition* (Lon-

The referendum was declared invalid (there were some struggles between the Parliament, President, and the Judiciary concerning this issue) due to a low voter turnout of about 58% (below the minimum turnout of 60%); nevertheless, about 60% of those who *had* voted supported the President by answering in the affirmative.³⁵ Showing no sign of accepting his own defeat, the same President Lucinschi then took another step on the road towards a 'presidential system of governance' by signing a Decree on the creation of a Special Commission to draft Constitutional amendments, willing now to expand presidential competencies via Parliament, and threatening a dismissal of Parliament if his proposal was not accepted.³⁶ In particular, the decree announced that with the new proposed changes to the Constitution, the Moldovan President would 'appoint and dismiss the Prime Minister and ministers', would become 'the unique head of the Supreme Security Council', and 'would appoint prosecutors and judges'. The above mentioned draft amendments to the Constitution envisioned also that the term of the presidential mandate would be extended to five years, instead of four years, while MPs' mandates in the Moldovan Parliament were to be limited to 70 (out of the existing 101). Moreover, the incumbent President Lucinschi intended also to increase the president's ability to dissolve Parliament if it had blocked the adoption of any laws for more than two months.

Thus, according to the proposed draft, the President could have gained thus a very broad and undisputable supremacy in the political regime of the Republic of Moldova, very similar to the 'super-presidential' system applied by the Russian Federation. This prompted the Moldovan Parliament to respond on July 5, 2000 to the presidential initiative,³⁷ voting for a counter-proposal. Instead of amending the Constitution – according to the presidential ideas and plan, and thus changing from a semi-presidential to a parliamentary form of governance, – most of the acting MPs of the Moldovan Parliament decided to strengthen the parliamentary type of political regime, changing thus the existing 'semi-presidential' into a 'semi-parliamentary' form of governance. In particular, the new amendments to the Constitution included an additional provision to elect the President by three-fifths of the seats (61 MPs out of 101), while the Government was receiving more power and competencies, but under the sole scrutiny of the legislative power. The Speaker

don and New York: Routledge Taylor and Francis Group, 2004), 333.

³⁵ Current Digest of the Soviet Press, 1999, vol. 51, no. 21, pp. 15–16 in Ian Jeffries, *The Countries of the Former Soviet Union at the Turn of the Twenty-first Century: The Baltic and European states in transition* (London and New York: Routledge Taylor and Francis Group, 2004), 333.

³⁶ Constitutional Watch. A country-by-country update on constitutional politics in Eastern Europe and the ex-USSR. in *East European Constitutional Review*, vol. 8 no. 4, 1999.

³⁷ Segodnia, 6 July 2000, p. 3: Current Digest of the Soviet Press, 2000, vol. 52, no. 27, pp. 16–17 in Ian Jeffries, *The Countries of the Former Soviet Union at the Turn of the Twenty-first Century: The Baltic and European states in transition* (London and New York: Routledge Taylor and Francis Group, 2004), 334.

of Parliament would replace the President of Moldova, being the first highly-ranked official of the state, under certain circumstances, while the Prime Minister would be the second high-ranked official in state, undermining the role of the President, with the latter becoming merely a figurehead for the parliamentary system.³⁸

The political confrontation ended with a clear victory for the Parliament. The parliamentary system left no chance for Lucinschi to be re-elected, because he had lost his direct political support. This revealed some drawbacks of the parliamentary political regime, such as the taking over of the presidency by charismatic communist leader Vladimir Voronin with all its consequences. According to some experts, Petru Lucinschi would have stood a good chance to be re-elected by the people, as many saw him as a 'promoter of economic reforms and better living conditions'. However, conflicts between President and Parliament coincided with important changes to the Election Code. Thus, in January 2000, the Parliament of Moldova voted for a new election threshold of 6% for a political party, 9% for an election bloc of two parties, and 12% for other blocs formed by three and more parties³⁹, while lowering the threshold for independent candidates from 4% to 3%.

To ensure that President Lucinschi could not thwart this policy line, the Parliament of Moldova introduced another provision: 'parties intending to take part in elections must have been registered for at least two years before the beginning of an election campaign' (Art. 41–2a), and introduced the word 'early elections'. Meanwhile, the political scene mushroomed with almost 55 political parties and social-political organisations, registered by September 1999. By the end of 2000, surveys showed a high percentage of negative views on the Directorate headed by the country leadership, respondents being largely influenced by the economic and social instability of the preceding two years, the economic crisis and the opacity of the 'coalition-based' governance, which had induced a low level of confidence.

On top of this, polls showed a rather limited approval for the constitutional changes assigning the presidential election to Parliament. After unsuccessful attempts to elect a new Prime Minister, where Communist leader, Vladimir Voronin lacked only a few votes to get elected (elections being boycotted by the anti-communist coalition led by Christian Democratic People's Party (CDPP), the incumbent President of the Republic of Moldova, Petru Lucinschi, had to dissolve Parliament, following provisions of the Moldovan Constitution, and set early elections for February 25, 2001.

³⁸ Ibid. 335.

³⁹ Legea pentru modificarea și completarea Codului Electoral din 25 ianuarie 2002, nr 796-XV. // Monitorul Oficial, 2002, nr 20, p. 11–15.

In these elections, the Communist Party (PC) gained 50.07% of the votes, acquiring 71 seats, as a result of redistribution of votes from the parties that won less than the legal threshold of 6%. Only two other parties – the Electoral Bloc “Braghis Alliance” (BEAB) led by the Prime Minister Dumitru Braghis, and the Christian Democratic People’s Party (CDPP) led by its leader Iurie Rosca – received respectively 19 and 11 seats.⁴⁰ Thus, the results of the parliamentary elections crucially changed again the political situation in Moldova, as it was in the 1994 general elections. With the power shift in February 27, 2001, the CPRM reaped a landslide victory and heralded a serious intent to re-install a state ideology for the Moldovan state⁴¹. Authors tended to see the source of this victory in the poor quality of life indicators⁴², and the negative perception of the course Moldova was following by 2000–2001⁴³. Analysts stated their victory also reflected popular anger at market reforms⁴⁴, or perhaps, at their failure, which had left many people in extreme poverty since the 1991 course towards independence. Communist rule was associated by many citizens with a ‘full basket of social benefits’, and a promise of stability and economic growth, after a number of years of financial crisis and stagnation of the economy. The MCP campaigned with a classic socialist programme and an ostensible pro-Russian shift in foreign policy. Most of their commitments seemed to be impossible to uphold, if not absurd.

The Communists campaigned on a populist programme, promising a restoration of the socialist economy, elevation of the Russian language to the status of a ‘state language’, membership in the ‘Russia – Belarus Union’, and active involvement in the CIS integration process, with the hope that this would make Russia accept the re-integration of Transnistria into the Republic of Moldova. The CPRM promised to increase pension payments and subsidies to energy, and public transportation, and ensure that other goods and services (coal, gas), would be provided free of charge to the elderly, all without concern for the public budget, and the country’s rather limited economic potential. Conflicting messages concerning an orientation to-

⁴⁰ Political Parties of the Republic of Moldova, 2001 Parliamentary Elections <http://www.parties.e-democracy.md/en/electionresults/2001parliamentary/> (last accessed on January 14, 2006).

⁴¹ Arcadie Barbarosie, Understanding the Communist Election Victory in Moldova, Beyond Transition, The Newsletter about reforming economies, The World Bank Group, 2001

⁴² 90% of the population in Moldova, some 4.5 million – live in 2000 with less than 1 USD a day, about 80% of the population live on less than 20 USD (233 lei) a month, below the subsistence level, according to the date of the Statistics Department of State. The average salary covers only 40% of the minimum consumer basket, while salary arrears represented by February 2001 almost 380 M lei.

⁴³ In 2000, public opinion polls showed that 80% of the public believe the country was heading in the wrong direction. More than 70–80% of Moldovans think that before 1991, the quality of governance, social protection, living standards and even respect for human rights and liberties were better or much better than they are today. IPP Barometer of Public Opinion, www.ipp.md

⁴⁴ Communists win in Moldova, February 26, 2001, BBC News,

wards Moscow and the CIS, on the one hand, and the European Union and the international financial institutions, on the other hand, indicated lack of policy prioritization⁴⁵. Political pluralism and turmoil amongst opposition parties ended with the installation of an absolute control of the state by the Communist Party, making the Republic of Moldova the first former Soviet Republic to return to Communist rule, albeit under a more democratized Communist party.

Although there was more stability of the disciplined parliamentary majority of the CPRM, this was not the case inside the Government. Eight ministers and 20 vice ministers were replaced during 2001–2003 by decrees of President Voronin. It is remarkably obvious that the reshuffle of the Cabinet of Ministers came as a surprise even to the top leadership of the CPRM, but Members of the party would dare to challenge directly its official leader – incumbent President of Moldova. In fact, decisive decisions were usually taken by the President, placing the weight of political decisions outside of Parliament, and even outside of the formal decisions discussed by the Central Committee of the Communist Party of Moldova, officially led by the same President Voronin. This spurred continuous debates about the fuzzy separation of power under a hegemonic party's control of the state authorities. Although the Constitutional reform of 5 July 2000 formally reduced the powers of the President in some areas, it was not as radical as one might have expected when observing the parliamentary discussions prior to the constitutional amendments⁴⁶.

In fact, the President kept a plethora of major competences in his hands, with some of them not even listed in the text of constitutional amendments of 2000. According to the Constitution, the President appoints the Prime Minister, after consultations; and laws are valid only after they are promulgated by the President, who has the right to send them back to Parliament for reconsideration (Art. 93); the President issues decrees (Art. 94), and he is the Chief Commander of the National Army (Art. 97). Thus, the constitutional revisions only masked an even stronger presidential influence. The former President, Petru Lucinschi, was backed by only five deputies in his last year of office, while the leader of the CPRM could easily count on a 71-strong and disciplined faction of MPs in Parliament (2001–2005), and a major fraction of 56 + 8 (CPRM and CDPM during 2005–2008) during his second consecutive mandate. This made Vladimir Voronin a very powerful figure in the political system, which had become very personalized and unstable, because of the party fragmentation. In leading his party and the CPRM, President Voronin gained additional

⁴⁵ Luke March, *Power and Opposition in the Former Soviet Union*, Edinburgh, Party politics, Vol.12, No. 3, 2006

⁴⁶ Claus Neukirch, *Moldau: Eine Zwischenbilanz zur Umgestaltung des moldauischen Regierungssystems*, in *WGO-Monatshefte für Osteuropäisches Recht* 42 (2000), 4

leverage from his particularly high rate of popularity in polls, which allowed him to strengthen his grip of control over his close party men. Since the post of Speaker of Parliament was given to a little-known member of the CPRM (Eugenia Ostapciuc), this amounted to almost controlling both the executive and legislative branches of the state. Favouring a weak Prime Minister and a weak Speaker of the Parliament, President Voronin acquired exclusive rights to interfere into the work of both, meeting almost no resistance.

This was perhaps the reason why Voronin endorsed a Cabinet of Ministers in April 11, 2001 with only three Ministers, full-fledged members of the Communist Party of Moldova (CPRM). Voronin's strong control over the executive policies can be confirmed indirectly by statements of then Prime Minister Vasile Tarlev, who stated that before presenting his team to Parliament, they should be approved by the President⁴⁷. In 2008, Vasile Tarlev announced he would resign from the position of Prime Minister, and it was understood that 'this was Voronin's decision and not anyone else. Enjoying a heavy support from a massive political group, the Communist leader, Vladimir Voronin, faced few political constraints after 2001. During the official presidential inauguration he declared that [for him]... 'human rights mean nothing if low standards of living do not allow people to live in dignity', stressing the idea of 'expanding the role of the Presidency in Moldova for the sake of the people', despite the fact that he had earlier endorsed the amendments to the Constitutional Reform of July 5, 2000, reducing Presidential powers.⁴⁸

A fragmented and divided group of opposition parties could only symbolically challenge the direction of the President, but not in effective political terms. The Communists' power was very strong and almost seductive for the administration, as well as to some segments of the population. Almost half of the population (57%) said in 2001 that Moldova needs only one party, at the same registering one of the lowest rates of trust in political parties: 79% believed that political parties care only about the wellbeing of their members, against 13%, who think parties could help the people to live in better conditions⁴⁹. Many experts criticized the political situation in Moldova and hoped that the new parliamentary elections would change the picture and result in real power sharing. Complaints about interference and repression were frequent during 2005–2008. As both civil society and party activities were largely established top-down, and were financially vulnerable, the ruling CPRM attempted

⁴⁷ Infotag, 16.04.2001

⁴⁸ Constitutional Watch. A country-by-country update on constitutional politics in Eastern Europe and the ex-USSR. in *East European Constitutional Review*, vol. 10 no. 2, 2001.

⁴⁹ IPP, Barometer of Public Opinion implemented by CIVIS, 01.11.2001, available on: <http://www.ipp.md/libview.php?l=ro&idc=150&id=288>

to block the access of 'critical' NGOs to external funds, to harass independent mass media, and in particular the investigative outlets when they were serious in covering the unofficial aspects of the Communist regime in Moldova. A certain number of vocal Romanian language outlets and human rights organisations were especially singled out, being subject to various forms of obstruction, as demonstrated by their recurring protests to organisations such as the Council of Europe, or SEEMO⁵⁰.

In other cases, CPRM leaders tried to impose deterrent measures against some of the top-profile contenders, such as Valeriu Pasat, personally a former Minister of Intelligence Services (SIS) and also a former Minister of Defence. The image of a political trial against him was reinforced by the fact he was held behind closed doors at the request of the prosecution⁵¹. He was freed after two years in jail only by a final ruling of the ECHR, in 2007. A similar treatment was applied to the local governments between 2001 and 2009. Soon after winning power, the CPRM leaders decided to call for early local elections, with the aim of gaining complete state power, under the assumption of installing a 'vertical of power' regime in Moldova, since Communist leaders publicly stated that their 2001 election victory would be incomplete until all local governments in Moldova are not a part of the political system run by the Communists⁵².

To resolve this 'apparent misunderstanding', the ruling Communists decided to abolish elected councils before the normal end of their term, and started to prepare for the upcoming elections. Only due to repeated calls from the international community, the Moldovan Government had to give up this attempt, accepting that mandates of the local councils could not be withdrawn until their legal termination.⁵³ Other backward-looking moves targeted to replace the history handbooks in schools with so-called 'Integrated History Handbooks', largely replicating the party's views and interpretation, thus, new tensions and conflicts flooded into the realms of political clashes. The Communists soon faced their first cold shower in the winter of 2002, entering a deep political crisis generated by the attempt of the Communists to replace handbooks of Romanian History in schools with Integrated History Books, and sanction the Christian Democratic Popular Party's leaders for

⁵⁰ SEEMO Letter addressed to the Prime-Minister of RM, July 31, 2008; Letter sent to the Secretary General of the Council of Europe, Walter Schwimmer on behalf of the Union of Journalists of Moldova, January 31, 2004

⁵¹ E.Wayne Merry, RFERL, 2005, www.globalsecurity.org,

⁵² Vitalie Ciobanu, «Communist Agression in Bessarabia», *Dilemma (Dilema)*, issue: 465 / 2002, pages: 12, on www.ceeol.com. http://www.google.com/#q=2002+Voronin+alegeri+locale&hl=en&ei=_k5VTLL9A4KQjAeRmNzDBA&start=10&sa=N&fp=fbobee69b5aae820

⁵³ Local governments – under constant reform, 100 sensitive issues to the public, IDIS/Friedrich Ebert, 2007

their 'outrageous' behaviour against statehood⁵⁴. The first protest actions gathered thousands of people, who gathered day and night in front of the Presidency and the Parliament of Moldova from January 9 until the end of May, 2002. Many other MPs decided then to protest on the streets of the capital instead of the legislative chamber, having little chance to be heard or listened to. The crisis ended only during the PACE (Parliamentary Assembly of the Council of Europe) mediation mission, followed afterwards by the adoption of two Special Resolutions on Moldova – in April and September 2002⁵⁵, calling for restraint and assisting the conflicting sides to reconcile their concerns.

Equally sensitive for Moldovan civil society and the opposition was the issue of the future destination of Moldova – whether to choose an Eastern or a Western orientation⁵⁶. When CPRM came to power, they vehemently criticised the previous government's foreign policy, promising that they would pledge Moldova 'to join the Russia – Belarus Union'. However, already by mid-2002, in the middle of the acute political crisis in the capital of Moldova, and external monitoring missions investigating the arguments of the opposition, CPRM decided abruptly to change its earlier programme, and declare European integration as the country's strategic objective. This led the opposition to claim that the 'CPRM is imitating the EU course only to disarm the opposition', and not to pursue a transparent and responsive policy of integration⁵⁷. The Communists' ability to combine policies in favour of both EU and CIS integration served as a 'litmus test' for groups in Moldovan society who were critical of the CPRM's real intentions.

This is clearly what largely distinguished opposition from the ruling Communists parties: the latter were willing to be integrated in the EU without leaving the space of the CIS, while the former favoured a comprehensive and steady inclusion into all EU's economic and political institutions. Addressing an impoverished electorate, the adoption of this appealing and popular goal of EU integration were combined with blunter statements on the part of Communist leaders, such as that 'international donors should take responsibility for the general failure of reforms implemented so far', and that only because of the 'Communists of Moldova, NATO tanks have

⁵⁴ <http://www.ppcd.md/page.php?modul=Article&op=read&nid=35&rub=1&sort=0>

⁵⁵ Recommendation 1554 (2002) 'Functioning of democratic institutions in Moldova', Reply from the Committee of Ministers adopted at the 808th meeting of the Ministers' Deputies (18 September 2002), Doc. 9554, 21 September 2002, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc02/EDOC9554.htm>

⁵⁶ Stefan Gorda, Political Parties between the EU and CIS, www.e-democracy.md, 14 July 2003

⁵⁷ Igor Botan, Competition of ideas for the public good, www.e-democracy.md, April 2004

not reached yet the Briansk region in Russia'⁵⁸. Thus, Moldova was torn between its past allegiance to Russia and its aspirations to seek prosperity within the EU. But the EU could not be forthcoming enough, partly because of Moldova's low level of political culture and economic welfare, but also because of Moldova's unclear commitment to the EU's "rules of the game".

Nevertheless, after less than three years in the highest echelons of state power, Voronin's team was forced to abandon some of its previous assumptions under the impact of two factors. Firstly, exposure to the West enabled the leaders of CPRM to overcome their original isolation, while the attraction of the EU's benefits and advantages proved to be much stronger than the appeal of Russia. Secondly, the accumulated negative experience in dealing with Russia literally shocked the Communists, in particular their official leader, Vladimir Voronin, who expected a juicy reward for his unambiguous and active pro-Russian position⁵⁹. Nevertheless, this does not mean that the CPRM had fully absorbed the lessons of the past, and that it had been converted into a 'promoter of democracy'. The Communists univocally refused substantially to reform their party, using the argument that this would only 'weaken the party's democratic centralism and scare the traditional voters.

Since 2001, Voronin's approval ratings fell by half (from 70%), but were still higher than those of most of the opposition leaders during his second presidential mandate (2005–2009). The youngest opposition leader, Dorin Chirtoaca, became especially popular after 2007, when he had succeeded in defeating in direct elections a prominent candidate of the Communist Party, Zinaida Greciannai. Nonetheless, fighting in different "weight categories", as it were, the opposition leaders were successful in becoming prominent only when they engaged in direct confrontation with the Communists, thus gaining public visibility and recognition, and succeeding thus in defeating some of the weaker candidates of the ruling Communist Party. The results of the 2005 elections brought no significant changes, but nevertheless shook the tranquillity of the Communists. Because of the March 6, 2005 general elections, the ruling CPRM lost its constitutional majority in the Moldovan Parliament, but remained in office, with a significantly smaller majority (56 out of 101 mandates). This opened the way for a more balanced political system, where the opposition and civil society had a greater role to play, and where centralizing or undemocrat-

⁵⁸ In April 2001, leader of CPRM declared that Moldova should become a 'European Cuba'. One month later, he declared that if the Communists will lose elections, then NATO tanks will advance into Russian territory, in Briansk region, almost 200 km from Moscow. Briansk Oblast lies in western Russia in the western part of the East European Plain, occupying the middle part of the Desna River basin. Source: <http://www.sar.org.ro/files/PWR%201%202005%20Moldova%20alegeri.pdf>

⁵⁹ Vladimir Socor, Moldova's political sea change, Monday, April 11, 2005, Jamestown Monitor

ic trends could be reversed under public pressure from external-internal coalitions of civil society groups, opposition parties, and Moldova's partners for development (US, EU, OSCE, and the Council of Europe).

However, the emerging regional changes associated with the "colour revolutions" in Ukraine and Georgia, and an apparent domestic regrouping of the opposition parties in Moldova forced, in 2005, a considerable turnaround. Only three political parties/blocs entered the Moldovan Parliament in March 2005, due to a relatively high election threshold (4%). Nevertheless, international and local observers concluded univocally that the ruling party abused its position to the detriment of opposition parties and candidates, despite the formal acceptance that elections were free and generally fair⁶⁰. The incumbent president, Voronin, was re-elected with a large majority due to the support of certain opposition groups, while in return, the CPRM leader promised to carry out a number of reforms requested by the opposition. In its first session, the Parliament of the Republic of Moldova unanimously adopted a *Declaration of Political Partnership for Achieving the Objectives of Accession to the EU*. This proved to be a rather interesting attempt at building consensus politics in Moldova, aiming to create cohesion on the way to resolve the existing conflict in Transnistria.

The consensus-based politics appeared to be an encouraging development in Moldova, where different parties and political groups could discuss freely and promote their own ideas, on the basis of the national interests and constitutional principles. In the meanwhile, civil society produced and vocally advocated for an alternative plan for settling the Transnistrian conflict, under the title – '3-D Strategy on the conflict resolution in Transnistria', based on three major vehicles: democratisation, demilitarisation and decriminalisation of the separatist region, by closing the operating smuggling networks, largely perceived as being the last resort of separatism⁶¹. Receiving the so-called 'conditional support' of three political parties (Christian-Democrats, Social Liberals and Democrats), the Communist Party accomplished its first political task – re-electing their leader for the Presidential office. The Communists remained in power, while the opposition leaders believed they would be able to use the same 'consensual politics' as a leverage to influence the behaviour of the Communists and repeal the existing setbacks of the political regime. In particular, the opposition parties desired a comprehensive reform of the largest Public Broadcasting Company (Teleradio-Moldova), they were also willing to amend Electoral

⁶⁰ Moldova Country Report, Freedom House, 2006 – <http://www.freedomhouse.org/template.cfm?page=47&nit=461&year=2008>

⁶¹ Igor Botan, Moldova: Post-transition, Parliament faces Separatist, Political and Electoral Conflicts, in UNDP Initiative on Parliaments, Crisis Prevention and Recovery, April 2006 – www.parlcr.undp.org

Code and composition of the CEC, to conduct effective judiciary reforms, to guarantee freedom of expression, and enhance the quality of good governance and local autonomy.

It soon became apparent that the re-election of the CPRM leader was the only possible outcome acceptable to the Communist Party and, in spite of the big hopes of developing the atmosphere of consensual politics, most of the promises remained strictly on paper. Although the government had been increasingly receptive to civil society opinion on certain issues, its co-operation remained ineffective, while the state administration was too slow to withdraw its censorship of the mass media. This is why, already in the 2007 local elections, the ruling party turned back to the practices of harassing independent media outlets, stopping the reforms announced in the public TV and Radio Channels, to the bewilderment of those who endorsed the consensual style of politics. In May-October 2007, after a round of failed attempts to elect a mayor of Chisinau (due to low turnout), a young liberal candidate named Dorin Chirtoaca defeated the principal candidate of the CPRM, Zinaida Greciannai, who later became the acting Prime Minister (March 2008).

Beginning in 2008, Communist Party leaders, backed up by Christian Democrat Popular leaders, decided to amend the existing Election Code by abolishing pre-election alliances, banning the participation of the holders of multiple citizenships to the competition for official positions, but also by increasing the threshold for the validation of election results, as well as for the selection of the election winners, following the proportional representation electoral system in elections. Both amendments were just the opposite to the previous recommendations of the Joint Opinions of the Venice Commission (Council of Europe) and the OSCE, but were described by the ruling party of the Communists as the only political option they would accept. In 2009, the Communists tried hard to keep their party control over the main state authorities.

Given the hyper-personalisation of the Moldovan political landscape, after more than eight years of rule, President Voronin still enjoyed the highest scores of popularity. In July 2009, Voronin was rated favourably with 37.5% (between the two consecutive elections), at practically the same level with Marian Lupu (37.6%), who just left the ranks of the ruling party⁶². Polls thus suggest that voters are very loyal to their preferred leaders, whom they trust to a much larger extent than any party programmes or sophisticated election techniques. Since political parties are rated rather lowly, politicians receive public recognition when they win office. Thus, Marian Lupu remained a privileged actor in 2009, because of his previous exposure

⁶² Public Opinion Barometer, July 2009, IPP, www.ipp.md

and recognition as a possible successor to the Communist leader, Vladimir Voronin, who, nevertheless, decided to keep him at arms' length, preferring instead some less well known figures as candidates to the highest state position, who might be less competitive to the party leadership.

Table No. 2 Political favourability ratings

	2001	2005	2006	2007	2008	2009
Vladimir Voronin	70	47	44	43	41	37,5
Marian Lupu	–	33	31,4	28,7	40,1	37,6
Dorin Chirtoaca	–	–	14,1	29	34,6	27,8
Vlad Filat	–	–	–	8,8	12,7	22,5
Mihai Ghimpu	–	–	–	8,9	9,9	15,8
Iurie Rosca	16	15	15,4	8,1	8,3	8,9
Serafim Urechean	43	28	21	24,9	18,8	16,9

Source: Combined data from the Barometer of Public Opinion, IPP

Nation-wide polls show persistent high rates of trust in the Church, army and Mass media, followed at significant distance by local governments, and the President of the country, as evidenced in the figures below (Table 3). Political parties were only 8th; respondents trusted the police and banks more than political parties. Confidence scores show a descending trend for political authorities in 2010, while the Church, army and mass media preserve their leading positions, with a slight increase of trust in local governments.

Table No. 3 Confidence in public institutions in Moldova

	2001	2002	2005	2006	2007	2008	2009	2010
	February	March	February	April	May	April	March	May
Government	19	48	49	40	36,1	28,8	34,1	27,4
Parliament	10	39	46	39	32,1	27,5	34,3	26,1
President	15	65	56	51	47,2	36,3	40,5	24,3
Judiciary	26	33	41	31	31,7	24,3	27,7	22,9
Army	38	48	52	46	45,7	43,8	44,5	44,1
Church	77	80	80	79	78	77,1	81,6	81,9
Mayors	33	56	55	42	47,3	44,3	46,5	51,4
Political parties	11	21	28	20	19,4	14,3	16,4	16,8
Mass media	53	48	61	63	65,7	53,8	58,6	61,5

Source: Combined data from the Barometer of Public Opinion, IPP

However, the political landscape in Moldova is deeply polarised and split by multiple contradictions of ideological, cultural, ethnic identification, language and confessional character, which are seen as core ingredients for a highly pluralistic environment for political parties. Under such circumstances, political parties resort systematically to populist slogans, embracing transitional difficulties as an almost natural platform from which to “divide and rule” considerable shares of the population, building on a weak political culture, and under the leadership of charismatic populist figures. Although parties acknowledge the persistence of an over-personalisation of the political scene, they see this as a long-term challenge, and do not have the time and resources to change this. So, if one would analyze the succession of governments in Chisinau, one could argue that these have been largely a succession of populist groups, which have only changed their external aspects and rhetoric, but never their inner reasons to keep power. The nationalists, the agrarians, the socialists and the communists: all of them had difficulties in adapting to the political scene, but they never changed their main approach to political power, namely that power was an instrument of wealth creation, and for the reinterpretation of the past.

So, if balancing between East and West was a major tactic for President Petru Lucinschi, then by contrast, the Communists who ruled after 2001 had the ambitious goal of restoring the structures of the former Soviet regime. These included former collective farms, the party’s grip of power, and an ambiguous strategy to join the inter-state union of Russia and Belarus. Optimistic claims about the possibility of solving the conflict in Transnistria have often been made by politicians in Moldova for populist reasons; nevertheless, the lack of strategic support and operational resources to achieve a breakthrough towards effective “reintegration” has left the same politicians dependent on “external agendas”. Parties have not been averse from accusing each other of being ‘fascists’, ‘nationalists’, ‘neo-communists’ or ‘Bolshe-

viks', in an attempt to tarnish each other's reputation. However, such ideological labels make little sense since parties often express their popular support usually to their leaders, whereas support for the parties and their ideologies *per se* is usually rather low. In the absence of any clear programme, political parties can be identified mainly with some specific issues with which they identify.

It is remarkable that no political party in Moldova can be seen as "extreme left" or "extreme right" forces. Sometimes the Christian Democrat Popular Party was seen by the left wing as a radical group, due to its traditional self-identification with the ideas of a "union of Bessarabia with Romania", while CPRM was blamed of being "extreme left" for deploring the demise of the USSR, and its calls for a Soviet restoration. At the same time, both parties have tried to moderate their ideologies, at least from a rhetorical level, thus coming closer to each other, and have been able to gain considerably from the turbulent times of transition. It would seem that political identities and public support for parties in Moldova rely extensively on the 'charisma' and personalities of their leaders, and less on principles, or agenda and representation of social interests. Thus, the political scene is overcrowded on the centre, left and right, and in spite of the painful Soviet past, direct identification with the far left does not create any discomfort for the active political parties and their leaders.

Moreover, the left wing parties have a larger appeal to citizens than right wing parties, primarily because of their socially-minded goals, and not least, because of a considerable nostalgic sentiment towards the defunct Soviet regime. A 2008 survey showed that almost 11% of respondents see themselves as belonging to a 'USSR people', almost twenty years after the Soviet Union's collapse⁶³, while 27.4% interpreted the events of June 28, 1940 as the liberation of Moldova by the USSR from the Kingdom of Romania, in contrast to 34.2%, who see this date as the beginning of 'an occupation'⁶⁴.

Their vocal populism has prevented so far other political groups (liberals, Christian democrats) from gaining electoral ground. The left wing populists have even attempted to exploit some liberal ideas and benefits for campaign benefits. This was the case for instance of the "liberalisation package of laws", launched in 2007 by the incumbent President Voronin. Social and economic liberal ideas can be therefore found in almost all major party programmes, as well as full references towards the social welfare state. In institutional terms, the political scene of Moldova has been defined by the existence of a dominant party (first the Agrarians and then Communists) which has formed alliances with one or more satellite parties.

⁶³ Survey on Family Values, IDIS/CBS Axa, 2008.

⁶⁴ Barometer of Public Opinion, May 2010, IPP, <http://www.ipp.md/libview.php?l=ro&idc=156&id=552&parent=0>

Table No. 4 Left – Right positioning of political parties in Moldova

	Far left	left	Centre-left	Centrist	Centre-right	right	Far right
	-10	-8	-4	0	+ 4	+ 8	+ 10
POLITICAL GROUPS							
Conservative /Collectivist Socialists:	Communist Party of Moldova (CPRM) Social Political Republican Movement ,Ravnopravie'	Political Movement 'Speranta – Nadejda' Socialist Party 'Patria-Rodina' (SPPR),	Democratic Agrarian Party (DAPM) Party of Social-Economic Justice (PSEI)				
Reformed Social-Democrat Group:			Social Democrat Party (SDPM) Democrat Party (DPM)	Republican Party (RP), Centrist Alliance of Moldova (CAM)			
Reformed Social-Liberal Group				European Party (EP)	Our Moldova Alliance (OMA) 'New Force'	Liberal Democrat Party (LDPM)	Liberal Party (LPM) Liberal National Party (LNPM)
Christian-Democrat Group:							Christian-Democrat Popular Party (CDPP)
Others ⁶⁵		Humanist Party Conservative Party Republican Popular Party	Green Alliance				

Source: IDIS Viitorul Data, 2010

⁶⁵ The category of 'others' include some political parties, which have attempted to adhere to supra-ideologies, such as: Humanist Party (HPM), a party with a centrist orientation, Conservative Party (CoPM), sharing a conservative view, as well as Green Alliance (Green), the environmentalist movement.

The latest parliamentary elections of April 5, 2009, produced in its turn a series of protracted controversies, both at the national and international level, which ended with serious accusations against the authorities, of having committed electoral fraud. In particular, the opposition parties claimed that considerable manipulation took place, including counterfeited lists of voters. They blamed the ruling party of deliberate actions in this regard. Prior to the election, the stakes were extremely high, therefore both camps launched their electoral actions long ahead the official campaign, expressing their will to win no matter the costs. The ruling Communist Party (CPRM) appeared too strong to lose elections in a process in which it had institutional advantages and administrative resources, including biased and censored state media, and a partisan state administration and prosecution. At the same time, the Communists seemed to be too weak to win elections with a fair competition, therefore, the election process was afflicted by serious and systematic irregularities, including the significant abuse of administrative resources in campaign, domination of the state-controlled mass media, and massive use of general prosecution, special services and police in various actions to intimidate the ruling party's contestants during campaign. On the second day after elections, opposition parties claimed that they found more than 20,000 falsified signatures on the voter's lists, including those of dead persons, as well as people working outside Moldova. Although the opposition contested the election process, the Central Election Commission announced the final results by 14 April, and the Constitutional Court validated the results, without even considering the evidence submitted for verification⁶⁶.

The opposition parties then claimed that they had proofs of multiple voting, as well as of the regular use of fake names in elections. Both the Court of Appeal and the CEC turned down the claims, while the former even declined the request of the opposition to make copies of the lists of those who voted in elections. As a consequence, rumours that Communists were hiding the signs of fraud increased the number of protests. Aware of the inequality of forces/resources during the campaign, the opposition raised the issue of legitimacy, and claimed that fraud had been committed in the elections. The announcement of the election results led to demonstrations in Chisinau with crowds of young people feeling they were cheated and that somebody had "stolen their vote". Some parts of the demonstrations were organised by anti-communist groups, but most of them spread spontaneously following calls via Twitter and Facebook⁶⁷, demanding a change in the government and believing that most of the country had really voted for change.

⁶⁶ Moldova: Ex-USSR's leading communists retain power By Eugen Tomiuc – RFE/RL, Tuesday, April 07, 2009

⁶⁷ Moldova's 'Twitter Revolution', Radio Free Europe, Radio Liberty, April 8, 2009, www.rferl.org/content/Moldovas_Twitter_Revolution/1605005.html

A widespread mistrust in the election results, evidence of the broad use of state resources, biased media coverage and the brutal interference of police and prosecution in the election campaign made people respond by protesting. Massive protest actions turned violent when the police hit the protestors, while open opposition to Voronin was labelled as actions directed “to undermine the statehood of Moldova”. The Communists accused the opposition of having organized a *coup d'état*, and opened criminal cases against them, while at the same time insisting that Romania was partially to blame.

On their side, the liberal parties claimed that the CPRM had used the event to crush the opposition, and install a dictatorship. However, the riots corresponded to a large extent with the psychological situation of the society, which felt deceived as well as angry against the Communist Party that was unable and unwilling to share the power with other actors. The whole machinery of state authorities, media, police and other structures had acted as electoral agents for the Communists. Post-election riots and continuous clashes between the opposition supporters gathered on the second day after the elections. Thousands of people, protested against the alleged frauds, administrative abuses, and the corrupt regime, which was unanimously tied with President Vladimir Voronin, leader of the incumbent CPRM. The authorities' efforts to intimidate the political parties, civil society and media after the events of 6–7 April basically destroyed the good functioning of the mechanisms guaranteeing the fundamental rights and freedoms of citizens.

As a result of post-election turbulent reactions, and brutal intervention of police against the protestors, European Parliament, seconded by the Council of Ministers of the European Union, as well as the Parliamentary Assembly of the Council of Europe (PACE) adopted harsh statements on Moldova. While the OSCE Mission to Moldova condemned the post-election violence, appealing to all sides for restraint⁶⁸, the Rapporteurs of the Council of Europe noted serious violations of the human rights perpetrated by the police during the events of 6 and 8 of April, requesting ‘immediate and accurate information from the authorities’⁶⁹. Nevertheless, in the election results, the Communists (CPRM) secured 49.8%, followed by the Liberal Party (13.13%), Liberal Democrats (12.43%), and Our Moldova Alliance (9.77%)⁷⁰. But the results of elections were bitterly contested by those who claimed the elections were rigged, and that several irregularities had categorically compromised the

⁶⁸ Post-election interim report on the 5 April 2009 parliamentary elections in the Republic of Moldova, 17/04/2009m www.osce.org/documents/odihr/2009/04/037278_en.pdf

⁶⁹ Situation in Moldova: PACE co-rapporteurs ask the authorities for ‘full information’, BICE.md, 16.04.2009.

⁷⁰ www.e-democracy.md/elections/parliamentary//2009

election process. Domestic and international observers noted several cases of multiple voting, harassment of the opposition parties, and various forms of overt 'hate speech' campaign behaviour against competitors.

The final reports of the OSCE/ODIHR election observation missions for the parliamentary elections of April 5 and July 29, 2009, documented a range of irregularities, together with serious inconsistencies in the current legislation, as well as problems in applying the Election Code. As the first Observation Mission Report of the OSCE/ODIHR noted: "while many of the OSCE and Council of Europe commitments were met, further improvements were required to ensure an electoral process free from undue administrative interference and to increase public confidence". The report further noted that the "observation of post-election day developments revealed further shortcomings that challenged some OSCE commitments, in particular the disregard for due process in adjudicating complaints of alleged irregularities and deficiencies in the compilation of voter lists lodged by opposition political parties."⁷¹

Thus, post-election events stimulated the creation of a new political reality, shaped by mutual accusations, brutal treatment of the protesting groups, and rising fears that the semi-democratic regime led by Voronin would turn rapidly into a sort of direct autocracy beyond any checks and balances. The Communists had enough votes (60) to form a new government after the April Elections, and even install a Speaker of the Moldovan Parliament, but could not elect a new President, for which they needed one vote from the opposition. Few had expected, however, that the missing one vote would undo the election "triumph" of the ruling Communist Party, which appeared not to be ready for the difficult post-election conflicts, nor any willingness to accept a political dialogue with the opposition. Three opposition parties, which had just entered the Parliament (the Liberal Democratic Party, the Liberal Party and the Our Moldova Alliance), decided to close their ranks, refusing to deliver that one vote to "preserve" the stability claimed by the Communist Party after the elections.

These parties had a number of reasons for refusing to vote for the CPRM candidate. First of all, the ruling Communist Party appeared to be definitely isolating itself from its previous or possible political partners. Unlike the 2005 elections, which allowed the Communists to win another term of presidential mandate with the votes of some provisional allies (CDPP, SLP, DP), in 2009, the incumbent party seems

⁷¹ OSCE/ODIHR Election Observation Mission Final Report for the Parliamentary Elections of April 5, 2009 (June 16, 2009); OSCE/ODIHR Election Observation Mission Final Report for July 29, 2009 (October 14, 2009). Source: http://www.osce.org/documents/odihr/2009/10/40763_en.pdf

to have miscalculated its strengths, and chosen for a course of radical selfishness with almost no chance to find a compromise with any of the three liberal parties. The IPP Survey showed that two social democratic parties (Democratic Party and Social Democratic party) and the oldest political formation since 1990, the Christian-Democrat Popular Party could remain well outside of the future Parliament, if they would not be able to win 6% of votes to overcome the threshold. Since elections were organized on the basis of a proportional representation system, the votes accumulated by parties that did not reach the 6% threshold, were distributed among the winners, which thus these parties added additional strength to dispute the right to designate the new President of the country (with 3/5 of the deputies), and nominate the Prime Minister (with a simple majority of deputies, 52 seats). In the past, almost 20 to 30% of votes have been redistributed to the winning parties. But the effects of the distribution were influenced by the rate of participation.

In 2009, electoral standards were considerably compromised during the election campaign. Already in 2008, Ambassadors of the EU countries accredited in Moldova twice called upon central authorities to respect democratic norms, and to take the upcoming elections as a serious test for the country on its path to European integration. Prior to the elections, a number of causes for concern had emerged. Indeed, some ten years earlier it would have seemed inconceivable that politicians or independent NGO leaders would be banned from appearing on the official TV, or that public financing would be seen as a 'state secret' and concealed from the mass media. The Police and Prosecution Office were used as political weapons, instilling fear and anxiety. A number of senior municipal civil servants from Chisinau had been given two-three year prison sentences, being released after their cases received a redress in the European Human Rights Court. Hundreds of top-and middle-ranked civil servants, suspected of sympathizing with the opposition parties, were dismissed from their earlier positions, at the request of the ruling party leadership. Censorship of the public media and concentration of private media in the hands of people loyal to the ruling party deepened social divisions. Opposition parties complained that over 50% of the regular news at the Public Company 'Tel-radio-Moldova' was exclusively reserved for daily appearances of the incumbent party officials, undermining professional reporting standards.

Third, the sentiment of deep and inevitable financial crisis was widespread, affecting the financial reserves at the National Bank; trust in the optimistic statements made by the ruling officials soon declined. Since Moldova's economy was largely based on consumption, driven primarily by foreign remittances, and with more than 70% of the state budget collected directly at the border custom from imported goods, it cannot but import other countries' inflation via its imports. In February, the National Bank of Moldova lost 20% of its currency reserves, continuing to defend a

strong national currency (lei), at the expense of exporter's incomes⁷². In the run-up to the 2009 elections, the economic crisis could have had two effects on voters; it could have either brought the undecided closer to CPRM, with its slogan of 'stability', at a time of potential risks; but it could equally have alienated its last-minute supporters, feeling they are left unprotected.

Despite unilateral concessions, the participation of Transnistrian voters in Moldovan elections was not accepted. Isolated from the mainland of the country, the separatist enclave has enjoyed a bad reputation as an economic "black hole", but also 'an open-air museum' with Soviet-style elites. A joint Statement, undersigned by Presidents Medvedev and Voronin, in Moscow, some weeks before the election day in Moldova in April 2009, suggested Moscow's intention to press Chisinau to accept the 'equal status' of Transnistria, as a basis for a federalized Moldovan state. Analysts saw a double inconsistency in Voronin's stance: first, Voronin seemed to be ignoring the 1999 Istanbul OSCE Summit Declaration, which explicitly requested that Russia evacuate its army from the region, with a later conversion to a demilitarized civilian peace-keeping mission. Voronin also seemed to be overturning Moldova's previous stance that the EU and US should be seen as mediators in the 5+2 format; suddenly, Voronin had been persuaded to negotiate in a format that was much more favourable towards Russia, the so-called 2+1 format.⁷³

The rapprochement towards the EU placed a special attention on the implementation of democratic standards for elections during 2008/2009, so that the EU's appeals during 2009 had a particularly deep impact on Moldova's political system, since no political party could neglect these. This despite the fact that President Voronin had showed his sceptical attitude towards the EU's proposed Eastern Partnership, in February 2009, saying that it 'means cookies, (not real food), and that he [personally]... shares the opinion that 'the only scope this initiative brings is to encircle Russia, as a hostile state'⁷⁴. The statement set off critical reactions from the opposition, which disagreed with the position of the CPRM leader.

Some analysts noted that this should be seen definitely as a 'tribute paid to the obvious political backing received from Moscow', a perception reinforced (in the eyes of some) by Voronin's subsequent meeting at the Barvikha residence near Moscow with President Dmitry Medvedev, and the leader of the Tiraspol Administration, President of the unrecognized PMR, Igor Smirnov, where they both endorsed a

⁷² Info-Prim Neo New Agency, 15.02.09

⁷³ Deca Press News Agency, 20.03.2009, DECA-press

⁷⁴ Evz.ro, 28 Februarie 2009. Voronin apără Moscova de „Parteneriatul Estic”, available on: <http://www.evz.ro/detalii/stiri/voronin-apara-moscova-de-parteneriatul-estic-841514.html>

Russian-drafted joint Declaration⁷⁵. For electoral reasons the President apparently agreed to drop any references to the withdrawal of Russian troops from Moldova (Transnistria) until a political settlement had been attained, ostensibly to ‘guarantee’ such a settlement, and accepting thus the Russian plan to transform the existing ‘peacekeeping’ operation into an international operation of civilian character. President Voronin had equally admitted a sort of ‘equivalence’ between the status of Moldova, as a ‘sovereign, unitary, indivisible and independent state’ (Art. 1, Constitution) and the unrecognized region of Transnistria, under a Russian plan to arbitrate a transition towards a possible ‘confederated state’, as a *fait accompli* outside the existing “5 + 2” international format of negotiations.

The outcomes of the pre-election visit to Moscow were deplored by most of the opposition leaders, and vigorously criticized by the civil society and political analysts, who called this ‘a dangerous mistake’, ‘an adventurous escapade’, and which was said to ruin Moldova’s position in the conflict settlement process. Although President Vladimir Voronin has denied allegations that his visit to Russia is linked to elections in Moldova⁷⁶, his statements only increased public mistrust. Instead, Voronin obtained exclusive interviews on the largest Russian TV and Radio Channels, rebroadcast into Moldova, which also frequently televised images of Voronin, meeting Medvedev, as well as the Patriarch of the Russian Orthodox Church. The Communist leader paid a second visit to Moscow before the 29 July elections, highlighting Moldova’s place in CIS, but sending strongly worded messages to the EU and Romania⁷⁷. Voronin blamed ‘Western’ influence, which was allegedly assisting the opposition ‘to remove Communists from power and liquidate Moldovan statehood’⁷⁸, and that he personally ‘is ashamed of having such an opposition’⁷⁹.

⁷⁵ The Jamestown Foundation, V.Socor, Voronin-Medvedev Accord Demolishes Moldova’s Negotiating Position on Transnistria Publication: Eurasia Daily Monitor Volume: 6 Issue: 54, March 20, 2009.

⁷⁶ <http://politicom.moldova.org/news/voronin-denies-link-between-his-moscow-visit-and-coming-election-201707-eng.html>

⁷⁷ “The EU should deal with the liberalization of visa procedures with the Republic of Moldova as soon as possible. An iron curtain between our country and the EU, which has been erected along the Romanian-Moldovan border, coupled with the active distribution of Romanian citizenship [to Moldovans], is a huge threat not only to Moldova but also to regional stability,” Voronin said.

⁷⁸ Moldova accuses Romania of staging riots, VALENTINA POP, 08.04.2009, ‘Euobserver.com. <http://euobserver.com/9/27933>, see also: Russia furious with EU over Twitter revolution. Moscow backs Moldovan President after he accuses Romania of supporting coup By Shaun Walker in Moscow Thursday, 9 April 2009 <http://www.independent.co.uk/news/world/europe/russia-furious-with-eu-over-twitter-revolution-1666121.html>

⁷⁹ Moldova azi. Voronin off for one-day visit to Moscow – <http://www.azi.md/en/story/3846>

1.4. POST-ELECTORAL DEVELOPMENTS IN MOLDOVA

Although reporting an impressive majority in the April 5, 2009 national elections, the Communists found it extremely difficult to come to terms with the parties they had earlier accused of crimes. Already by April 29, President Voronin issued a Decree to set up a State Commission on the investigation of causes, conditions and effects of the 6–7 April events, but made a wrong move by appointing as its Chairman one of his close party colleagues, Vladimir Turcanu, who later appeared to be totally inconsistent in his mission⁸⁰. The post-election political crisis in Moldova led to the escalation of political conflicts, and a sudden deterioration in relations with neighbouring Romania. Moldovan authorities presented the events as an attempt of ‘foreign forces to intervene in the domestic affairs of Moldova’, thus presenting Romania as the main actor beyond the scene, although President Voronin also pointedly expelled NDI Country Office Director, Alex Grigoriev, a US citizen, and claimed also that ‘Serbian citizens’ had been noticed amongst the rioters during 7 of April, but no evidences have been presented.

Accusations against Romania allowed the Transnistrians to appeal again for Russian support, and make the claim that “Romanisation” is the main impediment for a political settlement. On the second day of the protest actions, Tiraspol requested from Russia an increase of peacekeepers from 500 to 2,700 troops, as well as a squad of helicopters, to deter the entrance of “extremists” into the region. The mobilization of Transnistrian separatists coincided with a larger Russian diplomatic offensive. The Russian Duma and the MFA reacted with a number of aggressive statements in support to the ‘territorial integrity of Moldova’ against the supposedly irredentist actions of Romania, hinting that in case of a Communist defeat, Moscow would recognize Transnistria. The situation in Moldova was monitored by the EU, which called for political dialogue and respect for human rights, in contrast with Russia which requested an end to violent actions, and called on the world to recognize the authorities of Moldova against the so-called ‘attempted orange revolution’. Moreover, Moscow called on Brussels and Bucharest to stop the use of EU and Romanian symbols in the protests. Moscow’s political backing appeared to encourage Moldova’s authorities, which despite the continuous calls from Brussels, continued to arrest peaceful protesters between 8 and 15 of April, and intimidate the opposition, mass media, civil society.

⁸⁰ Independent reports (Radio Free Europe) showed however that Turcan could have been encouraging protestors to fly the flags of Romania and the EU on the buildings of Presidency and Parliament, which led President Voronin to accuse Romania of having plotted against the independent statehood of Moldova, expelling the Romanian Ambassador, and imposing a visa-regime on Romanian citizens.

In spite of the escalated hatred between the ruling power and the opposition, Western diplomats called repeatedly for dialogue and reconciliation, alarmed by the effects of the economic crisis and the dire situation of the population. Resolution of the existing conflicts was not an aim in itself, but an opportunity to redress the situation of the major constitutional authorities, which could not perform well during the events of April 2009 in Moldova. Civil society, along with European organizations, mobilized themselves to mediate between the conflicting sides. On April 28, 2009, a Report (No. 11878) was adopted by the Parliamentary Assembly of the Council, incorporating a list of measures to be implemented by Moldovan authorities to unlock the crisis: serious investigation of the protest actions by an international mission of experts, transformation of the public broadcasting company, adopting of a special law to protect the rights of the political opposition, etc.

On May 4, 2009, a Roadmap for national reconciliation and European Integration was presented by civil society to the main political stakeholders. Pressures on the opposition to accept dialogue with the ruling Communists were high, but the ambiguities persisted. After consuming two consecutive attempts to elect a new president, anticipated elections were announced for July 29, 2009. Mutual accusations, and widespread hatred, could not clear the road towards political dialogue, but only increased the political splits and unwillingness to negotiate a political situation. To lessen the unity of the opposition parties, CPRM leaders announced they would negotiate not with the parties, but with individual Members of the Parliament – implying thus that the missing votes could be bought. This infuriated the opposition and democratic media, and therefore, when the leader of Communists called on the opposition to ‘behave as real patriots’ by voting for a new President (proposed by the CPRM), this was translated as an invitation to traitors, or an invitation for the possible corruption of individual MPs.

After two unsuccessful attempts to persuade the opposition to vote for the new president, on 3 June, Voronin had to officially announce anticipated elections, to be held on 29 of July. CPRM leaders also announced changes to the minimum turnout of voters (lowering it from 50% plus 1 to 30%). The ruling party leaders attempted thus to hold early elections in less than 45 days, leading to concerns that the elections would be held under the cloud and the fear generated by the April riots. Some also speculated that the date of the elections (a Wednesday, contrary to Moldovan political traditions) had been chosen to increase the number of CPRM votes and suppress opposition votes.

In the climate of tension following the April riots and the post-election crackdown, Moldova saw an aggressive and polarized election campaign for the 29 July anticipated elections. The opposition claimed a “moral victory” against Communists, and presented the failure of Voronin to receive any votes from the opposition in the two

rounds of voting for President as a confirmation of their capacity to eventually win over the communists. The Communists repeatedly described their campaign in terms of a fight to 'defend the statehood' against its 'internal and external enemies'⁸¹. For instance, former prime minister, Greciannai claimed on 10 June 2009 that the foremost task of the Moldovan Government was to keep Moldova on the map, and that objectives of an economic and social character were only secondary⁸². The opposition also campaigned against "red oligarchs", blaming Voronin for the poverty of the country, and arguing that Voronin's son, Oleg, was one of the richest businessmen in Moldova.

Thus, the campaign surpassed the March-April campaign in its intensity and polarization, with very strong accusations on both sides. Although the Communists claimed that they would win at least 70 mandates after the new elections, they received only 48, with 12 less mandates than in the previous April elections. The election results of opposition parties (Liberals, Liberal-Democrats, Democrats and Our Moldova Alliance) opened the way to the creation of an effective alternative to the Communist government⁸³. The four opposition parties gained 53 seats in the 101-seat parliament. They created in 5 August 2009 an "Alliance for European Integration" and by 28 August, the Alliance elected its candidate as the Speaker of the Parliament of Moldova, and negotiated the creation of a coalition-government⁸⁴.

The Alliance stated its firm commitment to achieve five major goals: restore the rule of law; overcome the socioeconomic crisis and foster economic development; decentralize the government and promote local autonomy; achieve Moldova's territorial reintegration; achieve Moldova's European integration and follow a balanced, consistent and responsible foreign policy. The Communists' invitation to form a left-centre-left coalition was not taken up by any of the former opposition parties, to which Voronin reacted by accusing the West of having paid for the victory of the opposition in elections⁸⁵. In an interview provided to the Russian Radio Station Echo Moskvi, he accused the US and Romania of financing the parties of the opposition in order to destroy Communist rule, and to have been behind the creation of the Alliance.

⁸¹ Moldovan communists say opposition may provoke civil war, June 25, 2009, available on: <http://politicom.moldova.org/news/moldovan-communists-say-opposition-may-provoke-civil-war-201902-eng.html>

⁸² Program of the Government of the Republic of Moldova, June 10, 2009, http://gov.gov.md/www.gov.md/file/raport%20de%20activitate/md/Programul_GRM_final_md.pdf

⁸³ In 2008, the Communists and Christian Democrats voted for amendments to the Election Code, prohibiting creation of electoral coalitions, with the aim of creating an institutional advantage for large parties, such as the Communists. As a result, the Christian-Democrats failed to get the necessary votes to enter the new Parliament in April 5, and once again on July 29.

⁸⁴ Deca – press, 17.09.09, Chisinau

⁸⁵ Deca Press, 14.09.2009. Ex-president Vladimir Voronin accuses West of having paid for the victory of the opposition in elections

Challenged by the creation of the Alliance, Communists attempted to split the Alliance by calling for the formation of a nation-wide coalition⁸⁶, which would include only two parties (the Democratic Party and Our Moldova Alliance), claiming that the Liberals were extremist parties, but all actors concerned ruled out publicly any government position for the Communists, as well as to form a coalition. Meanwhile, the International Elections Observation Mission led by the OSCE issued a statement⁸⁷ about the elections on 30 July in which it concluded that early parliamentary elections in Moldova met many international standards, but that the process underscored the need for continued democratic reforms to restore public trust. Several shortcomings were highlighted by the observers: the election campaign had been affected by subtle intimidation and media bias; the inaccuracy of the electoral registers had once again exposed weaknesses; and the abuse of administrative resources had a negative effect on the equality of campaign opportunities. A similar assessment of the elections came from the Swedish Presidency of the European Union⁸⁸, the EU High Representative for the Common Foreign and Security Policy Javier Solana⁸⁹ and the EU Commissioner for External Relations, Benita Ferrero-Waldner⁹⁰.

Table No. 5 Parliamentary configuration of the political parties

Political Party	Elections result in April	Number of seats after April elections	Elections result in July	Number of seats after July elections
Party of Communists of the Republic of Moldova (PCRM)	49.48%	60	44.69%	48
Party of Liberal Democrats of Moldova (PLDM)	13.43%	15	16.7%	18
Liberal Party (PL)	13.13%	15	14.68%	15
Democratic Party (PD)	2.97%	-	12.54%	13
Alliance Moldova Noastra (AMN)	9.77%	11	7.35%	7

Source: Adept Association, web-page: <http://www.alegeri.md/en/>.

⁸⁶ PCRM considers that the liberal majority of the Parliament is a “danger for Moldova” and declares it will continue making efforts to create a centre-left-side anti-crisis coalition, Deca press, 02.09.2009

⁸⁷ See <http://www.osce.org/item/39082.html>

⁸⁸ Find the statement at <http://www.se2009.eu/en/2.543/2.578/2.610/2.640/1.11034>

⁸⁹ Full statement at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/declarations/109463.pdf

⁹⁰ Full statement at http://www.delmda.ec.europa.eu/whatsnew/press_releases_en.shtml

The post-election riots, and political changes after April 2009, surprised many political analysts and journalists, since many had not expected to see in Moldova such a response to elections. It also highlights considerable risks and challenges in how an impoverished society can react to the global economic crisis. Analysts suggest that a so-called 'spiral of silence' existed in Moldova, in which people's fear of revealing their true opinions and sympathies led them to hide their true voting intention when asked during polls. This 'spiral' is explained, analysts suggests, by people's fear of losing their stability having little information about the contending actors, who are still new to many of them.

1.5. INSTALLATION OF THE NEW RULING ALLIANCE

On August 28, 2009, at the inaugural session of the new Parliament, the liberal-democratic coalition installed its candidate as a Speaker. With only a rather narrow majority of 53 deputies out of 101 in the Moldovan Parliament, the Alliance proved to be united and coherent. The Communists contested election of the Speaker in the Constitutional Court, claiming that serious breaches of the internal regulation and Constitutional provisions took place. In the meanwhile, Prime Minister Greciannai and a group of its Ministers resigned, being also among the MPs elected on behalf of the Communist Party for the Parliament. They refused however to present a report in the legislative house, fighting back any attempt of the majority group of legislators to call for a hearing of the previous Cabinet of Ministers, considering it an attempt to present the outgoing Cabinet in a negative light in front of public opinion⁹¹.

On September 17, the Court denied that any irregularities, and confirmed that Mihai Ghimpu was the legal interim president of the Republic of Moldova⁹². The government coalition became aware of the complexity of managing a country in full disarray and economic crisis, but achieved a certain unity in part because of the strong opposition of the Communist party, which still held 48 MPs in the Parliament.⁹³

According to the Constitution, 52 votes are needed to elect a speaker of the Parliament, and confirm the Government, but these not sufficient to elect a new President of Moldova (with 61 votes). On 11 September, however, President Voronin informed the Parliament of his resignation, reluctantly ceding his state authority to the in-

⁹¹ Idem

⁹² Deca press, Mihai Ghimpu is the legal interim president of Republic of Moldova, 17.09.2009

⁹³ Four liberal parties form ruling coalition – Alliance for European Integration, 10.08.2009, www.totul.md/en/enwsitem/1203.html

cumbent Speaker of the Parliament, Mihai Ghimpu. He accused the newly-created alliance of intending to abolish Moldovan statehood⁹⁴, and praising his comrades for all their achievements so far. In spite of the fears that the Alliance could be an unstable if not unruly provisional formation, the Alliance kept the tactical initiative by voting in their new Speaker of the Parliament of Moldova, and announced their readiness to form a new Government. This would not include representatives of the former ruling Communists, who would thus remain in opposition (as the largest opposition fraction). But, international analysts warned the new government of the risk of repeating the Ukrainian model of a ‘fractious legislative, permanent and chaotic crisis in the national government’, urging the liberals to draw a prompt and essential lesson from Ukraine⁹⁵.

While one could President Voronin’s decision to step down as a defeat of the Communists⁹⁶, and as an opportunity for the Alliance, the complex nature of the Alliance has many analogies with its old-type – ADR (Alliance of Democratic Forces) of 1998, which produced mixed results⁹⁷. Since 2009, the Alliance has sent strong signals requesting the European Union’s engagement in reforming the country⁹⁸. The Alliance has also committed itself to combat corruption, to free the mass media, to pursue a balanced foreign policy, and resume relations with IMF (which had been frozen by the previous government between the two elections in 2009). Nevertheless, the failure of the presidential elections was repeated again, in November and December 2009, with the Alliance (AIE) being unable to secure the necessary votes to elect a new President.

Art. 87 of the Constitution enshrined the obligation of the President to dismiss the national Parliament, after two consecutive failures to elect the head of state, but at the same time the provisions of art. 85–3 stipulate that ‘Parliament cannot be dissolved twice in the same year’. The above mentioned provisions raised multiple interpretations and tensions. The communists demanded an immediate dissolution of the Parliament, while announcing a new date for anticipated elections, mean-

⁹⁴ In his last-minute press conference, ex-President Vladimir Voronin declared he did not trust “the abilities of politicians, who have joined together only on emotions of negation and total denigration of their country and for sharing high posts, to offer the Moldovan society a new positive programme, and that he is unaware of any single example of governance based on the idea of liquidating one’s own native country or dreaming to destroy it”. Deca Press, 11.09.2009

⁹⁵ Louis O’Neill, Note to Moldova: Beware the Kiev Trap! In *opendemocracy.net* (UK), August 10, 2009, www.azi.md/en/comment/5158

⁹⁶ Voronin resigns as acting Moldovan President, September 2, 2009, RFERL, www.politicom.moldova.org/tag/alliance-for-european-integration

⁹⁷ From Alliance for Democracy and Reform to Alliance for European Integration – analogies and differences. Info-Prim Neo analysis. 2009–08–10

⁹⁸ Moldova elects new pro-Europe parliamentary speaker, Eastern Europe, 20.08.2009, www.dw-world.de/dw/article

ing that 'one year' should end in December, while the ruling Alliance attempted to promote the meaning of 'one complete year', i.e. twelve months. To address this obvious stalemate, the Acting President issued a Decree to create a special Committee for the revision of the Moldovan Constitution, and resolve the emerging crisis. Already by the end of February 2010, the appointed Committee for Constitutional Reform announced that they proposed the modification of 64 articles of the Constitution, claiming that this would require the adoption of a new Constitution. Since the acting President is going to fulfil his obligations, according to the art. 80(2) of the Constitution, until the newly elected President would be sworn into office⁹⁹, this prompted the Communists to accuse the Alliance of attempting to avoid elections, or even usurp power.

In response to the growing discussions on the subject of constitutional revision, the Venice Commission responded to a request sent by the Moldovan Constitutional court through an *amicus curiae* brief, adopted at the 82nd Session on March 12–13, 2010¹⁰⁰. In the brief, the Venice Commission reiterated the need to respect the provision requiring dissolution of the Parliament, after a repeated failure to elect the head of the state. But, dissolution of the Parliament cannot come into effect twice in the same year, even if the Parliament fails twice to elect President of the country. The Venice Commission thus sided with the interpretation that the provision of one year should be interpreted as a full astronomic year (12 months), calculated from the latest dissolution of the Parliament, and not according to the calendar year. This presupposes thus that the Parliament cannot be dissolved sooner than June 16, 2010, but nevertheless in a reasonable time span afterwards.

The Venice Commission suggested to the Moldovan Parliament to change only one article, number 78 of the Constitution, which sets up the provisions for the election of the President.¹⁰¹ The Venice Commission called to political dialogue on all conflicting sides to resolve the crisis, suggesting that a comprehensive constitutional reform will be needed, but only after the settlement of the pending political crisis.

⁹⁹ Constitutional Court: Ruling no.43 of December 14, 2000

¹⁰⁰ Strasbourg, 15.03.2010. Venice Commission: When to dissolve the parliament of Moldova – Venice Commission adopts opinion? http://www.venice.coe.int/site/main/Focus_E.asp

¹⁰¹ Article 78, excerpt:

"(3) The President of Moldova is elected with 3/5 of votes of the registered MPs of the Moldovan Parliament. If none of the candidates obtained the necessary number of votes, a second ballot shall be held between the first two candidates established in the order of the diminution of the number of obtained votes in the first ballot.

(4) If in the second ballot none of the candidates obtains the necessary number of votes, repeated elections are organised."

On June 3, 2010, the Secretary General of the Council of Europe, Thorbjørn Jagland, visited Moldova to mediate a solution to the issue of early elections of the Moldovan Parliament, between the ruling Alliance for European Integration (AIE) and opposition (Communists). Mediation efforts led to the fact that all four leaders of the governing AIE have publicly announced that the Moldovan Government will hold a referendum to amend Art. 78 of the Constitution, to introduce a system of direct election for the President, followed by dissolution of Parliament¹⁰². The decision was the result of the fact that a broad compromise between the Alliance and the Communists was not possible, but at the same time the political crisis had to be resolved. The Secretary General stated that all European organizations confirmed his personal support to this solution, and appealed to the citizens of Moldova to exercise their rights to vote in the coming referendum, and elections¹⁰³.

¹⁰² Radio Free Europe, Moldovans To Go To Referendum, Early Polls In The Fall June 03, 2010 http://www.rferl.org/content/Moldovans_To_Go_To_Referendum_Early_Polls_In_The_Fall/2061327.html

¹⁰³ Statement of Council of Europe Secretary General Thorbjørn Jagland on 15.03.2010 – “I am glad to be able to fully support the decision made by the Alliance to end this crisis. I have discussed it with EU leaders and they are fully behind the solution. I have been in contact with all four leaders of the Alliance and the leader of the Communist Party in an effort to find a way to amend Article 78. It was not possible to reach a broad compromise between the alliance and the Communist Party on this and the only way forward was to bring the decision to the people, which is normal in any democracy. Press release – 453(2010) – Council of Europe mediates solution to end constitutional crisis in Moldova, <https://wcd.coe.int/ViewDoc.jsp?Ref=PR453%282010%29&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

II. Institutional Context for Political Parties

2.1. CONSTITUTIONAL PROVISIONS

Art. 41 of the Constitution (Freedom of parties and other social-political organisations) stipulates the ‘right of Moldovan citizens to free access to political parties and other social-political organisations’, which thereby ‘define and express the political will of the citizens, and in accordance with the existing laws, participate in elections’. The Constitution of the Republic of Moldova, adopted in 1994, does not define exactly what is a ‘political party’, setting only the general aims for parties ‘to define and express the political will of citizens and participate in elections’ (Art. 45–2). Nevertheless, Moldovan legislators have enshrined a number of core principles that aimed to outline the explicit meaning and components of the concept of ‘political pluralism’. Thus, the Constitution sets down two basic principles in this regard:

- Equality of all political parties (Art. 41–2),
- Protection of rights and legitimate interests of parties and other social-political organisations (41–3).

At the same time, the Constitution of the Republic of Moldova lists a number of restrictions imposed on political parties. The first and perhaps the most fundamental restriction on political parties is that the ‘usurpation of power’ is described as the most serious crime of the state. The Constitution incorporates the following provision: ‘no individual, or a part of the people (nation), a social group, a political party, or any other social organisation may exercise state power in its own name’ (Art. 2–2 – Sovereignty and state power)¹⁰⁴. Other restrictions are provided in the

¹⁰⁴ Constitution of the Republic of Moldova: Art. 2 – ‘Power usurpation represents the most serious crime against the people’.

Chapter II ‘Fundamental rights and Freedoms’ (art. 24–54), including the following provisions:

- ‘Parties and other social-political organisations, which militate by their views or activities against political pluralism, the rule of law, the sovereignty, independence, and the territorial integrity of the Republic of Moldova, are unconstitutional’ (Art. 41–4):
- ‘Secret associations are prohibited by law’ (41–5),
- ‘Political parties established by foreign citizens are not allowed’ (41–6).

Art. 41 (6) explicitly bans the creation of political parties by foreign citizens. Although clear in its instrumental use, it caused several attempts to interpret it in a restrictive manner in relation to citizens having dual or multiple citizenships. The Law on the Civil Service (No. 273-XVI), adopted on May 13, 2008, imposes some important restrictions on the holding of state/public positions by Moldovan citizens with multiple citizenship. Given the special circumstances (in particular cultural links with Romania) which can lead some Moldovan citizens to hold other citizenships, the imposed restriction was perceived by many as an abuse, if not a deliberate action to prevent Romanian-speaking citizens from participating in the decision-making bodies. In 2003, the Moldovan Parliament adopted a law on dual citizenship, allowing citizens of Moldova to hold other citizenships, but later the same Parliament introduced additional restrictions on a wide range of professional categories, such as: MPs, ministers, judges, police and customs officers, or restrict competition for public positions for dual-citizenship holders. Thus, by toughening restrictions, the ruling Communists intended to prevent, in fact, citizens holding Romanian citizenship from obtaining public or state positions.

When the case reached the ECHR (European Court for Human Rights), it analysed it in an emergency procedure¹⁰⁵. The ECHR ruled, on November 18, 2008, that some of the provisions of the Law infringed upon Art. 3 of Protocol No. 1 of the European Convention on Human Rights Protection¹⁰⁶. After an appeal by the Moldovan Government, which insisted that the scope of the Law is legitimate and democratic, the Joint Chamber of the ECHR ruled on March 10, 2010, by maintaining the previous decision of the ECHR, which declared that the Law violates the right to free elections for Moldovan citizens holding multiple citizenships. Later, the provisions contested by the ECHR were removed from national legislation by the new Parliament of Moldova in 2009. Nevertheless, although the law has been essential-

¹⁰⁵ Decision of the Large Chamber of the EHRC, April 27, 2010, Moldovan Civil Servants can hold double citizenship. <http://www.stireazilei.md/c-2167-3528,Decizia-Marii-Camere-a-CEDO-Functionarii-moldoveni-pot-detine-dubla-cetatenie>

¹⁰⁶ Tanase wins against acting Government, April 27, 2010, <http://unimedia.info/?mod=news&id=18626>

ly improved, following the jurisdiction of the ECHR, the Constitutional Court has not yet revised its own Decision No. 9, as of May 26, 2009, recognizing as constitutional the law contested before the ECHR¹⁰⁷.

Art. 38 of the Constitution enshrines the right to vote and be elected, stipulating that 'the will of the people represents the actual underpinning of state power, which is expressed via free elections, regularly conducted through universal vote, equal, direct, secret and freely expressed' (Art. 38–1). The right to vote is granted by national law to all citizens who have reached 18 years of age by the day of the elections, the only exceptions being related to those deprived of this right, in accordance with the legislation. Citizens may exercise their right to vote, but also to be voted for, in accordance with the existing laws for the elective positions in the State (Art. 39–3). This presupposes that no discrimination can be applied to Moldovan citizens running for various positions, and outlaws any possible restriction in connection with ethnic, social, linguistic, religious, or other background associated to their identities.

A statutory definition of a political party was introduced in September 17, 1991 by the Law on Political Parties and other social political organisations¹⁰⁸. The Law was adopted in the weeks following the USSR's implosion and presented in the Republic of Moldova as an essential document aiming to create the necessary legal and procedural rules for pluralist competition and interaction of the parties with State authorities. By this law, the Parliament of Moldova stipulated the legal procedure for the registration of parties, membership in parties, and general rules existing between the State and political groups of citizens in a competitive environment. Parties are seen as voluntary associations of citizens, established on the basis of their common concepts, ideals and views, which contribute to the realisation of the political will of a part of the population by winning, through legal means, state power and participating in the exercise of power' (Art. 1)¹⁰⁹.

Only citizens of Moldova can be members of parties, and only once they reach the age of 18 or over. Political parties are only allowed to function on the territory of the country, and at the same time other foreign political parties are banned from operating in the Republic of Moldova. This is not explicitly referred to the political

¹⁰⁷ Constitutional Court: Individuals with double citizenship may hold public positions, Unimedia, June 3, 2010, <http://unimedia.md/?mod=news&id=19838>

¹⁰⁸ Law on political parties and other social-political organizations, No. 718, September 17, 1991. // Monitorul Oficial, 1991, nr 11, 12, Art. 106; Зарубежное законодательство о политических партиях (Сборник нормативных актов). / «Луч». – Москва, 1993.

¹⁰⁹ Law on parties and other social-political organisations, No. 718-xii September 17, 1991 Monitor nr.11–12/106 din 30.12.1991

parties, which have established their technical assistance offices, at the invitation of the Government – National Democratic Institute (NDI), International Republican Institute (IRI), Friedrich Ebert Stiftung (FES), Konrad Adenauer Stiftung (KAS). All these political foundations and institutes have decided to assist political parties of the Republic of Moldova, on a non-partisan basis, by developing political training for young activists, conducting quantitative and qualitative opinion research, delivering legal expertise in law-making and application of the electoral law regulations, encouraging women's participation, as door-to-door campaigns¹¹⁰.

In October 2009, branch offices of the US National Democratic Institute (NDI) and International Republican Institute (IRI) have received registration certificates at the Ministry of Justice, and were described as 'important partners in the ongoing process of reforming the political system in Moldova' by the Minister of Justice, Alexandru Tanase¹¹¹. In 2008 and 2009, IRI and NDI specifically worked with political parties of the Republic of Moldova, as they prepared for the upcoming April 5 and July 29 parliamentary elections, but intense disputes, produced by the election results were used by the Communist authorities to suspend the operation of both NDI and IRI offices. Art. 4 of the Law on parties and other socio-political organisations set the basis for their activities, based on the Constitution of the Republic of Moldova. It stipulates that parties may not operate without a statute registered by the competent authorities, and that the leading bodies of the parties must be based on the territory of the country. The same articles bans the creation of parties and other social-political organisations that militate against political pluralism, the rule of law, or aim to change the political regime by violent means or any other anti-constitutional methods, having as an effect to undermine the sovereignty and territorial integrity of the Republic of Moldova, or spread the ideas of war, social, interethnic or religious hatred, using authoritarian or totalitarian methods which violate the fundamental rights of the citizens of Moldova, or run other kinds of activities that contravene the constitutional regime, and are generally incompatible with the norms of international order.

To be registered, political parties of the Republic of Moldova must legalize their statute and programme of activities, and must have at least 300 founding members. The Law bans the financing of political parties from abroad, but also prohibits the use or allocation of resources from the state authorities, except for the organisation of election campaigns, according to the law (Election Code). The Law on Politi-

¹¹⁰ See for instance: IRI Web-Page on Moldova projects – <http://www.iri.org/countries-and-programs/eurasia/moldova>;

¹¹¹ New Moldovan authorities register NDI and IRI offices in Chisinau. <http://politicom.moldova.org/news/new-moldovan-authorities-register-ndi-and-iri-offices-in-chisinau-203773-eng.html>

cal Parties demands explicitly that 'political parties do not intervene in the public education system (schools), or within the activities of the central and local governments' The existing legislation still sees political parties, as only a form of many other forms of political actors, therefore, the Law incorporates under the same term of 'social-political organizations' a wide range of 'fronts', 'leagues', 'mass political movements', encouraging a wide diversity of actors, without restricting the possible forms of representation.

Nevertheless, the Law states that it will not regulate the activity of other independent organizations, created on the basis of professional or cultural interests of citizens, which do not claim to participate in the creation of state bodies (elections). Thus, the law does not encourage political participation of 'non-political organisations', and even set up specific restrictions for the 'registered public associations from running election campaigns', thus making a clear delimitation between parties and public associations.¹¹² The latest amendment was in 1998, where state regulatory agencies found it more difficult to differentiate between parties and other public associations that are publicly involved, but do not run in campaigns.

Art. 5 of the Law enshrined the main elements that needed to be addressed by the statute of parties and other social-political organisations. Subsequent amendments on 10 February 2000 stipulated additional requests about the programmes of parties and other social-political organisations, which need to be presented in writing, and adopted by the Congress or the General Assembly of the respective entities.

Art. 9 (7) of the Law restated the principle of the equality of all parties and other social-political organisations, on the basis enshrined by the Constitution of Moldova, by stipulating several legal conditions necessary to ensure they can pursue their statutory aims. In this regard, the Law bans interference of the state authorities and their official representatives in the activities of parties and other social-political organisations, as well as the 'interference of parties and other social-political organisations in the activities of state authorities', with a limited number of cases stipulated by law. This also encompassed a guarantee against any restriction in the rights of those 'who joined a party or another social-political organisation'.

An amendment made to this Art. 9 (7) in 1998 (Law no.146-XIV din 30.09.98) introduced the 'principle of gender equality in all decision-making authorities at

¹¹² Decision of the Government approving the regulation 'Regarding public associations', No. 593, September 8, 1992, // *Legi și hotărâri adoptate la sesiunile Parlamentului Republicii Moldova (dreptul civil)*, Partea VII. *Законы и постановления, принятые на сессиях парламента Республики Молдова. Часть VII.* / USM. – Chișinău, 1992.

all levels', adding a general clause stipulating that 'people who are found guilty of breaking this provision may face a court charge'. The law stipulated that official acts shall not request citizens to declare their party affiliation. In a similar vein, Art. 11(8–9) required a radical move towards de-ideologization of the education system, banning any form of activities that would cultivate and propagate in schools, to any degree, programmes, ideas or aims of political parties or other social-political organisations¹¹³. Thus, the amendments of 30 September 1998 aimed to adjust the law to the constitutional provisions, in particular to the provisions of the Art. 5, Democracy and political pluralism, which set up the foundation of political pluralism, incompatible with a dictatorship or totalitarian rule, and accordingly stated that 'no one ideology can be instituted as an official ideology of state' (Art. 5–2).

2.2. NORMATIVE PROVISIONS OF PARTY FUNCTIONING IN MOLDOVA

The most cogent structure of norms and regulations on political parties can be found in the Law on Political Parties, adopted in 2007 as an organic law, which replaced the older definition provided by the Law on Political Parties and social-political organisations (1991)¹¹⁴, adopted in the weeks following the Act of Independence of Moldova (August 27, 1991). As one of the first laws regulating general principles for the creation, functioning and dissolution of political parties, the first legislation on political parties had been the object of several revisions (12) and widespread criticism, expressed by party leaders and civil society. For instance, the first Law on parties succeeded in creating by 1991 an operational framework for a myriad of different political wings and groups that emerged after the collapse of the USSR, and therefore, it aimed to:

'...regulate the existence of 'fronts, leagues, mass political movements, etc'¹¹⁵, except independent organisations of citizens which are established to promote professional or cultural interests, i.e. do not aim to participate in the creation of state authorities' (elections)'.

¹¹³ This provision has been regularly infringed by the former ruling party (Communist Party of Moldova), who widely used its territorial branches and control over the Ministry of Education, to set up young organisations of Communist followers (komsomol) and teenager's organisations of Communist Party in schools and summer camps, across the country. See: <http://www.stireazilei.md/c-o-1202>, and also: <http://www.airm.reg.md/wp/?m=200911&paged=2>.

¹¹⁴ Law Nr.718-XII of 17.09.91 on political parties and other social-political organisations

¹¹⁵ Idem, Art. 1–1

Some of the regulatory provisions on political parties have served as a basis for complaints before the Constitutional Court of the Republic of Moldova¹¹⁶, other provisions have been assessed as being, 'too restrictive and inadequate for the democratic standards widely accepted in Europe'¹¹⁷. The interpretability of several of its articles triggered conflicts during its implementation, therefore the principle of freedom of political association and other related rights have been marred. International institutions recommended a revision of the Law on parties taking into account the recommendations made by the Council of Europe and OSCE experts¹¹⁸.

In 2007, a new Law on Political Parties was adopted in the Republic of Moldova¹¹⁹, which responded to several observations and criticisms, but also left a considerable number of issues unresolved. One of the main criticisms was that it had been adopted by the Moldovan Parliament without serious consultation. As a result, opposition parties did not see the new law as a possible remedy for their immediate concerns or needs. Thus, the opportunity to create a good basis for institutional dialogue between political parties, as responsible actors in the political landscape in Moldova was missed. The new legislation did provide, however, a better definition of 'political parties' than the previous law, describing in greater details the most appropriate forms of political activities, strengthening procedures for registration, reporting and dissolution.

If compared with the first legislation on political parties¹²⁰, by which parties were 'voluntary associations of citizens, established on the basis of their community of concepts, ideals and goals, which contribute to the realisation of political will of a certain part of the population by acquiring, via legal ways, state power, and participation in the exercise of state power, accordingly', the 2007 Law on Political Parties defines political parties as being: 'voluntary associations, established as legal entities, by citizens of the Republic of Moldova, entitled to vote, which may contribute

¹¹⁶ Constitutional Court rulings No. 37 of 10.12.98; No. 3 of 29.01.99; No. 110 of 03.06.2003

¹¹⁷ Comments and observations of the Council of Europe' Experts, specific reports of the Committee for the monitoring of membership obligations and recommendations of the Council of Europe (report of 14.09.2007, Doc. 11374) – <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/tao7/EREC1810.htm>

¹¹⁸ Point 16.1.1 – Resolution 1572 (2007) – Honouring of obligations and commitments by Moldova, Assembly debate on 2 October 2007 (31st Sitting) (see Doc. 11374, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Co-rapporteurs: Mrs Durrieu and Mr Vareikis). Text adopted by the Assembly on 2 October 2007 (31st Sitting), <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/tao7/ERES1572.htm>

¹¹⁹ Law On Political Parties (No. 294-XVI of 21.12.2007)

¹²⁰ Law On Political Parties and other social-political organisations, Nr.718-XII din 17.09.91 Veștile nr.11–12/106, 1991

through their common activities and on the basis of free participation of their members, to the expression, elaboration and formulation of their political will' (Art. 1–1).

The definitions used in the new Law on Political Parties proved to be relevant, as they were frequently invoked in law-court sessions in the last half of the decade of transition after 1991, and even to a larger extent after the 2007 official decision of the Ministry of Justice to re-register political parties, as a result of the new legal framework newly adopted by the Parliament. The Law stipulated also that political parties, act 'as indispensable democratic components of a state governed by the rule of law, promoting democratic values and political pluralism', and thus, 'contributing to the formation of public opinion'.

As such, 'parties are functioning through the election campaign, assistance provided to their own candidates during election campaigns, and afterwards, by participation through their own representatives to the exercise of state power, as well as to other activities, in accordance with the legislation' (Art. 1–2). Moldovan legislation deals exclusively with 'political parties' and not with 'parties and other social-political organisations', as it did until 2007.

Art. 3 of the Law on Political Parties regulates the creation and functioning of political parties. Political organisations of foreign states, as well as their branches and structures are prohibited in the Republic of Moldova. It also bans the creation and functioning of political parties on the basis of discrimination on the criteria of race, nationality, ethnicity, language, religion, gender, wealth or social origin'.

Art. 15 of the Law requires parties to call their General Assemblies, represented by the ordinary members and their delegates, as the supreme decision making bodies of political parties. Setting up a date for the Assembly, and the definition of the party's programme and functional structure must be based on a written Charter of political parties, which are two of the main official documents used by political parties to have their registration accepted by the Ministry of Justice, according to the Art. 13 of the Law.

Chapter IV of the Law on Political Parties defines in art. 12 the basic provisions for the 'organisation and functioning of a political party', stipulating that 'all decisions shall be based on the Statute provisions and Party Programme, which are to be voted and applied by the competent bodies'. Parties must provide clear evidence that 'at the moment of application for registration, their membership resides in at least half of the level II administrative territorial units of the country, with not less than 120 members in each of the above mentioned administrative territorial units' (Art. 8). Accordingly, Ministry of Justice is entitled to verify this information, and

take the necessary steps if it could find out it does not correspond to reality. To facilitate the process of official verification, political parties must present to the registration bodies a number of supplementary documents: list of party members (drawn up on the basis of their individual requests to join the party), personal data of the party members names, surnames, date of birth, residence information) and original lists of signatories. We shall outline here the opinion of the Venice Commission Expert, who warned against ‘accumulating too much information about party members, considering that the individuals supporting a political party could easily become victims of identity theft, resulting in a situation in which their privacy will be infringed’¹²¹.

Within one month from the date of the official application from the applicant parties, the Ministry of Justice must make a decision on the registration of the respective political party or, if the party did not respect the requirements of the Law on Political Parties, decide on postponing or rejecting the application. Art. 8–4 of the Law stipulates the legal way to challenge the Ministry of Justice’s decision to reject an application for registration: it can be challenged in the Court of Appeal (Chisinau) within a 10-day period from its official adoption. Only after the finalization of the court appeal may the Ministry of Justice be approached again with a request for party registration. Thus parties will become ‘legal entities’ on the date of the registration of their Statute and incorporation into the State Registry of Political Parties (Art. 11). Art. 13 of the Law on Political Parties defines in great detail what shall be included in the statutory provisions of parties:

- a) the party’s full name and acronym;
- b) description of permanent symbols;
- c) permanent logo in a graphic form (in black-and-white and colour), as annex;
- d) a short statement on the objectives;
- e) terms and procedure for appointing delegates to the general assembly,
- f) members’ rights and obligations;
- g) disciplinary sanctions, procedures for applying them, as well as the competent body to apply sanctions;
- h) executive bodies, procedure for their election, their mandate and duties;
- i) the body competent to initiate the party’s reorganisation or determine its affiliation to a political alliance or other form of parties’ association;
- j) the body competent to designate candidates for elections to local public administration authorities and to Parliament, the procedure for the candidates’ designation, as well as procedures for amending the candidates’ list;

¹²¹ Comments on the draft Law on Political Parties of Moldova by Mr Hans-Heinrich Vogel, Endorsed by the Venice Commission at its 71st plenary session (Venice, 1–2 June 2007), <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29025-e.asp>.

- k) the procedure to cease the party's activity;
- l) the party's sources of financing and the way its patrimony is managed in accordance with the law;
- m) the party's structures responsible for bookkeeping;
- n) the way of carrying out the internal financial control;
- o) the party's body authorized to represent it with public authorities and other individuals and legal entities;
- p) other compulsory provisions according to the present law.

The Law on Political Parties defines exactly what the functional structure of political parties must be. In particular, Art. 14 requires political parties to have (1) a central authority and to have (2) regional branches as the primary tier of the respective organisation. The main governing body for political parties shall be their General Assembly, called regularly by the party leadership to discuss with individual members, or their representatives, the most compelling political issues for the respective party.

An Executive body is the primary chain of command for the operational management of political parties, and also – a contact point with the national public authorities (Government), regardless of the form or statute of the political party (movement, party, league, association), having operational responsibilities over the activities of both central and local bodies. By law, political parties are entitled to achieve their statutory goals set forth in their statutes and programmes, by: free dissemination of their ideas, information about their activities, participation in elections, nominating candidates in the upcoming elections, (in accordance with the specific legislation on elections), establishing and running mass media, and carrying out other editorial activities, (in accordance with the law), planning and implementing other activities which are not banned by the existing laws of the country (Art. 17).

Art. 16 restates the main rights which are explicitly recognised for political parties. As such, (1) 'all political parties have equal rights to participate in the elections of Parliament and local public administration authorities', and (2) 'during election campaigns, all political parties competing and their candidates running for elective positions are offered free and fair airtime', as established by law, 'on public TV and radio channels'. In the same vein, 'political parties are entitled to hold meetings, demonstrations and other activities, as established by law'.

Provisions on rights and political freedoms are complemented thereafter by art. 18, which defines the existing 'duties and liabilities of political parties', including the following: (1) Political parties are obliged to observe the legislation of the Republic of

Moldova and the provisions of their statutes: (2) In case of legislative amendments, or in case their statutes or programmes are not in compliance with the legal provisions, parties will adjust their documents to the legal norms, by amending and completing them in accordance with the established procedure. (3) Political parties are liable for the assumed obligations with their own patrimony. (4) Political parties are not liable for the obligations of their members, and the members of political parties are not liable for the obligations of the respective parties.

Following recommendations of the Council of Europe, Moldovan legislators have removed in 2007 the provisions of the draft law requesting ‘at least 5,000 party members at registration’¹²², but left intact other provisions imposed on ‘territorial representation’, which request that ‘at least 150 members must be domiciled in each of half of the territorial administrative units of the Republic of Moldova’. It should be mentioned that the view of the Venice Commission called this requirement a condition ‘almost impossible to be met by any group of common interest citizens joining each other in a limited part of the country’, considering that ‘this put a difficult burden on citizens trying to exercise their rights under Article 11 of the ECHR, which is potentially restrictive and as such would be disproportionate and not necessary in a democratic society’. The same applies to the general prohibition in Article 3 (6) on any establishment of political parties on the basis of ethnic or racial criteria, insofar as a group of this character does not act in a way which would justify application of one of the above mentioned exceptions, as provided by art. 11.2 of the ECHR in this case.

Nevertheless, the accepted provision in the Law on Political Parties stipulates that ‘creation and functioning of political parties, based on discrimination against criteria defined in racial, national, ethnic, language, faith, gender, income or social origin terms, is prohibited’. The Law includes also a special chapter ‘on state financing of parties’, followed by a series of governmental decisions, regulating the creation and maintenance of the State Registry of non-commercial organisations (No. 345/30.04.2009) and approval of the Regulation on reporting the financial situation of political parties.

Art. 34 of the Law on Political Parties obliged existing political parties to adjust their statutory documents by October 1, 2008. The new registration procedures were carried out in a highly politicized context, primarily defined by political bias of the State administration, whose zealous actions caused numerous conflicts. However, although the 2009 budget approved 7.8 million lei for provisioned expenditures, the Government decided unilaterally to suspend the funding, with no explanation.

¹²² Idem

Regardless of the state financing, the new legislation stipulated (Art. 30–1-3) the obligation of political parties to present their annual financial reports by March 31, to be verified later by the Auditing Chamber, Ministry of Finance and Ministry of Justice. Art. 13 of the Regulation on financial reporting from political parties (Ministry Order No. 559 of 30.12.2008) also stipulated a 10-day term for these reports to be posted on the web page of the Ministry of Justice. Although failure to comply with this request called for legal penalties on parties, the Ministry has not applied this provision since the law entered into force. The new legislation on political parties did however address, but not effectively, the issue of the parties' publicity and accountability to the public, involving the dissemination of information on both sides – not only in campaigns, but also between elections. For instance, limited access to financial data is still seen by many experts as a “time-bomb” for the credibility of a large number of parties. Financing of political parties involves multiple risks, and corruption during election campaigns has not been entirely excluded, says Transparency-Moldova¹²³.

Some of the basic documents, such as the Public Registry of political parties, mentioned by the Law on parties (2007) have remained a dead-letter, since the Ministry of Justice has not yet ensured public access to its website. Art. 11–3 of the Law states that information on the Registry of political parties is ‘of public interest’, while the Standing Regulation of non-commercial organisations (Governmental Decision No. 345 of 30.04.2009) labels it as ‘information of public interest, which shall be accessed via internet’, which implies that an electronic version of the Registry is indispensable.

Similarly, financial reports, which represent an intangible part of the profile of political parties, are not easily accessible whether it is through the Central Election Commission, or through the official political parties' websites. The same was true for the timeframe set up by the legislation for financing political parties, but not enforced by the Ministry of Justice after 2007. Even in 2010, the data are still not available.

2.3. NORMATIVE RESTRICTIONS ON POLITICAL PARTIES

In addition to the bans imposed on ‘extremist parties’ by the Constitution (Art. 41–1/5), the Law on Political Parties provided additional restrictions against or-

¹²³ Efim Obreja, Info – Prim News Agency, 31.01.2010, last accessed: 05.04.2010. <http://www.civic.md/stiri/3523-legea-privind-partidele-politice-nu-este-suficient-de-bunae-pentru-a-evita-corupapia-ong.html>

ganisations, which ‘militate against the sovereignty, the territorial integrity, the democratic values and the rule of law in Moldova, in its programmes or via their specific activities, resorting to illegal or violent means to achieve these goals, infringing on the fundamental freedoms and democracy’ (Art. 3–1). Article 3 (2) provides that political parties shall be prohibited ‘which, by their statutes and programmes convey ideas that contravene the provisions of the Constitution’.

It is obvious that the Law on Political Parties provides too large a margin for interpreting some of the above-mentioned restrictions as a legal ground for banning political parties, which contradicts Guideline No. 3 of the Venice Commission on the prohibition of political parties and analogous measures, and will have to be improved in accordance with democratic norms. For instance, the Venice Commission emphasized that ‘prohibition of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution’¹²⁴. An opinion has already been expressed on this restriction that the provision was too broadly drafted¹²⁵, as the Court decided that, ‘as far as a political party pursues its goals by peaceful means, its activities, for example for greater autonomy of a certain region, cannot be used as reason to ban the party’.

The Law bans any kind of party affiliation to other international political groups whose goals or activities contradict the basic constitutional provisions, as well as to foreign political parties or their representations. In particular, the Law on Political Parties explicitly bans parties’ involvement in the creation or support of military or paramilitary organisations, and other illegal activities, as well as storage of military arsenals or other illegal materials or substances. The Moldovan Law on Political Parties bans the creation and functioning of parties or other political organisations originating from foreign states, as well as their branch offices or other kinds of party-affiliated structures, including the creation and functioning of parties based on race, nationality, ethnic background, linguistic, religious, gender, income, social origins or other discriminatory elements (Art. 3–6). Nevertheless, there are multiple indications to suggest that the above mentioned provisions of the Law on Political

¹²⁴ [http://www.venice.coe.int/docs/2000/CDL-INF\(2000\)001-e.asp](http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp)

¹²⁵ Comments on the draft Law On Political Parties of Moldova by Mr Hans-Heinrich Vogel, Endorsed by the Venice Commission at its 71st plenary session (Venice, 1–2 June 2007), <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29025-e.asp>. For instance, the author said that “qu’un parti politique peut mener campagne en faveur d’un changement de la législation ou des structures légales ou constitutionnelles de l’Etat à deux conditions : (1) les moyens utilisés à cet effet doivent être à tous points de vue légaux et démocratiques ; (2) le changement proposé doit lui-même être compatible avec les principes démocratiques fondamentaux’.

Parties are not properly applied in practice. The creation of numerous party branches of the Russian Federation and Ukraine in the region of Transnistria, which is de jure an inseparable part of the Republic of Moldova, but de facto ruled separately, is one example¹²⁶.

The Law on Political Parties also restricts foreign citizens' participation in political parties following provision of Art. 6 (1), stating that only citizens of the Moldova having the right to vote can become members of political parties. It seems that the provision excludes without exception both foreigners and stateless persons from party membership, and was not remedied after the Venice Commission pointed out that such a broad exclusion is no longer acceptable under the standards of the Council of Europe. Art. 22 of the Law on Political Parties also included tough penalties on parties, which can be dissolved if they have not participated, with lists of candidates, in two consecutive campaigns for general elections, or if they have won at each election a number of votes that is less than the number of members required by the legislation for party registration'. The penalties raised criticism from civil society and international organisations, which have univocally assessed this as 'a serious violation of Art. 11 of the European Convention on human rights and fundamental freedoms', which stipulates *inter alia* that:

'Every person has the right to peaceful meetings and freedom of association, including the right to set up trade unions and join trade unions in order to defend individual interests'.

The above mentioned provision of the European Convention on Human Rights is further developed in paragraph 2 of the same Art. 11, which stipulates that:

'the exercise of these rights cannot be the object of other restrictions that those envisioned by law, and represent the necessary measures, in a democratic society, to protect national security, public order and security, prevent violations of the law, ensure protection of health or morals and to safeguard the rights and liberties of other individuals. This article does not exclude other possible legal restrictions which can be imposed on certain rights by members of the military forces, police or state administration'.

¹²⁶ There are at least four offices of Russian political parties deployed and operating now in Transnistria: Liberal Democratic Party of Russia, offspring of the Zhirinovskiy LDPR, Political Party 'Fair Republic', as subsidiary of 'Fair Russia' ('Spravedlivaia Rossiya'), Social-Political Movement 'Breakthrough' ('Proriv' in Russian) – regional office of the Russian International Network of Parties 'Proriv', and Party 'Renewal' ('Obnovlenie'), created on the model of the ruling party 'Edinaya Rossiya by local / regional business groups. www.despiteborders.com/clanok_an.php?subaction

Since a political party established in the framework of the existing legislation may decide to participate or not in elections and be able to justify its decision as a free expression of will by its members, this cannot be interpreted as a legitimate ground for suspending its activity. Being a voluntary form of association, parties may freely decide to act as electoral actors or not, in the same manner as any other citizen may decide to participate or not in elections. Imposing tougher penalties on parties for non-participation in elections will not improve democratic standards in a given society, nor will it improve the political value of a campaign.

In fact, exaggerated penalties may hinder the substance of 'political pluralism', which is protected by the Constitution, and the freedom of association, guaranteed by the European Convention on Human Rights and Fundamental Freedoms. On 3 February 2010, the Government decided to submit to Parliament a bill of amendment removing this restriction¹²⁷ leading to the dissolution of parties, arguing that this ran counter to the constitutional norms that guarantee the freedom of parties (Art. 41) and define political parties as voluntary associations. A bill of amendments will remove paragraph 2 of Art. 22 of the Law, thus adjusting the legislation on parties to address the above mentioned standards of the Art. 11 of the European Convention on Human Rights and Fundamental Freedoms¹²⁸.

2.4. THE ISSUE OF REGIONAL PARTIES

The Republic of Moldova is a 'sovereign, independent and indivisible (unitary) national state', whose territory is organized into several (32) sub-national districts of II tier, and over 900 territorial-administrative units of I tier (cities and communes). The current territorial administrative structure of the Republic of Moldova also incorporates the existence of an autonomous region, Gagauz Yeri, which is designed on the basis of a special law, adopted on December 26, 1994. According to the Constitution, similar statute-laws can also be attributed to the Transnistrian region, in the framework of the political settlement process, to be reached through mediation of the 5+2 format¹²⁹.

In June 10, 2005, the Moldovan Parliament adopted a law on the special statute of Transnistria, which provides a generous underpinning for the centre-region re-

¹²⁷ Info Prim Neo News Agency, 3 February 2010

¹²⁸ Adopted in Rome in November 1950, Ratified on September 3, 1997 by Moldovan Parliament.

¹²⁹ More info on Transnistria and Gagauzia see: www.transnistria.md

lations, similar to the Gagauz special statute¹³⁰. It should be emphasized that in response to the requests from the Gagauz leaders, the Moldovan Parliament decided in 2002 to incorporate into the Constitution a special article, re-affirming the existence of Gagauz autonomy, which earlier had described the possibility of local autonomy more in potential than actual terms, stating in art. 111 (Special Autonomy Statute) of the Constitution that ‘Some localities of the Left bank of Dniester, as well as some localities from the South of the Republic of Moldova could receive special conditions of autonomy and forms, shaped on the basis of special statutes, adopted through organic laws’.

Under new amendments, adopted by Law No. 344-XV of 25.07.03¹³¹, the Constitution recognizes Gagauzia as

‘an autonomous territorial unit, governed by a special statute, as a form of self-determination of Gagauz, which is an integral and inalienable part of the Republic of Moldova, is empowered to resolve alone, within the limits of its competencies, following Constitutional provisions of Moldova, on behalf of the whole population, various problems of political, economic and cultural character’ (Art. 111, Constitution).

On October 22, 1996, the Republic of Moldova ratified the Council of Europe Framework Convention on the Protection of National Minorities. Although, the current legislation does not explicitly prohibit regional-based parties, registration of political parties in Moldova requires meeting a number of conditions that make the official procedure of registration and annual reporting for such types of parties more difficult when they represent, for instance, small ethnic groups or some particular communities with specific goals.

For instance, Art. 8-d of the Law on Political Parties requires that at the time of the application to register, party members ‘shall be based in at least half of the current territorial administrative units of the second tier of Moldova’ (32 rayons, today), ‘with not less than 120 members in each of the above mentioned territorial administrative units’, which makes in total – 1920 members. Although the requested number of supporters for a new political party is not extremely high, this can be seen as a ‘restrictive condition’ primarily by those who would like to associate themselves or operate as ‘regional parties’ (read: defined in national, language or ethnic terms) in the southern part of the country (Gagauzia). There are several reasons for

¹³⁰ Law on the basic provisions of the legal special statute for the settlements of the left Dniester region (Transnistria), No. 173-XVI of July 22, 2005

¹³¹ Official Monitor, No. 170–172/08.08.03, art. 721

considering this situation in a wider context. Out of 18 registered ethnic groups in the Republic of Moldova, the four largest are represented by Ukrainians, Russians, Bulgarians and Gagauz¹³².

Table No. 6: Largest minority groups in Moldova, 1989 and 2004 census figures

Groups	Number of persons		% share of total population	
	1989	2004	1989	2004
Ukrainians	600 000	283 367	13.8	8.4
Russians	562 000	198 144	13.0	5.8
Gagauz	157 500	147 661	3.5	4.4
Bulgarians	90 000	65 072	2.0	1.9
Other ¹³³	121 500	44 350	2.7	1.3

Source: National Office for Statistics, 2006.

The case of Moldova is not at all unique. In fact, regional parties do not seem to be widely encouraged by the election rules in most of the Council of Europe member states, and in particular in those with a 'unitary' system of government. No regional or ethnic parties play any sort of relevant role in France or in Poland. In Switzerland there are national political parties with cantonal branches, but also parties which do not only participate in elections at cantonal level. Instead, parties may quite often sponsor lists of independent candidates tailored to the local context (members of several parties, well-known people not belonging to a party). In other countries like: Czech Republic, Norway, Portugal, Finland, Estonia, Luxembourg, Montenegro, Armenia, Ireland, Denmark, there are no registered regional parties at all.

Even in federal states, parties based on religious or ethnic traits are quite rare (in Carinthia, Austria, a Slovene independent list won 20% in the last elections for the regional Parliament)¹³⁴. In Denmark, a small German-speaking minority (in

¹³² According to the 2004 National Census, citizens representing the titular ethnos of Moldovans were 78.2% of the total population (3.39 million). The census indicates a dramatic decrease of population in Moldova: from 4.5 million in 1989 to 3.39 million in 2004. This is mainly due to the fact that the separatist region of Transnistria did not participate in the latest census. Furthermore, official statistics show that over 600 000 citizens left the country to seek employment abroad. Source: <http://www.culturalpolicies.net/web/moldova.php?aid=421>, last accessed on 03.04.2010.

¹³³ Note: The category "other" includes: Jews, Belarusians, Poles, Germans, Roma, Greeks, Lithuanians, Armenians, Azerbaijanis, Tatars, Chuvash, Italians, Koreans, Uzbeks and Georgians. They have a variety of institutions operating as communities (11), societies (14), unions (2), centres (4), associations (4) and foundations (4).

¹³⁴ Cees Bijl (The Netherlands, L, SOC), CG/INST (15)1REV, 28 May 2008 Questionnaire, Equal access to elections. The autochthonous Slovene group in the Land Carinthia has for a long time demanded to be represented in the Land Parliament of Carinthia, even without getting sufficient votes for a "basic mandate", but their demand has not been met so far (no "basic mandate" reached). There are no special

Jutland) supports a party, represented in a few municipal councils only, but nevertheless is not seen as 'regional party'¹³⁵. In Russia, regional political movements and parties are legally prohibited; therefore federal parties attempt to reach territories through their networks and branches, thus becoming the driving forces for regional and local elections. Macedonia is the exception with parties reflecting the regional diversity of its population, defined by traits of distinct ethnicity and faith at the regional level. Some political parties are known for using the ethnic and religious qualifications of their members as propaganda devices during and outside of the election periods. In Ukraine, laws do not allow the registration of local parties. As the proportional system was used in the 2006 local elections for the first time, national parties developed neither local political programmes nor the strategies for local electoral campaigns.

Now local elections are the competition of local political elites; parties which form coalitions or even a single electoral bloc at the parliamentary level may oppose each other at some localities and vice versa. Normally, regional parties are branches of larger national parties, and are not strictly bound to certain territorial identities. Furthermore, many countries do not distinguish between political parties at different levels of government: Austria, Greece, Finland, France, Italy, Japan, Luxembourg, Malta and Spain may be mentioned as examples. However, there are some exceptions to this rule. For example, Germany does not include political activities at the local level. Associations which are politically active on the local level only do not fall within the concept of a political party in the sense of the Constitution and the German legislation on political parties¹³⁶.

In Moldova, regional parties can be established in practice if they are able to expand beyond their regional boundaries and represent, as the Law on Political Parties specifically request, 'at least half of the existing territorial administrative tiers, with at least 150 members in each'. Until 1998, regulations on parties were less strict in this regard. The first Law on Political Parties (No. 718 of September 1991) allowed political parties to be registered at the regional level, confirming in fact the political realities of that time, described in terms of ethno-political mobilisation at the level of some regions (Gagauzia and Transnistria). Some authors emphasize however

minority rights, apart from certain technical possibilities that facilitate voting for elderly, handicapped or ill persons. It is usual for elections at federal or Land level to admit only those electoral parties that have passed the threshold of a "basic mandate" in the first electoral stage or a certain number of votes.

¹³⁵ Hans Otto Jorgens, Denmark, Questionnaire on "Equal access to elections", CG/INST (15)1REV, 28 May 2008 Questionnaire, Equal access to elections.

¹³⁶ Report on the establishment, organisation and activities of political parties, Venice Commission at its 57th plenary session, 12–13 December 2003.

that even at that time regional parties played a much more limited role than national parties, even in their territorially-drawn boundaries.¹³⁷

In 1998, the legislation on parties changed this by imposing the condition that all parties have 'territorial representation' in not less than half of the registered 2nd tier sub-national governments, under the assumption that this would decrease the critically high number of political parties (60 in 2008), considered to be dispersing votes. However, tensions appeared between central government and regional authorities even after the abolishment of regional parties (2003–2006). Protagonists were a former Mayor of Ciadir Lunga, Mihail Furmuzal, and the ruling Communist Party, CPRM, in Chisinau, which reveals that not the parties, but another issue hinders the political process. Nevertheless, one must also consider certain concerns amongst regional elites in the southern part of Moldova on the existing legal limitations of the right to establish political parties.

An emphasis on regional parties must also consider the risks associated with isolation and tribalism of purely ethnic parties, which cannot be regarded as genuinely promoting democratic standards. Considering the Venice Commission's opinion, expressed in the Code of Good Practice in the Field of Political Parties that 'State bodies... should not limit the right to establish political parties on a national, regional or local level,' Moldova should consider this issue from a broader perspective. It is obvious that the current Law on Political Parties is a bit too restrictive in regard to the creation of regional parties. First of all, one should consider that the creation of political parties on the basis of ethnic or racial criteria cannot be prohibited (Art. 3 (7) insofar as such a group does not act in a way which would justify the application of one of the exceptions mentioned in Article 11.2 of the ECHR, specifically 'carrying out violent activities against the state, the sovereignty').

On the other hand, very demanding conditions imposed by the law for the registration of political parties may create a serious burden on individual citizens trying to exercise their rights under Article 11 of the ECHR, which is being qualified as 'potentially restrictive', and as such this might be seen as 'disproportionate and unnecessary in a democratic society'. The same applies to the general prohibition included in the Art. 3 (7) for creation of political parties on the basis of ethnic or racial criteria', insofar as the applicant group 'does not act in a way which would justify the application of one of the exceptions mentioned in Article 11.2 of the ECHR in that specific case.

¹³⁷ Igor Botan, Sint partidele regionale necesare? 6 martie 2008, www.alegeri.md, Tabelul 1. Rezultatele alegerilor in Adunarea Populară a Găgăuziei in 1995

One can conclude that the legal provision of the Moldovan Law (Art. 8-d), requesting a rather high extent of territorial representation from the membership of political parties, can be regarded as too restrictive and disproportionate in a democratic society. Only in the case of activities that run counter to the spirit and constitutional norms on the freedom of association and other liberties could the competent authorities of state intervene. Following a notification of the Ministry of Justice, to the Appeal Court, the Court could decide on the alleged irregularities and curb the existence, or even decide on the prohibition of a political party, in accordance with the limitations or banning of political parties, pertaining to the jurisdiction of the ECHR¹³⁸.

2.5. NON-COMMERCIAL, BUT DIFFERENT IN SCOPE

In Moldova, legislation on public associations evolved in several stages. The first one coincided with the emergence of the first informal groups of citizens, gathered around ideas of political freedom, pluralism and 'perestroika' slogans. These first incipient groups of self-organized civil society 'pioneered' the creation of a public space, so much needed at the time of the democratisation process in the USSR (1985–1990), generating a chain reaction through the multiplication of informal movements and 'discussion clusters'¹³⁹, highly pluralistic and diverse, undermining the patterns of obedience to the one-party regime. One should consider however that no distinction was made in the incipient phase of the creation of public associations. In the second phase, public associations evolved towards a more structured legal framework and institutional growth, when the first law on public associations recognized public associations as genuinely non-commercial and non-political forms of organisations.

The Law on Public Associations¹⁴⁰ (adopted in 1996), defines public associations as 'non-commercial organisations, acting independently from the public/state authorities, established on a voluntary basis by at least two physical persons or legal entities, which have joined on the basis of their common interests, with the aim of realising their legitimate rights, according to the existing legislation' (Art. 1).

¹³⁸ See: EHRC decision in relation with prohibition of Ozdep in Turkey, cithttp://www.icnl.org/KNOWLEDGE/IJNL/vol2iss2/cn_2.htm.

¹³⁹ In RSSM, informal movements received a great exposure through open-air debates held as 'literary circles', like A. Mateevici's Sunday Meeting (cenaclu, in Romanian language). See: Eugenia Bojoga, *Limba Romana – un calvar fara sfarsit*, Contrafort, 1–2, (171–172), ianuarie-februarie, 2009, <http://www.contrafort.md/2009/171-172/1636.html>. See also: National Liberation Movement (1987–1990) <http://www.moldova.org/page/1099-rom.html>.

¹⁴⁰ Lege Cu privire la asociațiile obștești, Nr. 837-xiii din 17.05.1996, Monitorul oficial, nr.153–156bis din 02.10.2007

The legislation elaborates further on a broad list of potential activities of public associations (Art. 1–2), incorporating the following fields: peace-promoting, human rights, gender, the elderly, youths and children, science, technical, environment, cultural, education, sport, creative activities, ethno-cultural activities, and others. This law explicitly differentiates, however, public associations from political parties and other social-political organisations, as well as from trade unions, employers' associations, faith-based organisations (churches), other organisations established by public authorities, cooperatives, etc (Art. 1–3).

The existing Law on Public Associations does not include any special provision against NGOs becoming politically involved, but it stipulates a specific institutional 'filter', associated with the certification procedure (Art. 30–34). This filter singles out the, 'public' and 'non-profit' status of some NGOs, barring them from partisanship and from benefiting parties, other social-political organisations, election blocs, or individual candidates during campaigns. The Legislation stipulates only that (Art. 8–4)

'public associations and their legal entities involved in campaigning for or against political parties, election blocs or individual candidates, can be deprived of their right to financial support from the state, as well as preferential loans, financing, or other facilities'.

This means that grants or subsidies received from the state, in accordance with special state programmes, must be returned to the state budget following a judicial decision. In contrast to political parties, public associations are 'independent from public authorities, established on a voluntary basis by at least two physical or legal persons, associated through a community of interests, with the aim of realising some legitimate rights according to existing laws'.¹⁴¹

As the last two decades of transition have shown some non-commercial organisations go into politics, but there is no specific provisions for 'associations particularly active in politics'. However, since only very limited financing from the State has ever reached NGOs or public associations, in practice this hardly applies to the non-commercial entities. The Law stipulates that 'if, a public association has campaigned in elections without the consent of their leading official bodies, they shall immediately dissociate themselves from these campaign activities, while the individuals responsible shall be sanctioned in accordance with their registered statute'. It is unclear however how the Ministry of Justice could enforce this requirement, and who will decide on the level of penalty within the parties.

¹⁴¹ Law on Public Associations, No. 837-XIII of 17.05.1996, last amended in 23.01.1997 – Monitorul Oficial, No. 6/54.

Art. 8–5 adds more weight by saying that if some public associations have campaigned in elections for some political parties or other social-political organisations, blocs or individual candidates using financial support and other material goods received from various physical or legal foreign persons or foreign states, they shall be expropriated, and the resources shall be transferred to the state budget, on the basis of a judicial decision. The ‘public benefit’ certificate is supposed by law to confirm state support to a category of NGOs appropriately applying national legislation and working hard for the benefit of the public. The certification procedure is carried out by a Certification Committee created by the Ministry of Justice, which applies a relatively complex evaluation matrix, which takes into account the existing reports, activities performed by the respective NGOs and the reported fiscal situation, as confirmed by the State Fiscal Inspectorate.

Although Moldovan law recognizes both as ‘non-commercial entities’, membership of public associations is considerably less strictly regulated than in the case of political parties. Non-political public associations are established at the initiative of their founding members, which can be moral, physical or legal persons (Art. 11–14 of the Law on Public Associations). By Moldovan Law on public associations, public authorities are banned from becoming founders of public associations. The restriction is not entirely clear in its scope, and has been often criticized by the independent authors and local government officials¹⁴², regarding this as a blatant limitation of their rights to associate, as a professional group of elected officials.

In addition to the Law on Public Associations (1996), the Parliament of Moldova adopted a special Law on Foundations, which are defined as ‘non-commercial entities, without membership, established on the basis of a charity act by one or more moral persons (physical or juridical), having its own endowment, distinct and separated from the properties of the founders, established to pursue non-commercial goals as stipulated by the founding charter’¹⁴³. The same legislation stipulates that the ownership of the foundation shall assist it to reach the goals expressed by the statute of the organisation (Art. 9). The foundation must have an intangible minimum basis of 200 average salaries¹⁴⁴, during all its activities. In general terms, sources of financing of foundations are generally the same as for the NGOs (founders’ contribution, donations, grants, revenues generated by activities carried out by

¹⁴² Monitoring Report on local government autonomy (2003–2005) <http://www.viitorul.org/public/437/en/raport%20de%20monitorizare%20eng.pdf>

¹⁴³ Law on foundations, No. 581-XIV of 30.07.1999,

¹⁴⁴ This requirement equals approximately 32,000 USD (considering 2,000 lei average salary multiplied by 12,5 lei – 1 USD).

the foundation, as well as other means received from charities, or other activities related to sport, culture, and leisure).

Political parties become legal entities from the date of registration in the Registry of political parties, which must take not more than one month from the official application, provided the submitted documents are not rejected. A similar period of time is stipulated by the Law on Public Associations for the registration of NGOs, although the Ministry of justice may decide to take one of the following options (Art. 18): to register the statute and issue a Certificate of state registration; to postpone registration, if additional documents are needed, or to reject the registration. It is obvious that in the latter case, a Ministry of Justice decision should be based on one of the following exceptional reasons:

- the statute submitted by the applicant organisation contravenes the Constitution of Moldova, specific law and other legislative acts;
- the main requirements exposed in the decision to postpone the registration of the Statute were not met during the previous three months;
- another NGO was registered previously with the same name;
- the application for registration of the respective public association has been submitted before one year from the day when a final decision of a judiciary court ruled termination of the above mentioned association;
- specialized bodies of the Ministry of Justice have found that there is incorrect information presented in the documents submitted for registration;
- The name of the public association may hurt the public moral, national or religious feelings of individuals, as protected by the Constitution of Moldova.

The Ministry of Justice will inform the applicants about the decision to reject the application indicating the reasons, in relation to the registration rules. However, refusal to register the NGO will not be an impediment for the applicant to submit a repeat application to the Ministry of Justice. Public associations enjoy quite a margin in terms of citizenship and age of their members. For instance, art. 12–14 of the law stipulates that youth associations may have members aged 14 and associations children of age 10. The only restriction is stated in a provision about moral capacity: convicted criminals cannot join public associations. Foreign citizens and stateless persons residing on the territory of Moldova can equally establish Moldovan public associations, with the same rights as Moldovan citizens. At the moment of registration, founders become by right ‘members of their associations’, holders of all the rights and obligations, as enshrined by the Law on public associations and the statutory charter of the respective organisations. In contrast with public associations, however, by law political parties cannot accept foreign citizens as their ordinary or founding members. Aliens cannot become members of political parties or run for elections. The Ministry of Justice will consider for registration only statutes endorsed by the

instituting members at their founding conference, congress or general assembly, concomitant with the approval of the statute, and election of the leadership, control and revision bodies, etc, but sets no specific number of members at the constituting stage.

Political parties and social-political organisations are recognized by the Moldovan Constitution through a special provision (Art. 41), which is complemented by articles on trade unions (Art. 42) and on faith-based organisations (Art. 31). NGOs are not explicitly mentioned by the Constitution, nor are they mentioned as a form of free association for citizens of Moldova. Both parties and public associations are required by law to have a Registration Certificate from the Ministry of Justice to operate legally in Moldova, but NGOs may exist without legal registration, while the registry proceedings are rather different. Although registered by the same public authority, political parties and public associations are governed and treated differently by the Ministry of Justice via its specialized body (Directorate for Non-commercial organisations) since the nature of supervision and governance of both are intrinsically different. Political parties are required by law (Art. 8) to provide at registration the following documents: official request for registration, approved charter (Statute), political programme, foundation act supported by a specified number of founding members, specific documents confirming the existence of territorial branches where the party has its own offices or territorial organisations, full lists of participants (delegated representatives) at the foundation assemblies (congresses or conferences).

Additional provisions require political parties to provide a legal address, bank account, and full list of party members, with their personal data. The procedure for considering a registration request will take one month from the date of the application, ending with a registration decision, or a registration refusal. In the case of refusal, parties can challenge the Ministry's decision in the Court of Appeal within ten days from the date of its notification. Parties are requested to pay a fee of 200 lei (equal to 18 USD) for the registration procedure, or for any other decision to amend or add other provisions to the registered charter. Legislation is strict in prescribing to political parties a required number of founding members, broadly representative territorially: party members who are founders of the respective political parties should reside in no less than half of the second tier territorial administrative units of Moldova, with least 120 members in each of these units.

Table No. 7. Legal differences and similarities between NGOs and Political Parties in Moldova

		NGOs	Political Parties
1	Activities	No explicit recognition by the Constitution. The Law defines NGOs as 'non-commercial organisations, acting independently from the public/state authorities, established on a voluntary basis by at least two physical persons or legal entities, which have joined it on the basis of their common interests, with the aim to realise their legitimate rights, within the frame of existing legislation' (Art. 1).	To assist in the definition and expression of political will of citizens and, in accordance with the law, participate in elections (Constitution Art. 41–1.) The Law defines political parties as 'voluntary associations, established as legal entities by citizens of the Republic of Moldova entitled to vote, which may contribute, through their common activities and on the basis of free participation of their members, to the expression, elaboration and formulation of their political will' (Art. 1–1).
2	Statutes	NGOs can be established as public associations pursuing public benefit and associations pursuing mutual benefit (Art. 2–2). NGOs can be international, national or local (Art. 9–12).	The Law on Political Parties stipulates in Art. 2 that (1) Political parties are organized along the territorial administrative organisation of the Republic of Moldova, and (2) Political parties' governing bodies, branches and structures shall have their headquarters on the territory under jurisdiction of the Republic of Moldova'. Art. 3–5 states that 'creation or functioning of political parties or other political organisations of foreign states, as well as their branches and structures, is prohibited in Moldova'.
3	Foundation	Art. 11 (14) of the Law states that NGOs can be founded at the initiative of physical persons having full legal capacity or by legal persons, or other public associations. The Law prohibits public authorities to establish or be members of public associations (11–3), but allows foreign citizens and stateless persons residing in Moldova (Art. 11–4) to establish NGOs (public associations) with the same rights and obligations as the citizens of Moldova, if the specific legislation on public associations does not stipulate otherwise.	Art. 6 of the Law on Political Parties stipulates that 'Citizens of the Republic of Moldova have the right to freely associate in political parties, to participate in their activities and to leave political parties. No one may be coerced to join or not to join a political party'. Art. 6 (3). Each person who becomes a member of a political party is required to make a written declaration, on his/her own responsibility, confirming that he or she is or is not a member of any other political party', and that only 'individuals that are expressly prohibited to join political activities cannot be members of political parties'. Nevertheless, 'members of political parties may become citizens of the Republic of Moldova who, according to legal norms, have the right to vote. Members of political parties receive membership cards, which are issued according to the provisions of the party's statute.
4	Membership	Art. 12 (15) of the law enshrines the right to be members of NGOs to all citizens of Moldova, foreign citizens or stateless persons, if the legislation on various kinds of public associations does not stipulate otherwise. Any physical person with full legal capacity, as well as young people aged 14 may be members of public associations. Legislation allows however membership in public associations even for children aged 10, when their activities are specifically related to children.	Article 6 (1): Members of political parties may become citizens of the Republic of Moldova who, according to legal norms, have the right to vote. Members of political parties receive membership cards, which are issued according to provisions of the party's statute. Art. 6 (2) Citizens of the Republic of Moldova have the right to freely associate in political parties, to participate in their activities and to leave political parties. No one may be coerced to join or not to join a political party. Only persons that, according to legal provisions, are prohibited to participate in political activities, cannot be members of political parties. Art. 7 (2) stipulates that 'a citizen of Moldova cannot be simultaneously a member of two or more political parties. By joining another political party, the person automatically loses the membership of the party he/she was formally a member of', but 'acquiring and losing the political party membership is regulated by internal norms of the party, stipulated by the party's statute'.

		NGOs	Political Parties
5	Registration	Voluntary registration: Art. 17 (19) of the Law stipulates the obligation of NGOs to register their statute in order to receive a state certificate, but NGOs can remain unregistered, acting as a group of affiliated persons.	Obligatory registration. Unregistered political parties are not allowed to operate or to run elections. Art. 8 and 9 of the Law stipulate the necessary proceedings to be followed by political parties in order to be registered.
6	State authority in charge for registration	Local authorities of 1st and 2nd level for NGOs, Ministry of Justice for international, national and local organisations (Art. 17–19).	Ministry of Justice – Directorate for Non-Commercial Organisations
7	Deadline for registration/refusal of registration	Art. 18 of the Law stipulates a one month period for the registration of statutes submitted by NGOs for a formal certificate from the State.	Art. 8 of the Law stipulates that the Ministry of Justice, within one month after the submission of documents listed in paragraph (1) of the same article, shall adopt a decision on the political party's registration or, if the party did not respect the requirements of the present law, decision on rejecting the party's registration. The same Art. 8–4 says that a decision of the Ministry of Justice on rejecting registration of a political party may be appealed in the Chisinau Court of Appeal within ten days after its notification.
8	Obligation to create local territorial branches	No	Art. 8 of the Law stipulates that 'political parties can be registered if at the moment of registration, they confirm membership in more than half of the existing territorial administrative units of 2nd level (16), with not less than 120 members in each of the territorial administrative units. After the verification of the submitted lists of members, based on individual letters of application to join the parties, ID and original signatories, parties can start the registration procedure.
9	Programme	NGOs are not supposed to have a programme of activity outside their specific statute (regulation) and the founders' list. In addition, NGOs shall comply (Art. 26) with the obligation to inform annually their respective registration authority about their activities, possible changes in the organisation chart or location of activities, which shall be included in the Registry of organisations. In case of failing to comply with this requirement for two years consecutively, NGOs can be radiated from the state Registry of public associations, losing their legal capacity, on the basis of a judiciary decision.	Political parties shall act on the basis of a statute and a programme of activities (Art. 8). Art. 10–2 stipulates the obligation of parties to inform the Ministry of Justice of every possible change or amendment to their statute or programme within a period of 30 days from the date of its adoption'. Registration of amendments and completions to the political party's statute or programme is performed by the Ministry of Justice in compliance with provisions of article 8, paragraphs (3)–(6), applied correspondingly.
10	Nomination of candidates for national or local elections	No	Art. 41 of the Election Code provides the general rule by which political parties submit their lists of candidates to the Central Election Committee for confirmation, within 60 days before election day in the case of parliamentary elections, and 30 days in the case of local elections. Candidates are nominated only by parties and other social organisations meeting conditions stipulated by law, as registered entities by the Ministry of Justice. The particular trait of Moldovan election legislation is that political parties may nominate non-party affiliated candidates on their party lists.

	NGOs	Political Parties	
11	Right to establish enterprises	Art. 26 of the Law allows NGOs to practice business activities and, in this regard, they may establish commercial or cooperative enterprises. However, newly founded enterprises shall comply with the general requirements set by the Law on entrepreneurship, as well as with the statutes of the respective associations (26–4). Revenues collected from the economic activities cannot be distributed among members of the association, being exclusively directed to accomplish the goals and statutory tasks, as recognized by law. Economic activities carried out by NGOs shall be based on certificates and other licenses, as stipulated by law.	The Law does not stipulate exactly how political parties can establish or run enterprises, but Art. 24 allows political parties to carry out publishing and other editorial activities, to manage their properties, and implement other economic activities which derive directly from the aims defined by the statute. Political parties may own, by law, buildings, equipment, publishing houses, cars, as well as other goods which are not restricted by law. Assets of political parties cannot be used for any other activities than those which pursue the statutory aims, as recognized at the registration, and revenues generated by the owned assets cannot be distributed amongst party members.
12	Right to have free access to state mass media during elections campaign	No	Art. 46 of the Election Code stipulates the right of competing parties to participate, on an equal basis, to the election campaign, receiving equal right to use mass media and electronic media financed from the state budget. The Central Election Committee ensures that the rights of competing parties are respected in full, elaborating in this regard special regulations for mass media and monitoring the implementation of this right during campaigns.
13	Right to sell goods and services	No	Yes, for certain types of goods and services. For instance, political parties can sell public and political literature, other kinds of materials meeting ideological or election purposes, goods with their political party logos, conduct festivals, exhibitions, lectures and other political actions, and acquire assets from these activities.
14	Right to receive donations and grants from foreign organisations, charities, foreign citizens, etc	There is no explicit prohibition	Art. 26 of the Law prohibits 'Direct or indirect financing, any form of financial support granted to political parties by other states and international organisations, by enterprises, institutions and state-financed organisations or those with state capital or foreign capital, by non-commercial organisations, trade unions, charity organisations or religious cults, by citizens of the Republic of Moldova who are minors or reside abroad, by individuals who are not citizens of the Republic of Moldova, by anonymous persons, as well as on behalf of third parties..

Source: Comparative overview of the legislation

Prior to the adoption of the new 2007 Law on Political Parties, several political leaders expressed their concerns regarding the stated official intention of the Moldovan Ministry of Justice to request from all parties seeking re-registration confirmed signatories from at least 4,000 party members supporting the party's application¹⁴⁵. All parties had to comply with the new requirements and run national conferences and congresses in order to adjust the statutes and other related documents to the

¹⁴⁵ Liliana Vitu, 2008 report: Electoral climate in the Republic of Moldova: <http://politicom.moldova.org/news/2008-report-electoral-climate-in-the-republic-of-moldova-152236-eng.html>

new legal requirements. Since 2007 was an election year, this inflamed the opposition parties' fears that the intended re-registration aimed, 'to block their access to the election campaign and the elections'. Although the Ministry of Justice denied the alleged purpose of the re-registration, some of the new parties insisted further on their claims.

2.6. ORGANISATIONAL RULES FOR PARTIES

By law, parties are registered with the Ministry of Justice, at the Directorate for Non-Commercial Organisations¹⁴⁶, formerly titled 'Main Directorate for Parties and Public Associations'. As a functional division of the Ministry of Justice, it was established by a Decision of the Government (No. 129 of February 15, 2000), being in charge of the registration of parties, public associations, periodical publications and press agencies¹⁴⁷. The Ministry of Justice acts thus as the higher public authority entitled to supervise and take decisions on the registration of parties, or if some requirements are not met by the applicant parties, it may decline registration, urging them to review their request.

Art. 8–4 of the Law allows groups of citizens whose application was declined at the registration to appeal the Ministry's decision in the Appeal Court (in Chisinau) within ten days from the date of its adoption. Parties are to respect in full the legislation of the country (Art. 18) and carry out their activities on the basis of the registered (by the Ministry of Justice) charters (statutes), approved by party members at the original constitutive assemblies (congresses). Art. 9 of the Law on Political Parties states that only a court can decide to ban a political party, so that when rejecting the application for the creation of a political party, the Ministry of Justice must present its justified reasons, which were at the basis of its decision before the judiciary. Court of Appeal decisions are definitive and cannot be challenged in other courts. Only on the basis of a definitive court decision, can the Ministry of Justice officially terminate the political party's presence by erasing it from the State Registry of political parties.

¹⁴⁶ Functional Structure of the Ministry of Justice of the Republic of Moldova, www.justice.gov.md/ro/organizatii-necomerciale/

¹⁴⁷ Its main competencies derive from the implementation of the Law on parties and other social-political organisations (No. 718-XII of 19.09.1991), Law on Public Associations (No. 837-XIII of 17.05.1996), Law on foundations (No. 581-XIV of 30.07.1999), Law on trade unions (No. 1129-XIV of 07.07.2000), Law on employers (No. 976-XIV of 11.05.2000), Law on press (No. 243-XIII of 26.10.1994, Regulation of the Ministry of Justice, approved by Decision of the Government (No. 129 of February 15, 2000).

Legislation stipulates a fee of 200 lei for the registration of the party statute, as well as for any other amendments, revision or inserts made by political parties. Changes to the party' statutes are to be made with the consent of the relevant department for political parties and public associations of the Ministry of Justice. An important instrument to institutionalise a long-lasting and stable cooperation between the state and political parties (and other social-political organisations) is the official Registry of political parties, as well as the introduction of amendments to this Registry¹⁴⁸, kept and updated by the Directorate for non-commercial organisations. This specialized division of the Ministry of Justice makes a clear difference when it certifies a political party or other social-political entities. Thus, it distinguishes between non-commercial activities, defined by the applicants' organisation on the basis of its potential 'political' or 'non-political' character. On the base of evidence and documents, it certifies that certain organisations qualify as political parties, while others have 'mutual benefit' or 'public benefit' as the purpose of their proposed activities.

Art. 12 of the Law states that each of the parties 'shall act and conduct its activities on the basis of its statute (charter) and the programme of activities, adopted by its leading and official bodies', thus keeping their activities in the internal legal field, and external, pertinent to the main norms and regulations of the field. Thus, it is the main responsibility of the Directorate for Non-Commercial Organisations to register, track and monitor the functioning of political parties, included in a larger group of 'non-commercial organisations', but keeping them as a distinct category of political actors, allowed to conduct political activities and run for elective positions at the state (national) or sub-state (local governments) level. The Directorate is also entitled to keep Official Registry of political parties, while monitoring that local authorities equally keep their Registries of locally deployed 'party offices (branches)'. The format for the registry has been set through a Decision of the Government of Moldova, approving the Regulation on political parties for the implementing agency, the Ministry of Justice (No. 129 of February 15, 2000). In addition to the State Registry of Political Parties (SRPP), the same Directorate keeps other registers, such as:

- Public Registry of associations,
- Registry of periodical publications,
- Registry of organisations certified with a 'public benefit' charter,
- Registry of logos for public associations, and
- Registry of reserved names.

Some parts of the information on political parties are accessible from the Website of the Ministry of Justice of Moldova (<http://rson.justice.md/organizations>), but the information is not complete. Art. 10 of the Law on Political Parties calls this in-

¹⁴⁸ Law On Political Parties of RM, Art. 11

formation of 'public use', and therefore the Ministry is under a strict obligation to facilitate the public's access to this information. Other information from the register is supposed to be accessible upon request. It is more difficult to see however to what extent the existing website of the Registry is accessible and useful to web users or simple citizens of Moldova since by the time of the latest update (23.05.2010), the data base was not functional. It is equally unclear to what extent the national data base includes information about the party territorial branches, which were seen as a condition for the legal registration of the applicant parties, and how this information can be verified or updated by the public. It is obvious however that under current legislation, political parties do not provide credible and relevant data to the Ministry of Justice, which has failed to set up a trustworthy and useful set of statistics on political parties.

Within one month from the date of the official receipt of the applicant's documents, the Ministry of Justice will adopt a decision on the registration of the respective political party or, in case of discrepancies between the application and the legislation in force, will issue a letter of refusal, explaining in detail the reasons behind it. Any decision taken by the Ministry of Justice can be challenged within ten days from the moment of its adoption in the Court of Appeal (Chisinau). The Law requests applicants to pay a fee of 200 lei for the registration of the party, as well as for any other possible amendments or changes to the statutory provisions by the official representatives of political parties. Art. 8 of the Law on Political Parties and other social-political organisations, registration and verification of parties is assigned functionally only to the Ministry of Justice. On the very date when the Ministry of Justice announces its decision of registration, political parties become full-fledged legal entities, being immediately inscribed in the State Registry of Political Parties by the relevant Directorate of the Ministry.

Art. 10 of the Law on Political Parties stipulates the obligation of parties to inform the competent authorities in charge of the registration procedure of the Ministry of Justice no later than 30 days after a decision of amending the statute or the programme. This obligation enables the Ministry to keep track of the evidence and statistical situation of the political parties in the Republic of Moldova, aligned to the standards and regulations of the existing legislation, on the basis of the Registry of political parties, the sole instrument of unified data on parties (Art. 11). Moreover, every new entity registered by the Ministry of Justice should be brought to the public's knowledge, and published in the *Monitorul Oficial*, as well as posted on the website maintained by the Ministry of Justice.

Legal registration with the Ministry of Justice is a prerequisite for any activity performed by political parties in Moldova. Thus, if a party fails to be registered it

cannot run in elections since it will not be admitted to the election campaign by the Central Election Commission, nor will it be able to function at the territorial level via its territorial branches by the local authorities in the respective areas, where they intend to develop political activities. This strongly emphasizes the need for political parties to seek registration in order to comply with the existing regulations and laws when they run for election, thus, outlining also the outstanding role played by the Department of Non-Commercial Organizations of the Ministry of Justice.

The above mentioned Directorate is also in charge of the registration of the organisations removed (for different legal reasons) from the official registries, but also for registering all judicial cases which involve the department, keeping track of changes in the statutory documents of the registered non-commercial organisations, current correspondence between the Ministry and the registered political parties, archives and a depository of articles with extremist character, collected to date. Moldovan legislation stipulates a number of organisational rules of conduct for political parties to be registered. In particular, it describes in great details the standard application documents, which are requested by the registration. This include the following documents: (1) the statute of the applicant party; (2) a letter of request for registration; (3) the programme of the party; (4) the Founding Act, confirming the list of members affiliated to the party, residing in not less than half of the existing territorial administrative units (32 rayons in total), but not less than 120 in each; (5) statement regarding the legal address of the political party; (6) data of a bank account opened by the party.

Templates of the political party charters / statutes should include as a compulsory condition the following elements: (1) name and logo of the party, (2) description of permanent symbols, (3) objectives pursued by the respective party, (4) right and obligations of its members, (5) disciplinary penalties in case members commit acts incompatible with the statute provisions, (6) leadership bodies, and a specific procedure for their election, (7) their responsibilities and fields of work, (8) competent bodies to initiate the reorganisation of parties, or to join a political alliance, or other form of political cooperation, (9) competent authority of the party to appoint candidates representing the party for local or general elections, as well as (10) the mechanism for modifying the list of candidates, at a later date.

Equally, the obligatory rule is that statutes must include (11) the procedure for dissolving the party, (12) disclosure of the current sources of financing (Art. 13-l) and (13) a specified mechanism for the management of the party properties, in accordance with the law, (14) authorities of the party responsible for accounts and internal control. Parties are requested to nominate their official representatives in relation to the public authorities, and other legal and physical persons. Legislation clearly

demands parties to provide the organisation chart of their central authorities and their territorial organisations.

Parties are also requested to hold regular meetings, but the Law leaves the party members to set up the periodicity of their organisation. Territorial branches of political parties follow the current territorial administrative structure of the country (Art. 14). Only members of the respective political parties may participate as delegates to the annual general assemblies of parties. Political parties are requested to conduct their activities in strict conformity with the Law on parties, but also with other normative acts and regulations. The same article (Art. 2–2) stipulates that registered party official bodies, structures and branches should reside only on the territory controlled by the Republic of Moldova. This ambiguous request is specifically destined to deal with the issue of territorial separatism, associated with Transnistria, which is de facto outside the effective control of the constitutional authorities of Moldova.

Legislation bans the creation of political structures and other bodies inside institutions, organisations or enterprises (Art. 2–3). This provision derives from the constitutional norm which bans any installation of state ideology (Art. 5–2, of the Constitution), and also which states that all parties and other social-political organisations are equal by law (Art. 42–2). There are no specific provisions for political parties to subscribe to certain standards of representation for women, men or some ethnic/linguistic minorities. Political parties can act only as legally established entities. This provides them with access to the existing rights, benefits (i.e. support, provided by the State to the political parties, Art. 5), and guarantees from the State, but also imposes certain limitations on their activities (Art. 3). Official applications for the registration of political parties must be submitted and then authenticated by the Ministry of Justice, which will later check individual members' requests to join the party, their names, birth data, place of residence, individual data and signatories (Art. 8-d).

Political parties may establish their own (domestic) structures that can deal with 'specific issues concerning special (vulnerable) social groups or professional groups' (Art. 1, p. 3), but can also join various international political organisations. Parties are due to bring their constitutive acts in accordance with the new changes in legislation, (if this occurs), following the new procedures set up by the responsible authorities. However, legislation provides that a political party will be not liable for its members' obligations and members of political parties will be not liable for the obligations incurred by their parties.

2.7. PATRIMONIAL ISSUES AND FINANCING FOR POLITICAL PARTIES

By Moldovan law, political parties may dispose, as legal owners, of: ‘buildings, equipment, publishing houses, cars, as well as other kinds of goods which are not outlawed by legislation’. Art. 24 of the Law stipulates that ‘these goods shall be used in strict conformity with the statutory charter, under oversight performed by the leading bodies of these parties’. The above mentioned provision indicates that parties may own and operate such facilities and assets, although it is unclear whether political parties may run their own businesses, and to what extent this business will match the ‘non-commercial’ character of political parties, and furthermore, what the balance is between the profitability rate of the business activities performed under the strict authority of political parties, and the political dimension, which these parties will have to adhere to.

It must be stressed that the legislators did not respond exhaustively to the opinion expressed by the Venice Commission at its 71st plenary session (Venice, 1–2 Jun, 200) on the Draft Law on Political Parties, presented by Hans-Heinrich Vogel)¹⁴⁹. Nevertheless, the Civil Code is the main reference law in protecting the property rights of political parties, exceptions being stipulated by legislation. Political parties can perform ‘printing activities’, as well as other kinds of activities related to the appropriate use of their properties, and other economic activities, as stipulated by charter. Political parties ‘cannot own, use or store arms (art. 24–4), explosives or other materials that represent illegal activities’. Properties owned by political parties, i.e. assets or incomes acquired through the use of their assets, cannot be distributed amongst members.

Art. 25 of the law stipulates the main sources of financing for political parties, which are: membership fees, donations, (i.e. those collected from various cultural, sport, leisure, mass activities organized by parties), State budget subventions (according to the regulations of the current law and annual budgetary law), and other legal incomes, according to Art. 24–3, such as printing activities, appropriate to party activities. Legislation prohibits the use of other types of financing sources to political parties. Incomes received by political parties will be exempted from taxes (VAT) or will be taxed in conformity with the Fiscal Code (salaries).

State or private financing cannot limit parties’ independent decisions (Art. 25–6). The Law on Political Parties leaves the authority of the respective parties to decide upon the level of membership fees which will be set through their Charter. Parties may receive donations (‘goods transmitted without conditions to the respective

¹⁴⁹ <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29025-e.asp>

parties' – Art. 26), but the annual income for such operations shall not exceed the equivalent of 0.1% of all revenues for the year in the state budget. There are no restrictions on how many political parties can receive donations from physical persons, but only that the quantum of all donations cannot exceed 500 minimum monthly salaries, as officially estimated in the national economy for the respective year¹⁵⁰. Legal entities cannot donate in a budgetary year more than the equivalent of 1,000 average monthly salaries, or 2.7 million Moldovan lei (around 156,184 euro). However, legislation bans categorically any direct or indirect financing, material support provided to the existing political parties from abroad (by other states or international organisations or private entities, foreign institutes financed by the state, or by private enterprises with foreign capital, non-commercial organisations, trade unions, charities, churches).

Prohibitions also include 'donations from citizens of Moldova residing abroad, or foreign citizens which are not citizens of the Republic of Moldova, anonymous individuals, or on behalf of third parties'. The unconditional and explicit prohibition on accepting financial support from abroad, laid down in Art. 25 cannot be interpreted as a full ban of cooperation with ideologically-affiliated political parties from abroad, but the law does not incorporate an explicit differentiation between support for and during an election campaign and support from ideologically affiliated parties, aiming to spread international cooperation worldwide. The Law does prohibit also any other possible support to political parties received from citizens of Moldova working abroad, even if they are formally allowed to participate in general elections.

As the Opinion of the Venice Commission stated in 2007, such interpretation of the Art. 25 provisions 'cannot be accepted under Art. 11 of the ECHR, since the prohibition would not be necessary in a democratic society'. If a general prohibition is not intended, redrafting the wording of Article 28 (8) should be considered¹⁵¹. Legislation stipulates the obligation of political parties to keep a strict Registry of Political Donations (RPD), as an official document of the respective political party. The Registry should include all the names, individual residence, other identification (personal) data of the private donors and donations received during the reported period by the respective political parties (Art. 27). If the total value of donations

¹⁵⁰ National Bureau of Statistics announced that for the period January – November 2009, the average monthly salary in Moldova was 2,701,8 lei. Minimum salary was 46.12 euro, less than Ukrainian minimum salary – 52.02 euro in 2009.

¹⁵¹ Comments on the draft Law On Political Parties of Moldova by Mr Hans-Heinrich Vogel, Endorsed by the Venice commission at its 71st plenary session (Venice, 1–2 June 2007), <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29025-e.asp>.

received by political parties exceeds the officially established limits or if the controlling bodies confirm the receipt of donations, infringing on the provisions of Art. 5, this will lead to the 'automatic transfer of the contested donations to the state budget, on the basis of a judicial decision'.

The Law on Political Parties (2007) includes, as a new provision, a special chapter regulating state financing of political parties (Art. 28), but the application of the law by 2010 was unexpectedly postponed by a Law adopted by the Moldovan Parliament, which explained this decision by the effects of the economic crisis affecting Republic of Moldova in 2010¹⁵². The new system of financing political parties is designed on the following model:

'Annual budget allocations for the financing of political parties represent 0.2% of the income of the state budget, and will be distributed as follows: 50% to the parliamentary parties, according to the number of seats won in the latest parliamentary elections, and validated by the new legislative, and 50% to all political parties, proportional to the number of votes received in the local elections, but under the condition that the parties have not less than 50 mandates in the representative bodies of the second sub national governments'.

However, political parties could be ineligible to receive state financing, if only:

- their activities are limited by a court decision,
- they have lost their legal statute,
- they have committed repeated infringements upon the financing of parties,
- they are in the process of being dissolved,
- They have exceeded the limits imposed by the legislation for expenditures during elections, as well as for parties that have broken these limits repeatedly.

Generally, state financing can be used (Art. 29) by the leading bodies of political parties for the following items:

- office maintenance,
- personnel payroll,
- media advertising,
- domestic and international travel,
- telecommunications,
- other kinds of organisational work and political activities,

¹⁵² In November 6, 2009, the Parliament of Moldova decided to postpone state financing of political parties from the state budget until July 1, 2013, as a result of the economic crisis. The new amendments stipulate that 0,2% of the state revenues will be allocated to financing parties, while proportional financing to the number of seats accumulated in the most recent local elections contests will start from July 1, 2011.

- membership fees in various international organisations,
- investments in mobile and immobile goods necessary to the party activities,
- office supplies,
- Other expenses related to election campaign costs, etc.

The system of state/public financing imposes a stricter control over the finances used by political parties. To be eligible for financing, parties need to be financially accountable, keep a strict record of their revenues collected from membership fees, donations, or other incomes generated by party assets or properties. In case of inappropriate spending of the state budgeted subsidies, confirmed by a decision of the Court of Appeal, parties 'shall return these expenditures to the state budget'. In conformity with a regulation approved by the Ministry of Justice (Art. 30 of the Law on Political Parties), parties shall present by March 31, every year, financial reports to the Auditing Court, Ministry of Finance and Ministry of Justice. These provisions are supposed to enable State bodies of auditors to verify how state subventions have been used by the beneficiary parties, and intervene in case some of the incurred expenses are not seen as eligible under the existing regulations.

Moldovan law requests political parties to regularly report their spending for election campaigns (Art. 31). All election candidates must report their spending in the following way: a preliminary report must be presented to the election authorities (CEC) by the candidates registered for elections two weeks before the date of the election date and a final report must be presented about one month after the date of publishing of the final election results. If, the CEC confirms the existence of irregularities, it may take it to the Supreme Court of Justice that may suspend registration of the respective candidates in the election. The Central Election Committee may request additional information from the candidates, if it considers this information insufficient or irrelevant as to the sources of financing and level of donations for campaigning.

2.8. REGULATORY PENALTIES ON POLITICAL PARTIES

Political parties must respect fully the existing national legislation and are fully responsible for bringing their constitutive charters, programmes and activities in line with the legal provisions (Art. 18–2). In case of a discrepancy, political parties are to be notified by the governmental authorities (Ministry of Justice) in accordance with existing procedures, and expected to redress the observed irregularities with the law.

The Moldovan Law on Political Parties lists a number of cases, which may lead to the application of penalties on political parties, some of them leading to the ban or

self-dissolution of political parties. Art. 22 of the Law provides for the following situations: (1) re-organisation, which may lead, as a result, to the loss of legal status or personality, (2) self-dissolution, through the definite decision of its supreme body, (3) dissolution, incurred through a final decision of the Appeal Court at the request of the Ministry of Justice, (4) decision of the Constitutional Court, which may find that activities of a specific party are 'unconstitutional'. In specie, the Ministry of Justice will launch a law-suit in the Court of Appeal requesting the dissolution of a political party, if it finds at least one of the following reasons:

- The respective party acts on the basis of a statute or a programme that differs from the official documents presented by this party to the Ministry of Justice at the registration;
- The respective party has committed multiple irregularities in the last year which call for penalties, by law;
- The respective party has not attended the last two consecutive election campaigns for Parliament, or has won in each of the last two elections a number of votes that is less than the number of members requested for the registration of a party;
- The respective party committed acts of violence, or employed illegal means in conducting its activities;
- Some activities of the respective party were qualified by the Constitutional Court as 'unconstitutional'.

The same article of the Law (art. 22) requests the Ministry of Justice to proceed with the liquidation of a political party only as a result, and solely, on the basis of a final decision of the Appeal Court. The Ministry will set up a liquidation commission, responsible for the finalization of the liquidation process and the party's removal from the Registry of political parties. In this case, all properties belonging to the liquidated political party will be transferred into state ownership, to be used for charitable purposes. To dissolve a political party, the Ministry of Justice will establish a special committee entitled to implement the final decision of the Appeal Court and dissolve the party which will intervene however only at the finalization of the full procedure aimed to dissolve and erase it from the Registry of political parties (Art. 22–4).

A period of 30 days is set by the law for other parties to claim any debts to or from this party, from the date when dissolution of the respective party is publicly announced in the *Monitorul Oficial* (Art. 23–2). By law, dissolution of a party implies automatically that all assets, goods and other values will be transmitted into state ownership, to be used for a charity or other philanthropic purposes. Art. 23 of the Law provides for the proper liquidation procedure for a political party, describing in detail who acts how, in order to draw on the legal decisions leading to the disso-

lution of the parties, cancellation of loans or other financial obligations to the party, in conformity with a posted official announcement.

Parties should be accountable for their contractual obligations towards their properties, but no party is liable for the obligations incurred by its members, as the members are not responsible for the obligations of the respective parties. However, parties may go bankrupt, or become insolvent, simply because they may have had unprofitable business activities. Art. 24 (2, 3) of the Law on Political Parties allows parties to carry out editorial activities, manage editorial businesses, as well as other economic activities resulting directly from the aims stipulated by the statutory charter; exercise property rights regulated by the civil law, with necessary exceptions set by the legislation on parties.

However, the existing Law on Political Parties does not define what exactly the situation of a political party will be in case of an unexpected 'bankruptcy', or insolvency. Here is to be stressed that the insolvency procedure in Moldova is regulated by Insolvency Law No. 632-XV of November 14, 2001, Civil Procedure Code and by the provisions of other normative acts, adopted for the application of the Insolvency Law principles. The Insolvency Law is applied to all businesses registered in Moldova, regardless of their organisational form and ownership, individual entrepreneurs, banks and other financial institutions, insurance companies, investment funds, fiduciary companies, non-commercial companies, except the State, public legal entities and administrative territorial units¹⁵³. Thus, current legislation does not define the case of political parties, which cannot be passed through the 'conventional' business stages of reorganisation, liquidation or reorganisation, but what is clear is that the management of debtors' assets during the insolvency procedure will be judged by a court, which will appoint a temporary administrator to mediate with creditors' meetings, following judicial decisions on this issues. So far, Moldova has not yet experienced any precedent of this kind.

Political parties can be dissolved if the Constitutional Court has declared them 'unconstitutional'. This provision has never been applied in Moldova since there are no precedents in which the Constitutional Court would have qualified a political party 'unconstitutional', perhaps because the existing provisions set up in law make the registering of separatist parties highly improbable. By Constitution, Moldova is 'a state governed by the rule of law, democratic, which sees the free development of the human personality, human dignity, rights and freedoms, justice and political pluralism as the supreme values, guaranteed by the constitutional order' (Art. 1–3, Constitution). This means that applicants for registration have to follow exactly

¹⁵³ Law on insolvency, No. 632-XV as of November 14, 2001

these provisions, adjusting their statutory aims and statements to the limitations set by laws, which by default outlaw any explicit support for a separatist claim, or for extremist orientations.

Art. 34 of the Law sets the obligation of the Ministry of Justice to work out and present to Parliament a specific act regulating 'when political parties can be declared unconstitutional', but the Ministry failed to comply to this timeframe (3 months from date of enforcement of the law)¹⁵⁴. Although direct accusations of 'state usurpation', etc. have been made regularly by political contestants, no specific decision of the courts confirming the subversive or anti-democratic character of the accused party have been taken so far. One should note however that the Ministry of Justice has not yet met its obligation, inscribed in the Law on Political Parties of 2007, to adopt a special bylaw for cases in which political parties can be termed 'unconstitutional'.

On April 3, 2010, the Ministry of Justice suspended the registration of a new association, 'New Right', stating that the application is incomplete, and that the organisation has undisputed links with some extremist or xenophobe organisations outside the country¹⁵⁵. Earlier, the former ruling party CPRM accused the liberal-democratic alliance of tolerating extremist movements, but has never proved this accusation in a trial. In a special communiqué posted on its website, the Ministry of Justice states that one of the founders of the respective groups advocates the far-right ideology of the legionary movement of Romania, therefore registration of the party is not possible considering the Law on combating extremist activities¹⁵⁶. Nevertheless, the case of this applicant group shows that incomplete set of instruments used by the Ministry of Justice during the examination procedure of the registration request.

Different penalties can be imposed on political parties according to the gravity of the infractions to the existing legal acts. Thus, political parties can be issued a warrant to limit some of their activities (Art. 21), if some of their actions or activities have seriously prejudiced political pluralism or a fundamental democratic principle'. The effects of the 'temporary limitation' warrant will include a ban for the respective political party to establish new media, or organise public meetings, gatherings, demonstrations, or other actions. If a political party declines to comply with

¹⁵⁴ Election Institutional Context in 2009, Adept, Study published with support of OSCE Mission in Moldova, Chisinau 2009, p. 18.

¹⁵⁵ Radio Free Europe: Ministerul Justitiei a respins înregistrarea organizatiei „Noua Dreaptă” in Moldova <http://www.europalibera.org/archive/news/20100315/445/445.html?id=1983623>

¹⁵⁶ Monitorul Oficial 56–58/245, 28.03.2003

a letter received from the Ministry of Justice to redress a situation of illegality or prejudice to the political pluralism or other basic values protected by the national legislation, then the Moldovan Ministry of Justice may lodge a complaint to the Appeal Court (Chisinau) to impose a 'temporary limitation' of the party's activities for a period of six months. Parties penalized through a warrant of temporary limitation will be unable to receive financial donations, having their accounts frozen for the respective period of six months, with the exception of minimum wage payments to the recruited staff, or penalties for prejudice caused by the actions of the respective party, or taxes and other fees to be paid to the state budget, according to the fiscal legislation (Art. 20–5).

The decision can be appealed in the Supreme Court of Justice within ten days. The court must make a decision within the following 15 days. When irregularities for which the party's activities has been limited have been redressed the party must inform the Ministry of Justice, which after a satisfactory review of the reported actions, will authorise in a five-day term, the resumption of the party's main activities. However, if the irregularities are again caused by actions and activities outlawed by the current legislation of Moldova, the Ministry of Justice may request the Court of Appeal, to dissolve the respective party (Art. 20–7).

It may seem that the grounds for lodging a complaint and restricting activities of political parties are too broad and general and could be abused, thus breaching Art. 11 of the ECHR and the judgements of the European Court of Human Rights¹⁵⁷. Nevertheless, the 2007 Law on Political Parties sets up some important safeguards against a blind or abusive use of the legal provisions against political parties. For instance, the Law stipulates that 'activities of the political parties cannot be limited one month prior to general elections or local elections as well as throughout the turnout period, as stipulated by law (Art. 21–8).

2.10. REGISTRATION OF POLITICAL PARTIES

The only public authority in Moldova entitled to register political parties is the Ministry of Justice, operating through a special department, called the Directo-

¹⁵⁷ Cf. CDL-INF(2000)001 – Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st plenary session (Venice, 10–11 December, 1999), CDL-INF(2001)007 – Guidelines and Report on the Financing of Political Parties: adopted by the Venice Commission at its 46th Plenary Meeting, (Venice, 9–10 March 2001) and CDL-AD(2004)007rev - Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12–13 March 2004). The documents of the Venice Commission are available under <http://www.venice.coe.int>.

rate of Parties and Public Associations, which is a subdivision of the Ministry, and governed, by a special Regulation, adopted by Decision of the Moldovan Government No. 129 of February, 2000, and other laws¹⁵⁸. The Law on Political Parties lists the necessary documents for the registration, requested from the 'initiative group', which starts the official procedure (Art. 8, Chapter III). Documents will be considered within one month from the submission date, ending with a positive or negative decision of registration. Within ten days from the date of issuing this decision, the Ministry of Justice can be summoned to the Court of Appeal. Party representatives attend the compulsory procedure of official registration of its leading bodies, which is afterwards inscribed in the Registry of political parties.

The Law (2007) on political parties rules out arbitrary attempts to dissolve a political party, as this can be done only on the basis of a judicial trial (Art. 9). However, adoption of the 2007 Law did not change the ill-advised practice of using legislation in a rather discretionary manner, which resulted in attempts to impede new political groups to register as parties in accordance with the newly adopted legal framework. Thus, some of the political parties sued the Moldovan Ministry of Justice during 2008–2009 for its proclivity to repeatedly postpone, or even reject some of the applications for registration or re-registration, on various grounds, claiming this was a harassment policy of the ruling party towards the opposition¹⁵⁹. The new requirements applied in 2008 on political parties again set off contradictory reactions from different political parties. Some of them applauded the new regulation because of its new chapter on political and state financing, more precise terminology, etc. Other parties claimed the new rule left unresolved too many important parts of the internal functioning of the party, affecting individual members' rights and safeguards against abusive behaviour of the party leadership.

Concomitant with the adoption of the new law, the Ministry of Justice called on parties to start a re-registration procedure. However, the Ministry refused to regis-

¹⁵⁸ The main functions ascribed to the current direction of the Ministry of Justice are the following: (a) Exercise of a non-litigation procedure of registering political parties, public associations, periodical publications and news agencies; (b) Analysis of the legal framework, evaluation of trends and needs of development for the third sector (non-governmental, and non-commercial), elaboration of proposals regarding updates of the legislation; (c) Exercise of controlling functions, within the limits of its strict competence, ensuring consideration of the statutory and legal provisions in the activities of parties, other social-political organisations, public associations and foundations; (d) Identification and analysis of cases where legislation is applied unevenly, having the competence to address its proposals and recommendations to the local governments, which have the authority to register public associations, or consult them in the methodology of the process.

¹⁵⁹ European Action Movement continues to protest against the decision of the Ministry of Justice, October 3, 2008, [http://ae.md/index.php?cstart= 66&](http://ae.md/index.php?cstart=66&) (Last updated 05.04.2010). See also: <http://www.e-democracy.md/parties/mae/>

ter submitted amendments to party documents, postponing its decisions to register changes to the party leadership, or changes made in party statutory documents. This led to considerable tensions between some parties and the Ministry of Justice, as they claimed that this decision caused ‘irremediable prejudices prior to the election campaign’. Several cases were filed by these parties against the Ministry of Justice such as: EAM (European Action Movement) versus Ministry of Justice, ‘Popular Action’ Movement versus Ministry of Justice, PLDM (Liberal Democratic Party) versus Ministry of Justice, and Republican Popular Party and ‘Ravnopravie’ versus Ministry of Justice¹⁶⁰, who claimed that provisions of the new Law on Political Parties had been applied in a selective and partial manner¹⁶¹.

Nevertheless, 12 political parties re-registered within the allocated time-span¹⁶²: Communist Party (Decision No. 22 of April 4, 2008), Social Democrat Party (Decision No. 27 of April 21, 2008), National Liberal Party (Decision No. 44 of July 7, 2008), Democratic Party (Decision No. 49 of July 15, 2008), Our Moldova Alliance (Decision No. 55 of July 28, 2008), Liberal Party (Decision No. 71 of November 3, 2008), Social Political Movement ‘Ravnopravie’ (Decision No. 72 of November 3, 2008), Centrist Union Party (Decision No. 7 of November 18, 2008), Liberal Democratic Party (Decision No. 80 of November 21, 2008), Socialist Party Patria Rodina (Decision No. 81 of December 2, 2008), Ecological Party ‘Green Alliance’ (Decision No. 85 of December 16, 2008), Agrarian Democratic Party (Decision No. 93 of December 26, 2008). In 2008, the Ministry of Justice removed two parties from its Registry: Social Democratic Party (Decision No. 27 of April 21, 2008) and Social Liberal Party (Decision No. 49 of July 15, 2008). Both merged with other parties.

As a result, over 28 political parties were active on the eve of the 2009 parliamentary elections, generating an increased eagerness to compete in elections to avoid the risk of being erased from the Registry of political parties, as a result of the application of the new legislation. The Ministry of Justice maintains the Registry of political parties as a legal instrument for managing the political diversity of the country, considering the evidence based registry as a matter of public interest. In fact, information regarding the registration of parties, or their dissolution, statute revisions or any changes in the Registry must be notified to the public via the “*Monitorul Oficial*”, as well as on the official website of the Ministry (www.justice.gov.md).

¹⁶⁰ The Ministry of Justice refused to register the election of the new Chairman of Centrist Union, claiming internal procedures have been ignored, thus, imposing restrictions and pressures on this party before elections, See: Contextul electoral 2009, Adept, Chisinau 2009, p. 16–17.

¹⁶¹ Election Institutional Context in 2009, Adept, Study published with support of OSCE Mission in Moldova, Chisinau 2009, p. 18.

¹⁶² Information Note of the Ministry of Justice published in Monitorul Oficial (No. 10–11/28 of 23.01.2009).

Despite its shortcomings, the Republic of Moldova's courts have also set a number of high-profile precedents, when it applied the existing laws in particular cases of party registration and supervision. For instance, introduction of the so-called 'principle of representation' by September 1998 became a litigation issue at the Constitutional Court. The Court stated that "the principle of representation does not contradict the constitutional right to associate freely, but could become unconstitutional if, by its effects, it leads to the suppression of the right to associate freely or to effects similar to those created by the suppression" (Decision of the Constitutional Court no. 37 of 10.12.1998 on interpretation of Art. 41 par.(1) of the Constitution of the Republic of Moldova).

This position has been confirmed by the Decision of the Constitutional Court no.3 of 29 January 1999, in which the court reiterated that establishing a criterion based on the number of members in a party falls under the competence of the organic law, i.e. depends on the discretionary power of Parliament and cannot be the subject of examination of the Constitutional Court if its effects 'don't lead to suppression of the principle of political pluralism'. At the same time, the Court decided that, starting from the representation criterion that is established by the Parliament, provisions on the minimal number of members of a party in the administrative territorial units of the second level comply with constitutional norms (Decision no.11 of 03.06.2003).

Nevertheless, the Venice Commission and experts of the Commission criticized the relevant provisions of the draft Law on Political Parties¹⁶³, stressing that these provisions do not match practices and European standards of the field of political representation. Another important and quite interesting case is the judgement of the European Court of Human Rights in the case of Christian Democratic People's Party v. Moldova (application no. 28793/02) of 14.2.2006. The Court ruled that there had been a violation of Article 11 of the ECHR, stating in particular that the temporary ban on the CDPP's activities would not have been necessary in a democratic society and that the ban could have had a 'chilling effect' on the party's freedom to exercise its freedom of expression and to pursue its political goals, the more so since the ban took effect on the eve of the local elections.

Although some of their critical points have been considered by the adoption of the law (support of not less than 5,000 party members, not less than 150 members domiciled in half of the 32 territorial administrative units), the legal require-

¹⁶³ (See: Comments on the Draft Law On Political Parties of Moldova by Mr Hans-Heinrich Vogel, endorsed by the Venice Commission at its 71st Plenary Session; Venice, 1–2 June 2007), <http://www.venice.coe.int/docs/2007/CDL%282007%29013-e.asp>

ments for registering a political party still remained quite high. In particular, this restriction affected some political groups, aiming to be active in a particular region of the country. This limit on their actions, affecting requirements of Art. 9 (1) –d, creates additional difficulties for some citizens wishing to exercise their rights under Art. 11 of the ECHR. These provisions were potentially restrictive before the adoption of the 2007 law, but the same can be said today, three years after the Law's adoption, as it creates a disproportionate and unnecessary burden for a democratic society.

2.11. DISSOLUTION/DE-REGISTRATION OF PARTIES

Art. 20 of the Law on Political Parties stipulates a number of possibilities to reorganize the activities of parties. This can be accomplished through a variety of ways, mainly via: absorption, division/separation and transformation, which should be decided by the official authorities of the respective parties, in conformity with the law (art. 20, Chapter V). But, if a party seriously prejudices political pluralism, as well as the fundamental democratic principles, its activities can be limited or suspended, as Art. 21 stipulates. The official procedures for reporting alleged cases of irregularities are quite clear and simple, but they cannot be enforced without a decision taken by the Court of Appeal at the request of the Ministry of Justice. This will occur only if the Ministry of Justice requests in writing a particular political party to suspend or cease some of its actions or on-going activities that are seen by the Ministry of Justice as infringing the law, and immediately adjusting its own activities in accordance with the written letter of the Ministry of Justice, which shall be notified about the accomplished results in less than one month (art. 21–2).

However, if the respective party did not comply in full with the above stated written requests of the Ministry, the political party may be compelled to do so by an Appeal Court's decision, which must be taken within a 5-day period after the expiration of the first 30-day period set by the Ministry of Justice. If a decision is taken by the Court of Appeal confirming that some of the party's activities 'have prejudiced political pluralism', then a party may be faced with a 'temporary limitation' of its basic activities for a period of six months. Parties may contest this decision in the upper judiciary level, in the Supreme Court of Justice, which will confirm or refuse the contested appeal from the respective party, leaving in force or not the previous decision of the Court of Appeal. It should be remembered here that the Law on Political Parties does not fully comply with the Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, reconfirmed by repeated reports of the Venice Commission on the draft law debated in 2003–2004 prior to its adoption.

In particular, rapporteurs raised the issue of 'proportionality of actions', taken by the competent authorities in relation to a political party which allegedly committed a violation of the law. As the Venice Commission mentioned in its Opinion of March 14–15, 2003 on the proposed amendment to the Law on parties and other socio-political organisations of Moldova,

'Any 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'.

It also states that,

'prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution'.

In general terms, prohibition or dissolution of political parties, being a particularly far-reaching penalty, should be used with the utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger'.

Equally, 'legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding of unconstitutionality and shall be deemed as of an exceptional nature and governed by the principle of proportionality. Any such measure must be based on sufficient evidence that the party itself and not only individual members pursue political objectives using or preparing to use unconstitutional means'. And that in the last instance, a decision on banning a political party should be reserved to the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial'¹⁶⁴.

¹⁶⁴ Opinion on the proposed amendment to the law On Parties and other Socio-Political Organisations of the Republic of Moldova, Adopted by the Venice Commission at its Plenary Session (Venice, 14–15 March

Going from the above, legal restrictions, imposing dissolution of political parties, for missing two consecutive election campaigns, seem to be undemocratic and disproportionate to the aim of the normative acts to protect and assist fundamental rights and freedoms. However, the current Law on Political Parties (2007) still imposes a dissolution procedure ‘when parties have not participated with their own lists of candidates in two consecutive campaigns for parliamentary elections’, or ‘have accumulated fewer votes than the necessary number of members at the moment of party registration by the Ministry of Justice’ (Art. 22–2c). This provision served as one of the most sensitive issues for public debate, particularly since this has affected a large number of small parties. Small parties, in particular extra parliamentary parties, called this provision discriminatory, and launched appeals in several instances to prove its unconstitutional character.

For its part, the Ministry of Justice acknowledges that Art. 22 ‘contradicts the constitutional provision of Art. 41, which states the freedom of parties and other socio-political parties’, as well as ‘Art. 1 of the Law on Political Parties, which defines parties as voluntary associations of citizens, based on the principle of free participation’, and Art. 17 (2) (b) of the Law, which ‘enshrines the right of political parties to freely participate in the elections organized according to the law’¹⁶⁵. The provision creates a serious limitation of the freedom of association and of meetings, protected by Art. 11 of the European Convention of Rights and Fundamental Liberties, which is an inadmissible setback in a democratic society.

Considering the sensitivity of the above listed article, the Ministry of Justice submitted a draft law in early February 2010 to amend Art. 22 and lift this ban on small parties, assuming that all political parties, regardless of their parliamentary or non-parliamentary character, must have an equal chance to participate in political life, to communicate with its political fiefs, and run for elections. On February 6, 2010, the leader of the Communist Party (CPRM), V. Voronin, accused the Ministry of Justice of attempting to favour small extra-parliamentary parties, suggesting that the ruling Alliance for European Integration, was behind recent defections of the Communist Party, and implied that the law revision was a trade-off. It appeared that the allegations are false since the draft law proposals concerning amendments of the Law on Political Parties was drafted already on November 16, 2009, discussed

2003) on the basis of comments by Mr James HAMILTON (Substitute member, Ireland) <http://www.venice.coe.int/docs/2003/CDL-AD%282003%29008-e.asp>

¹⁶⁵ Press release of the Ministry of Justice on the accusations regarding the draft law proposals to amend the Law on Political Parties, 08.02.2010, <http://www.justice.gov.md/ro/news-ministr/10034/> (last updated on 03.04.2010).

by the Cabinet of Ministers long before any case of defection from the CPRM, and adopted through a Decision of the Government on February 3, 2010.

Art. 3–4 of the Law bans any kind of intrusion in the activities of political parties, except the cases stipulated by the existing legislation. In practice, political parties may often face various types of pressures from the administrative layers of the central government. On the eve of the general elections of 2009 in Moldova, international observers (OSCE-ODIHR) noticed that penal law-suits were launched against opposition leaders, on grounds that raised legitimate doubts. For instance, Serafim Urechean, Chairman of AMN was accused of being the author of a conspiracy aiming to ‘assassinate the Iurie Rosca, Deputy speaker of the Moldovan Parliament, and also, leader of the Christian Democratic Popular Party, the only political ally of the ruling Communists. The alleged ‘professional killer’ however decided to ‘ignore the tempting offer’, and confessed personally to Mr. Rosca before leaving the country¹⁶⁶. Later on, collected evidence showed that the case was just a political blackmail aiming to incriminate opposition leaders, and as soon as the government changed the case was finally cancelled.¹⁶⁷

More cases registered by the team of observers reflected various kinds of intimidation or various pressures on candidates and parties from the administration, on the accusation of alleged use of ‘administrative resources’¹⁶⁸. Coalition 2009 noted in its report that ‘security forces have been involved in the political process in Moldova. Thus, General Prosecution, Ministry of Justice, Ministry of Interior, CCCEC (Centre against organized crime and corruption) and SIS (intelligence services) have constantly harassed opposition parties and their members. They have launched, or re-opened, political penal cases against opposition leaders at the direct orders of the ruling Communist Party (CPRM), aiming to outlaw some of these parties, or bring them to jail, thus brutally infringing upon fundamental human rights and freedom of expression’¹⁶⁹.

¹⁶⁶ Pro-TV, 16.01.2009, <http://m.protv.md/stiri/social/iurie-rosca-urma-sa-fie-asasinat-de-un-killer-sustin-fortele-de.html>

¹⁶⁷ DECA-press, 27 ianuarie 2009, <http://www.azi.md/ro/story/1072>; <http://www.stireazilei.md/c-o-2929>

¹⁶⁸ Intermediary report No. 1, OSCE-ODIHR, Report of election observation in Moldova, 24-February – 6 March, 2009, www.osce.org

¹⁶⁹ Several political parties declared publicly that general prosecution has opened up political penal cases (AMN, PLDM, PPR), See: Info-prim neo, 14.01.2009; leaders of PPR (Republican Popular Party) accused Ministry of Justice for deliberately postponing registration to ouster the party from election activities and consume its time and efforts in the law-courts; leader of Democratic Party has accused Ministry of Interior of manufacturing political cases against opposition parties. See: Omega, 14.01.2009, Basa-press, 15.01.2009, leader of PLDM has accused ruling party for manufacturing political files against opposition, Basa press, 16.01.2009. LADOM report (December 23, 2008 – January 27, 2009) – www.alegeriliber.md

Although intrusion into the activities of political parties is restricted by law, Moldovan legislation imposes certain limitations on the party activities, if they could jeopardize the constitutional principles of 'sovereign, independent unitary and indivisible state' (Art. 1, Constitution). Since the Constitution regards the territory of the State inalienable, legislation translates this into specific prohibitions to the party programmes to aim to redraw the boundaries of the state for the benefit of other states, or that of a separatist enclave subsisting in the Transnistrian region. This can be seen as a restriction widely acknowledged, but sometimes tested again and again by political actors.

III. Parliamentary regulation and parties

3.1. PERMANENT REGULATION OF THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA

To conduct its activities, Parliament defines the functional structure and operational divisions based on a Standing Regulation (Art. 64–1, Constitution). The existing Regulation of Parliament (No. 797-XIII of 02.04.1996) was adopted as an organic law in 1996, and has been repeatedly adjusted and amended over the last 15 years. The Regulation basically aims to organise current proceedings and constitutive authorities of the legislative chamber, which include: voting procedures, creation or dissolution of parliamentary groups, delegation of representatives into various committees, bodies and foreign delegations, but also the interaction between the various political groups regarding the legislative agenda. The Standing Regulation describes in detail how the Parliament, immediately after the validation of the legislative mandates by a Constitutional Court decision (art. 62, Constitution) should create parliamentary fractions, how the nominal composition of the Permanent Bureau of the Parliament should be appointed (art. 7), and how many votes should be cast for the election of the Speaker (art. 8).

Parliamentary groups will be created during the first ten days of the legal establishment of Parliament, and will operate on the basis of the Standing Regulation of Parliament. Accordingly, all MPs may form parliamentary groups, if at least five deputies agree to this initiative. The same provisions can be applied to the independent candidates if they reach the threshold, but this is rarely the case in Moldovan politics. Political parties can register their participation in pre-election campaign not earlier than 60 (sixty) days before the election date, and immediately launch their election campaign. Independent candidates must first collect the support of, at least 2,000 and not more than 2,500 signatories (Art. 78 of the Election

Code)¹⁷⁰ in order to be registered by CEC, in charge of the supervision and verification of the submitted lists of support on behalf of independent candidates. Some think that the acting Election Code includes discriminatory provisions when it comes to the participation of independent candidates¹⁷¹.

For instance, independent candidates are requested to have their subscription lists stamped by the local authorities, who can refuse or postpone doing so until ordered to do so by a judiciary court. The threshold for independent candidates is set at 3%, while political parties can enter Parliament if they have reached the 5% threshold. Those MPs that do not join any of the established parliamentary groups, and do not have enough mandates to establish a group of their own, create a mixed parliamentary group, similar to the Italian '*Gruppo misto*', of the unaffiliated. But, the Standing Regulation prohibits the creation of new parliamentary groups, 'other than those constituted in the first ten days from the legal creation of the new Parliament'. Parliamentary factions (groups) in their turn have their own leading bodies and official representatives (Art. 4–5, Chapter I). Each of the MPs may join only one parliamentary group, and can leave the group or may be excluded from it.

The same Art. 6 of the Standing Regulation of Parliament stipulates the right of the MPs who have left a group to join another after a period of six months from the act of exclusion or individual withdrawal, but they cannot form a new parliamentary group during the same legislative session. Art. 5–4 sets up the procedure for abolishing political fractions, once their number is less than five MPs, or if the leaders of the fraction notify in written the Permanent Bureau of the Parliament, in this regard. Each of the parliamentary fractions elect their leaders and/or leadership structure, who then forward on to the Permanent Bureau, the composition of the nominal membership for this fraction, legally established. Fractions with the largest number of members, or coalition of fractions that represent the largest political support from the validated MPs, covering more than half of the elected deputies (art. 4–12) will be titled 'parliamentarian majority'. Any modification of the composition of parliamentary factions shall be notified to the Permanent Bureau of the Parliament by the leaders of the respective factions.

The Standing Regulation of the parliament guarantees equal treatment and equal conditions for the functioning of the parliamentary fractions, ensuring that adequate conditions exist for the organisation of labour of the respective groups, i.e.

¹⁷⁰ The Election Code regulates all direct elections and referenda except those for the authorities of the Autonomous Territorial Unit of Gagauzia.

¹⁷¹ Hyde Park is concerned by discrimination for independent candidates, March 6, 2009, www.curaj.net/?p=11688

offices, office supplies, computers, budgetary resources, and professional staff, in assisting the respective fraction with possible support in law-making process (art. 4–3 and 4–4). Fractions receive considerable advantages after their creation, if compared with unaffiliated independent candidates, the latter being unqualified by this Regulation ‘to form their own separate fractions’.

For instance, fractions have the right to initiate legislative initiatives and proposals, in order to: (1) nominate or support their representatives to the Permanent Bureau of the Parliament, in permanent commissions, and in permanent delegations, operating on behalf of the parliament of Moldova, considering their proportional representation, and equally call for their (representatives) dismissal; (2) set up the legislative agenda for the sessions of the Parliament and of the Permanent Bureau, (3) participate in the creation of Special Commissions, investigating important topics addressed by the Parliamentary fractions, (4) launch draft laws on the scrutiny of the implementation of the Programme of governance, (4) attend the creation of various working groups in many other fields of activity, (5) launch public hearings. In case, proportional representation of the fractions would change, their leaders can request, after at least one year from the above mentioned fact, adjustment of the Permanent Bureau composition (membership) or permanent commissions, as well as of permanent delegations operating on behalf of the Moldovan Parliament.

The total number of committees, name and numerical composition of each of them is defined by specific decisions of the Moldovan Parliament, at the proposals of the Permanent Bureau. Election of the chairs, vice-chairs, secretaries of the permanent committees is decided (art. 1715) through a nominal voting procedure with the simple majority of deputies, considering the proportional representation of the MPs. But, Vice-chairs and Secretaries of the parliamentary committees can be recalled, on the proposal of the parliamentary faction that originally appointed them as representatives, or at the proposal of a group of at least ten MPs, supported by the majority of elected MPs (art. 17–4). If Parliamentary factions do not reach an agreement over the composition of one or more committees, the Permanent Bureau will propose, while the Parliament will decide upon, to endorse possible candidates for the nomination as responsible officials for these committees, considering proportional representation of the political factions and individual will of the MPs.

By law, permanent Committees are in charge with the task of considering all legislative drafts and proposals with the aim to elaborate specific reports and legal notifications, to launch parliamentary investigations, or initiate political debates over pressing issues on the political agenda. The Permanent Committee may also issue consultative notes on the uniform and effective application of the legislation. If necessary, permanent committees may also set up working groups, consisting

of leading specialists and experts, with whom they will consult on the way or organizing the priorities of the legislative agenda; they may institute sub-committees, informing thereof the Permanent Bureau of the Parliament, inter alia to strengthen the exercise of the parliamentary control (art. 28).

Since its adoption, the Standing Regulation of the Parliament suffered numerous changes, but nevertheless, it continued to ensure a stable and quality functioning of the legislative process in Moldova. Usually, the Regulation is praised by the large political factions, who have the power to impose tough decisions, to the disadvantage of small and fragile legislative factions, and it is heavily criticised by independent MPs, who decided to leave their original faction, on the party lists of which they might have run in elections. Those MPs who are unwilling to join another political faction may hope to bring together a parliamentary faction of non-affiliated deputies, similar to the Italian '*Gruppo misto*'. But, in spite of its introduction, the current Regulation bans the creation of new parliamentary factions, beyond those established in the first ten days after the legal constitution of the Parliament. The rigidity of the standing Regulation has been criticized recently by a group of independent MPs, who defected from the former ruling Communist Party (CPRM)¹⁷², requesting changes to the Regulation to allow recognition of new groups by the independent candidates.

3.2. PARLIAMENTARY GROUPS AND LEGISLATIVE BUSINESS

The parliamentary majority is considered as a group or coalition of groups, announced by a statement, consisting of more than half of the elected MPs, while the opposition is made of those parliamentary groups that do not belong to the ruling coalition (Art. 4–13). The Standing Regulation¹⁷³ of the Moldovan Parliament requires at least five (5) Members of the Parliament to establish a fraction, which must be registered within ten days of the confirmation of mandates by CEC, and of the validation of the new composition of the Moldovan Parliament by the Constitutional Court.

Candidates for the main leading positions in Parliament are proposed on behalf of the political fractions and, following a vote (secret or open), the candidates are endorsed for those positions. Negotiations are encouraged between political frac-

¹⁷² Novosti – Moldova. The Group of independent candidates blackmail Parliament, 01.04.2010. <http://www.newsmoldova.md/politics/20100401/844348.html>

¹⁷³ Law on Regulation of Parliament, No. 797-XIII of 02.04.1996, published in Monitorul Oficial, No. 50/237 of 07.04.1996

tions, which can join their votes to support candidates that represent more than one fraction. The Moldovan Parliament has nine standing committees, which include each 10 to 11 members, appointed on behalf of the existing parliamentary groups, whose general competencies cover quite a wide range of activities. In particular, parliamentary fractions are entitled to prepare the draft laws or draft decisions for plenary sittings, to call for public or closed hearings on various issues of political interest, to establish and run working groups, chaired by their individual members. Political fractions may also propose amendments to the legislative agenda, the creation of investigative or special commissions, draft opinions on the activities performed by the Government, hold legislative hearings, etc. If the number of members of the groups is altered, then within one year from the formal notification of this, parliamentary groups may ask for an adjustment of the Permanent Bureau, Standing Committees, as well as permanent delegations.

Groups receive from Parliament offices for their members, equipment, office supplies, and other kinds of support, i.e. a secretary and subsidiary staff, according to the group size and funding allocated by Parliament. Political groups nominate their delegates to the standing committees of Parliament, which is usually done immediately after the legal recognition of the new legislative mandates by the Constitutional Court. Parliament has nine standing committees, each with ten or eleven members, whose competences cover a broad range of functions within their subject areas. *Inter alia*, they scrutinise, and, in some cases, prepare legislation, and also conduct inquiries into the Government administration, with the support of the Parliamentary staff, and of external consultants from the public and private sectors.

A parliamentary group ceases to exist when the number of its members drops to less than five, or when the group passes a resolution to dissolve itself. The process of party fragmentation caused considerable debate within the latest session of the Moldovan Parliament, following the results of the July 29 elections. First, eight MPs defected from their own parliamentary factions in less than six months after the elections (2009), requesting recognition as separate fractions, but also amendments to the Standing Regulation of the Parliament¹⁷⁴. They threatened to boycott the legislative sessions if their demands were not met. In their view, the current Regulation of the Parliament of Moldova contradicts the principle enshrined in the Moldovan Constitution – Art. 68 (2) – stipulating that ‘every imperative mandate is abolished’,

¹⁷⁴ Six deputies defected from the CPRM (Communist Party of Moldova) between December 2009 and March 2010, out of 48 mandates received in the latest general elections of July 29, 2009. Two other MPs defected from their Moldova Noastra Alliance (AMN), and cautiously suggested freeing up the floor for new political groups.

allowing MPs to be in the service of the people, and not of their parties on whose lists they have campaigned.

Following this argument, party interests cannot prevail over the representative mandate exercised directly by the Members of the Parliament on behalf of the sovereign people. Nevertheless, this cannot be equated with ‘party administrated mandate’, as it is understood in Ukraine, where new amendment adopted in 2004 to the Standing Regulation practically banned any sort of ‘party switching’. Current Standing Regulation can be used by parties ‘to call to order’ some independent-minded deputies, who can be warned to be expelled from the parliamentary fraction if they will not vote, as the party demands. In fact, this allows political parties to apply rather rude and undemocratic pressures on their members, as soon as they are becoming Members of the Parliament, limiting their space for manoeuvre, in attempt to apply various legislative strategies. Since there is no precedent for independent candidates to be elected individually, independent MPs represent, as a rule ‘exceptional’ cases, reflecting political ‘accidents’, scandals or individual decisions to leave the respective parties by some MPs, or these party’s decision to lift party membership to some of their members. Individual MPs still keep the same rights and obligations as full-fledged people’s representatives, but cannot enjoy the organisational benefits, shared only by party fractions inside Parliament, such as:

- participation in the formation and chairing of the standing committees,
- permanent office premises,
- consultation on specific cases of legislation, as well as
- official use of cars belonging to the Parliament,
- other collateral advantages, provided to the party fractions by the parliamentary apparatus.

Chairman of the Parliament is elected by a simple majority of votes but can, only be dismissed by a two-thirds majority, thus making their removal complicated or practically impossible during the legislative session. Chairs of the Standing committees are elected on the propositions of the political groups, following by and large the same procedure as in the case of the Speaker of Parliament. Parliamentary groups have the right to have representatives in the permanent Bureau of Parliament, standing committees, as well as in the standing parliamentary delegations, on the basis of their proportional representation in Parliament (Art. 6–5). Although the Standing Regulation of Parliament is contested from time to time, generally MPs agree that it ensures a stable legislative process, contributing to it through the work of groups, standing committees, working groups and leading bodies of Parliament.

In 2009, PCRM contested the election of the Parliamentary Chair, M. Ghimpu, (elected with the support of 53 deputies), belonging to the Alliance for European In-

tegration (AIE), as they claimed that ‘this prejudiced Regulation provisions, which set ten days for the creation of parliamentary groups’¹⁷⁵. Given the growing tensions between the competing political groups (former ruling Communist Party versus emerging ruling Alliance for European Integration), the Constitutional Court accepted to rule as an exceptional case, thus stepping into a highly sensitive debate. On September 8, 2009, the Constitutional Court examined the litigation in an open session, when three members voted against the election of the Parliamentary Speaker on the first day session of Parliament. The election of the speaker remained valid, postponing the conflict to another date.

3.3. PARLIAMENTARY VERSUS SEMI-PRESIDENTIAL POLITICAL REGIME

In July 25, 2000, the Moldovan Parliament decided to shift to a parliamentary regime, changing the way of electing the President, but leaving the same competencies he/she enjoyed when elected directly. This change was preceded by a number of political disputes and confrontations between President Petru Lucinschi, who attempted to expand his power by introducing a purely presidential system,¹⁷⁶ and the major political forces of the ruling coalition, Convention for Democracy and Reforms (CDR), led then by Dumitru Diacov, Chairman of the Parliament. The dispute was preceded by a failed referendum, organized at the initiative of the President Lucinschi, in 1998, followed by the creation of a Committee on constitutional reform, aiming to prepare as a law what the incumbent president saw as ‘unavoidable’ change. Conflicts generated a sudden ‘ad-hoc’ alliance of the major political forces against the incumbent President and, as a result, Moldovan Parliament decided to make President directly elected. The Parliament blocked the Presidential draft of amending Constitution, and replaced it with its own Draft.

The Moldovan Parliament called this amendment a ‘change from a Semi-presidential republic to a parliamentary one’. Thus, amendments to the Constitution allocated more power-competencies to the acting Cabinet of Ministers, who was nevertheless placed under more explicit scrutiny of the legislative power, while Presidential elections remained a pure matter of ‘negotiation’ between main political actors representing the Parliament, since it required a clear majority of votes,

¹⁷⁵ Infotag, 28 august, 2009

¹⁷⁶ In May 23, 1999, President Lucinschi called for a referendum with the following question: ‘Do you support amending the constitution in order to introduce a presidential form of government in the Republic of Moldova, in which the President of the Republic shall be responsible for forming and leading the government, as well as for the results of the country’s governance?’ The results of the referendum were invalidated since only 58% of voters participated in the referendum out of the necessary 60%, although almost 60 % of those who voted supported the President by answering affirmatively.

encompassing three-fifths of the acting MPs (61 deputies out of 101 total seats). Parliament holds the right to express a vote of confidence or no-confidence in the Prime Minister (Art. 106–1) and his cabinet, but it may also empower the Cabinet with the authority to legislate by ordinances (Art. 106–2), which actually meets Sartori's definition of a semi-presidential system¹⁷⁷.

While retaining the power to pass laws, decisions and motions, to control executive power (vote of confidence or no-confidence in the Prime Minister and Government), and to amend the basic law (Constitution)¹⁷⁸, the Moldovan Parliament nevertheless hesitated to change the main powers (competencies) of the President, who remained in charge for the appointment of the Prime Minister-designate, after a formal consultation with the existing political factions of the Parliament. The President retained the power to revoke or nominate members of the Cabinet of Ministers, on the formal proposal of the Prime Minister, but with unclear no specification of the conditions under which the President can use the power¹⁷⁹. The President holds the power to dissolve Parliament, under certain circumstances, which could potentially be interpreted broadly: a deadlock in forming the Cabinet of Ministers, or a deadlock in passing new legislation for three consecutive months.¹⁸⁰ Moreover, new amendments to the Constitution stipulated also that President could chair meetings of the Cabinet of Ministers, without providing any clarity in connection to the chairmanship's role, type of sittings, and authority of decrees upon Cabinet of Minister's decisions.

Art. 86 of the Constitution confer to him a number of competencies in the field of foreign policy: negotiations, talks, international treaties, signed on behalf of the state of Moldova, to be later presented for ratification to the Parliament, nomination and recall of diplomatic representatives, creation or cancelation of diplomatic offices abroad. Art. 87 recognize the quality of the President as of being the 'Chief Supreme Commander of the Military Forces', which allow him to declare, with prior consent of the Parliament, partial or general mobilization (87–2), authorise appropriate measures to fight back military aggressions on Moldova, to declare 'state of war' situations, which are to be notified however to the Parliament of Moldova, which can be summoned if this coincide with annual leave within 24 hours from the moment of a foreign aggression, or other calamities that demands from the

¹⁷⁷ Sartori, G. *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*. Houndmills: Macmillan Press, 1994.

¹⁷⁸ Ibid., Art. Art. 66, title 3.

¹⁷⁹ Constitution of the Republic of Moldova (1994), Art. Art. 82, title 3. www.docs.md (last accessed on January 14, 2006).

¹⁸⁰ Ibid., Art. Art. 85, title 3.

incumbent President extraordinary measures. Art. 88 stipulates a group of 'other competencies', which enable President with a wide area of symbolical functions (deciding on the orders or honorary titles, conferring military degrees, according to the legislation (judges, prosecutors), providing citizenship of Moldova and political asylum, nominate top-ranked officials, in accordance with special law (art. 88-d), authorize top-level diplomatic ranks. A later amendments to the Constitution of 1994¹⁸¹, amended Art. 88-i, thus enabling Moldovan President to lift some acts of the Cabinet of Ministers, which are seen as contradicting to the legislation, until the adoption of a final decision by the Constitutional Court, complemented with the contested phrase, and... 'exercise other competencies established by law'.

Having no explicit power to intervene in the work of the Cabinet of Ministers, nevertheless, Presidents held either continuous battles with all Prime Ministers or subdued them to their own proper authority. By Constitution, Presidents of Moldova shall cohabitate with the second, after Speaker of the Parliament, top-official – Prime Ministers – which are the ultimate responsible for the executive policy effects, supervised by the legislative power. In practice, this cohabitation is loosely understood as a continuous conflict of competencies, starting from the procedure, when President decides on his own who should create the new Cabinet, leaving him the choice in selecting individual Ministers, or imposing to the candidate for the Prime Minister position the obligation to respect the proportional representation principle, enshrined in the ruling coalition charter. This contains all the elements of a genuine semi-presidential system, except for the fact that the President is not directly elected.

This constitutional architecture, adopted in 2000, was harshly tested before the end of the year. After two consecutive failures to appoint a new Prime Minister, acting President Lucinschi dissolved Parliament and called for an early election. According to the Constitution, the Cabinet of Ministers is headed by a Prime Minister, assisted by a number of Deputy Prime Ministers, who are responsible for specific areas and fields of executive oversight.¹⁸² The powers of the Prime Minister, who is the head of the Cabinet of Ministers, are limited to a considerable extent by the prevalent position of the Parliament, and the nomination procedure, which is to be approved by the incumbent president of Moldova. Art. 96 of the Constitution stipulates that 'the role of the Government is to implement the domestic and foreign policies of the State, and ensure a general coordination of the public administration'. The Constitution also states that, 'the Government shall follow its programme of activity, as accepted by Parliament, when exercising its own competencies'. Even

¹⁸¹ Monitorul Oficial nr.1 din 19.08.94 (Art. 88 a fost completat cu litera i)

¹⁸² Ibid., Art. Art. 97, title 3.

if the Prime Minister's role is more generously outlined by the Law on Government, the Constitution of Moldova enshrines a dual authority structure of the executive, where the Prime Minister is by law a weaker authority, while the incumbent President a stronger one.

Art. 77 of the Constitution says that 'the President represents the State and guarantees the sovereignty, national independence, unitary statute and territorial integrity of the country'. The President may dissolve the legislature (Art. 85), exercising his authority to promulgate the laws adopted by Parliament. He/she also holds important powers in conducting the foreign policy of Moldova (Art. 86)¹⁸³, holding wide competencies in the field of national defence (Art. 87)¹⁸⁴, and other competencies (Art. 88), such as: political asylum and citizenship issues, nominations in the civil service, military and diplomatic ranks. Also, the President can suspend various acts adopted by the National Government until a final decision is made by the Constitutional Court. Such provisions may disturb the work of the Prime Minister, as it leads to a *de facto* oversight and control of the Cabinet of Ministers by the President, allowing him/her to adopt a 'super-dominant role', contrary to the original assumption that legislators would be 'the main pillar of the political system in Moldova'.

Art. 81 of the Moldovan Constitution does not impose any special provision on 'party affiliation' for the incumbent President, which creates instead several ambiguities. For instance, President Voronin decided to remain leader of his ruling party, and actively promoted the Communist ideology during his tenure of power. How can a President be consistent in his role of representing all the citizens regardless of their preferences, if he shares the membership of a specific political party? As a member of a certain political party, it is unclear when he would represent his own party, and when he speaks as a 'national arbiter', following the spirit of the semi-presidential model of governance. In 2001 this gave the Communists (CPRM) a golden opportunity.. Controlling more than three-fifths of Parliament (71 of MPs out of 101), they captured all the key elements of state powers: President, Speaker, Prime Minister, and even amended the Constitution. Political pluralism and 'pluralism by default' sessions ended soon in almost absolute control of the State by the Communists,

¹⁸³ Art. 86: in foreign affairs, the President holds negotiations, signs international treaties on behalf of the Republic of Moldova, which shall afterwards be ratified by Parliament; receives diplomatic credentials and appoints high ranking diplomatic envoys, confirms the creation of new embassies and other diplomatic missions.

¹⁸⁴ Art. 87: in the defence field, the President is the Commander in Chief of the armed forces; he may declare, with the prior approval of the Parliament, partial or general mobilization of the army; in case of military aggression against the country, the President takes the necessary measures to repel the aggression, declare a state of war, and inform Parliament about this decision; the President may take other necessary measures to ensure national security and public order, within the limits of the legal framework.

making Moldova one of the first ex-Soviet states to return to communist rule via democratic elections, even though the new ruling party has attempted to combine a market economy with Marxist concepts. President Voronin received unlimited power and influence in the country. The absolute majority obtained by the Communist Party in Parliament generated hopes of political stability, especially compared to the previous Parliament where the absence of a clear majority group produced a number of crisis situations.

In the following years, political dynamics still showed more turmoil than stability, and the original assumption that a super-dominant party could be protected against deep-seated conflicts proved to be wrong. In less than a year after the Communists' triumphal election, street protests erupted in Chisinau as a result of the Communists' wish to introduce the Russian language as a compulsory subject in elementary schools and change the history subject in schools. In 2003, the spiral of conflicts increased because of the 'Kozak Plan', originally accepted in Chisinau, but stirring up public unrest and confrontation. Although he was re-elected in April 2005, Vladimir Voronin had to agree upon a number of conditions set up by the opposition parties before they were to elect him as a President.¹⁸⁵ Even if the April 5 2009 elections proved to be successful for the ruling Communist Party (which won 49.5% of votes), it also caused serious concerns about multiple frauds, irregularities and abuses, prompting an immediate protest after the Election Day. People pointed to several irregularities during this election, including the interference of the police and security forces into the affairs of the political parties, and warnings about suspending the licence of some TV stations, blamed for their overt support of the opposition parties. Opposition parties were persecuted during the campaign, while their offices were vandalised by 'unidentified' persons, as the police announced: the banners or flags of the EU and the national flags were stolen or vandalized. The traumatic experience of the April protests forced opposition parties to block the election of the President, the Communist Party lacking only one vote to elect a new President and legitimately running another political cycle.

The failed election of the President on 3 June 2009, forced President (whose mandate ended on April 7, 2009) to call for early (repeated) parliamentary elections on July 29, 2009, which resulted in a fragile but nevertheless undeniable victory for the main four opposition parties. Six months later, however, the scenario of failed presidential elections was repeated, this time for the Alliance for European Integration

¹⁸⁵ Oazu Nantoi, Azi.md. 13 mai 2009, <http://www.azi.md/ro/print-story/2954>; Presedintele PPCD si-a argumentat decizia sa voteze alegerea lui Vladimir Voronin in functia de presedinte al Moldovei – <http://politicom.moldova.org/news/presedintele-ppcd-sia-argumentat-decizia-sa-voteze-alegerea-lui-vladimir-voronin-in-functia-de-presedinte-al-moldovei-1409-rom.html>

(AIE). Art. 87 of the Constitution stipulate that the President shall dissolve Parliament ‘after two failed attempts to elect a President’, but Art. 85–3 stipulates equally that ‘Parliament cannot be dissolved twice in the same year’. The Constitutional Court’s Decision no. 4 of December 26, 2000, ruled that legislative failure to elect a President in two repeated rounds of voting created the legal grounds to dissolve Parliament and call for early elections. With the vacancy of the Presidential office as a result of the expiry of his mandate, the President may keep exercising his mandate in line with Article 80(2) of the Constitution, until the newly elected President is sworn into office¹⁸⁶. Constitutional Court Ruling no. 45 of December 18, 2000, states that 61 out of the 101 deputies should take part in the election for the results of the presidential election to be considered valid, as Article 78(3) of the Constitution affirms that the President must be elected by a three-fifths majority of deputies.

In an attempt to curb political instability, generated by a new round of failed elections, some of the Alliance (AIE) leaders decided to resolve the unavoidable crisis through a comprehensive constitutional reform. In December 2009, acting President (also – Speaker of the Parliament), Mihai Ghimpu, set up a State Committee for constitutional reform, but controversies arose soon, since no clarity was provided about the political course, whether this can legally substitute the non-election of the President, which should be settled in a new round of early elections, or whether a new Constitution should be adopted via a referendum’. In response to the growing disputes and differing interpretations, the Venice Commission adopted an *amicus curiae brief* for the Constitutional Court of the Republic of Moldova, at its 82nd plenary session (March 12–13, 2010)¹⁸⁷. The response was given to the Constitutional Court Chair, who requested the Venice Commission to assist him in interpreting the respective articles of the Moldovan Constitution, particularly on (1) the election proceeding of the President, and (2) on the effects of the dissolution of the Parliament.

The Venice Commission stated that the ‘existent provisions of the Constitution on the dissolution of Parliament applies to the situations set out in the Article on the election of the President. Dissolution of Parliament can therefore not take place twice within one year, even if Parliament fails to elect a President twice’. According to the Commission, the words “in the course of a year” should be interpreted as meaning one year counting from the last dissolution of Parliament and not within one calendar year. This means that Parliament could be dissolved at the earliest on 16 June 2010. The Commission underlines that following this date; dissolution must take place within a reasonable timeframe. Nevertheless, the Venice Commission

¹⁸⁶ Constitutional Court: Ruling no.43 of December 14, 2000

¹⁸⁷ Strasbourg, 15.03.2010. Venice Commission: When to dissolve the parliament of Moldova – Venice Commission adopts opinion http://www.venice.coe.int/site/main/Focus_E.asp

underlined both the urgency of amending the constitutional provision on electing the President and the need to do so in full compliance with the requirements of the current Constitution.

The Venice Commission also reiterated its earlier proposal on constitutional reform through the revision of Art. 78 of the Constitution with a view to decreasing the number of votes necessary to elect the President, following comprehensive agreements reached between the leaders of political parties, mediated by the Council of Europe and the EU leaders. The Venice Commission voiced again the need to organise new elections for the Moldovan Parliament, after settling the existing constitutional issues, within a 'reasonable timeframe'. Concerning the initiative of striving for a more comprehensive revision of the Constitution, the Venice Commission stated it could take place during the term of office of the newly elected Moldovan Parliament.

IV. Political Parties as Organisations

4.1. MEMBERSHIP IN POLITICAL PARTIES

The Constitution of Moldova (Art. 41–1) enshrines ‘the right of citizens to freely associate in parties and other social-political organisations’, which is a basic principle for any democratic state. However, although this is widely associated with the procedural elements of the political regime, neither the Moldovan Constitution nor the Law on Political Parties adopted in 2007 mention another important principle for the organisation of political parties – internal democracy – which is largely seen as a matter of internal conduct of political parties, and its leaders.

It is understood that this principle is not specifically enshrined by the main law, Constitution of the Republic of Moldova, and is only slightly addressed by the Law on Political Parties, adopted in 2007. The absence of a sound conceptual ground for internal democratic rules has huge implications for the quality of the internal political process, the party construction, as well as for the public perception of political parties, their leader’s behaviour and statutory goals. Art. 6 of the Law on Political Parties develop extensively the provisions related to membership, the setting of the basic criteria, the non-imposition principle, but also the rights and responsibilities of the party members.

The Law stipulates that ‘citizens of Moldova who have the right to vote according to the existing legislation may become members of political parties. This provision excludes without exception both foreigners and stateless persons from party membership. As pointed out in the Comments delivered in 2007 by the Venice Commission, ‘such broad exclusion is no longer acceptable under the standards of the Council of Europe’¹⁸⁸.

¹⁸⁸ Comments On The Draft Law On Political Parties Of Moldova by Mr Hans-Heinrich VOGEL (member, Sweden), EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) Opinion No. 431 / 2007 Strasbourg, 19 April 2007

But, political parties are also voluntary forms of associations. Therefore, ‘nobody can be forced to adhere or not adhere to a political party, according to the existing legislation’ (Art. 6–2); all citizens of the Republic of Moldova have the right to freely associate or give up their party membership, at any time. Exceptions are made for those officials who by virtue of their professional rank cannot belong to political parties; the list is to be adopted as an organic law. Another exception relates to the legal character of associations: ‘secret or other kinds of associations which infringe upon the fundamental provisions of the Moldovan State: sovereignty, integrity and unitary statute, independence, etc.’ are automatically excluded. With the aforementioned exceptions, all citizens may join any party, without fear of being penalized, or that their affiliation will prejudice their career, developing thus the principle of inclusivity.

Parties approve or not the submitted application for membership by individual citizens on a case-by-case basis. At the same time, membership in parties is based on the principle of exclusivity, since Moldovan citizens ‘can be members of only one political party’ (Art. 7–2). Therefore, from the moment of joining any party, ‘citizens shall declare in writing, on their own responsibility, that they are not members of another political party’. The legislation is specific in stipulating that citizens lose their former membership on the date of joining another party, stressing that ‘membership in a political party, as well as loss of the membership in a party, cannot be seen as a ground for reclaiming some privileges, or for restricting some fundamental rights and obligations’ (Art. 7–5).

Another interesting development in the field of party regulations in Moldova was that some of the older provisions, excluding a number of professional categories from holding party membership (Art. 10 (8) of the 1991 Law on Political Parties), disappeared in the new 2007 Law of political parties. So, if the old legislation listed a large group of civil servants, who were explicitly banned from becoming ‘members of political parties’: police officers, other staff of the Ministry of Internal Affairs, intelligence officers, customs officers, judges, prosecutors, criminal investigation officers, ombudsmen, state inspectors, as well as journalists of the official media, then Art. 6 of the 2007 Law on Political Parties sets almost no limitations on political membership, extending the right to association to ‘all individuals entitled to vote’. The very few categories excluded from the right to associate with political parties were referred to those ‘not having full legal capacity’, or individuals ‘who are barred by judiciary decisions from participating in political activities’ (Art. 6–4).

The revision of the legal provisions on party members brought to Art. 16 of the Law on the Public Service and the questionable statute of public servants (No. 158-XVI of 04.07.2008), granted unrestricted party membership to civil servants, but main-

tained bans only for some professional groups, such as the judiciary, military and prosecutors (Art. 3 of the Law on Prosecution), customs officers (Art. 6 of the Law on Custom Services), members of the armed forces (Art. 36 of the Law on the Statute of the Military). No specific provisions or criteria for party membership were set by the new Law on Political Parties, which stated that this issue 'shall be a matter regulated exclusively by party internal documents (charters)', registered according to the existent legislation, and agreed upon by party leaders.

Art. 1–2 of the Law stipulates that 'political parties, as democratic components of the state governed by the rule of law, shall promote democratic values and political pluralism', which is incompatible with any racial, gender or ethnicity limitations. One should recognize that although the existing legislation and Constitution bans the creation of exclusivist political groups linked to either spoken language or national identity, Moldova has registered and contemplated the creation of several forms of political groups, representing national communities, registered as national minorities by domestic law. The Movement 'Ravnopravie', established as a social-political organisation to promote the interests of ethnic Russians serves as an example in this regard. In 1994, another group of ethnic-based parties (Socialist Party and 'Patria – Rodina' Party) joined a nation-wide bloc, which gained 22 seats, and formed a governmental coalition with the ruling Agrarian Party.

Another example is provided by the political party 'United Gagauzia', which is registered only at the regional level, in Comrat (urban centre of the territorial-administrative autonomy Gagauz Yeri). This in fact challenges the 'uniform application of the Law on Political Parties' principle, which stipulates that 'every political party should be registered by the Direction for Social-Political Organisations at the Ministry of Justice, while their branches could be registered by the local authorities of the first and second tiers'. Since the Law on Political Parties is an organic law, its provisions should be applied in full throughout the territory of the Republic of Moldova, and therefore it is unclear why registration of 'United Gagauzia' as a political party remained unchallenged by the Ministry of Justice so far. Moreover, even by the Special Statute adopted for the creation of this autonomous region¹⁸⁹, the Regional Assembly, as the highest representative regional body of the autonomy (art. 7) is explicitly forbidden 'to adopt decisions exceeding its competencies'. Having a wide range of administrative and political competencies, the Gagauz Assembly can 'set up the procedure for the organisation and activities of the local governments, public associations of citizens, excepting political parties and other social-political organisations' (art. 12-c).

¹⁸⁹ Law on the special legal statute of the Gagauz Yeri, No. 344-XIII din 23.12.94, published in Monitorul Oficial of the Republic of Moldova nr.3–4/51 din 14.01.1995

This means that the Law on Political Parties (2007) can respond to a large diversity of political and regional interests, whose leaders and the majority of their members belong almost exclusively to ethnic minorities. However, the legal ground for registering these parties were the normative provisions of the Law on Political Parties, which respond to a wide diversity of political and regional interests. There are equal claims that other national political parties primarily represent the titular group, but the alleged claim touches upon the internal affairs and policies of the individual parties, which cannot be addressed by law. Political parties cannot be dissociated from their ideological bias; they share doctrines and ideologies that are supposed to direct their political actions. It is obvious that candidates wishing to become members of political parties may have their ideological preferences tested, or be selected based on their loyalty to some political or ideological criteria.

At the same time, one can agree that there are political parties who might provide preferential conditions to attract various representatives of the ethnic minorities living in some of the regions of Moldova as members. Nevertheless, the acting laws do not impose rigid criteria for the representation of regional or ethnic minorities on the assumption that this would affect the independence and autonomy of political parties in designing their own political options, ideologies and programmes, which can appear and reach their audience only in a competitive environment. It is obvious that political parties cannot be separated from their doctrinal identities or ideologies through which they formulate their tactical directions, which define in the end their political choices and strategic options. Thus, those who intend to join parties as members will be selected according to their individual capacity and commitment, implying the existence of some political readiness, which can be assessed based on some ideologically-based assessments. It is thus obvious that parties may impose other criteria for the selection of their members or supporters that could be rather different from the way in which non-commercial public associations, running non-partisan activities, select their members.

However, the Law on Political Parties is not clear and explicit in defining membership criteria, subscriptions or other obligations to party members, leaving to the leaders of the respective parties to elaborate on the criteria for accepting or rejecting individuals seeking membership, defining various forms of joining parties, but imposing the obligation of belonging to only one party (art. 6). Party members can be suspended from their membership if a written application in this regard will be filled in and submitted, or if the respective members have committed serious violations against the party discipline, or made other activities, which contravene to the statutory charter or other party documents (art. 7–5). Moldovan Law does not restrict, nor prescribe the selection mechanisms for party members, nor does it establish any specific supervising facility to oversee this selection, which remains

a strictly internal matter for party organisations. For instance, the Communist Party's (CPRM) Statute (Art. 4) stipulates that its members should 'be honest, principled and with firm beliefs, studying and creatively using the 'Marxist-Leninist Theory and Practice', the party programme and other party documents, promote actively and support consequentially communist ideas, the orientation of the party in society, 'organising workers in defence of their vital interests', but in conformity with the Moldovan Constitution and other legislative acts of the country'.

Since 2007, the Ministry of Justice has attempted to supervise the activities of political parties, by setting an obligation to comply with the new rules of the legislation. Some of the opposition parties accused the government of restricting their freedom of association in advance of the spring 2009 parliamentary elections. On May 13, 2008, Moldovan Court of Appeal (Chisinau) confirmed a Justice Ministry's decision to decline registration of the European Action Party (EAP) on the accusation that 'upon verification, some signatories of the presented party members (list) seem to be false'. However, no technical proofs were shared following the announced decision of the Ministry of Justice. Similar accusations were made against the Liberal Democratic Party (LDPM) which tried to launch a wide-national referendum on the electoral system used for elections in Moldova, which made their leaders claim that police officers and other state-controlled bodies of the Central Government blocked in fact the collection of signatures, by intimidating party members or by calling LDPM territorial leaders in for police questioning¹⁹⁰.

By their statutes, political parties set up their own criteria of eligibility for candidates that express their wish to become members. For instance, the Democratic Party states that 'every citizen of Moldova, regardless of ethnicity, gender, race, faith or religion, social background or income, may become a member of the party', if they have reached 18 years at the moment of application, recognize and respect the statutory documents of the Democratic party (programme and statute), are active in one of the primary branches of the party and regularly pay membership fees' (Art. 19)¹⁹¹. Similar provisions -18-years old, commitment to contribute personally to the realisation of the main objectives of the party programme, respect for the statutory documents – can be found in almost all party statutes (Art. 10, Statute of the Christian Democratic Popular Party, Art. 9, Statute of the Social Democrat Party, etc).

¹⁹⁰ 2008 Human Rights Report: Moldova, US State Department, Bureau Of Democracy, Human Rights, And Labor 2008 Country Reports on Human Rights Practices Feb 25, 2009

¹⁹¹ Art. 19, Statute of the Democratic Party, <http://www.e-democracy.md/files/parties/pdm-statute-2008-ro.pdf>

The Social Democrats stipulate that members of youth organisations have to be between 18 and 30 (Art. 103). On the basis of this, the Social Democrats authorise the creation of three kinds of organisations: based on territorial affiliation (created according to the law requiring members in at least half of the existing territorial administrative units of second tier, with not less than 50 members in each), but also on a demographic or a professional basis (Art. 105–106). Application for membership is presented in writing by individuals to the primary organisation. Membership is granted if the primary organisation of the party supports the application.

Some parties recognize different types of membership. For instance, the Democratic Party of Moldova states in its Charter/Statute that ‘individuals aged 15 to 18 years, who know the party programme and statute, may become junior members of the Democratic Party (Art. 20, Statute), joining a primary organisation at their place of residence. Parties may have supporters who adhere to the programmatic principles of the party and contribute by their activity to the accomplishment of the party objectives without being party members. It is a task delegated to the primary organisations to keep track of the local supporters of the party.

By statute, parties set up specific limitations to exclude from membership those persons, who ‘support or undertake extremist, racist, anti-Semitic, anarchist or chauvinist actions, are incompatible with the democratic principles of the state governed by the rule of law’ (Art. 21, excerpts from the Charter of the Democratic Party). Some party statutes make provision for the cancellation of party membership, if this is requested by specific laws, for members in top-ranking positions of the state administration (Art. 22, Democratic Party Charter). The provisions in the Law on Political Parties stipulate responsibility for the clarification of the ‘rights and obligations of members’ in the respective parties. Therefore, each of the registered parties has been requested to work out its own system regulating links between members and party leaders, representation mechanisms and accountability of party leaders to their constitutive members. Usually, party statutes include the ‘rights’ and ‘obligations’ of their members. The rights of the party members include:

- free expression of opinions on the organisational and political aspects of the party,
- submission of proposals to the leadership of the party,
- voting for the leadership of the party at various levels,
- participation in the elaboration of political decisions,
- the possibility to request information,
- to request various kinds of support from the primary organisations,
- to criticize other members or party authorities,
- to address complaints or proposals to every party instance,
- organisation of, and participation in party actions, which conform to the party’s statute,

- representing the party at congresses, conferences, other political venues and national or international gatherings, and
- sponsorship with financial and material resources (Art. 23, DP Statute).

After enumerating the general obligations of party members, the CPRM Statute states that their ‘members may address justified criticism to their party bodies, or any CPRM member, individually, but also, that they ‘can rescind from the leadership of the party individuals, that have not proved to be trustworthy’¹⁹².

The main obligations of members (as enshrined by the Statute, Art. 24, DP) include the following:

- registration of membership and participation in the activities conducted by the primary organisations,
- abide by the statutory documents of the party and actively participate in the fulfilment of the objectives stipulated by the party programme,
- promote the policy and ideals of the party and expand the party’s influence,
- respect party discipline and ethics and political standards of conduct,
- contribute to the maintenance and strengthening of the ideological and organisational unity of the party,
- respect the pluralism of ideas and opinions,
- contribute to the achievements of the primary organisations, as well as its hierarchical party bodies, participate in the election campaigns.

The current legislation on parties does not stipulate any kind of ‘multi-tiered membership’, although parties may set up their own mechanisms to differentiate between ‘probationary members’ and ‘full-fledged members’. The party probationary period is provided for four months, similar to a working probation, in the case of the Democratic Party of Moldova (Art. 20–2). Party Members shall pay an annual membership fee of 48 lei (around 4 USD) in Democratic Party of Moldova (DPM). Membership can be lost, according to the party charters, in case of death, dismissal, or exclusion¹⁹³. For instance, exclusion can occur if members of the party ‘have contravened a party Statute, causing material prejudice and damaging the political image’. However, exclusion of party members is usually preceded by internal hearings, where suspected members are summoned to explain their ‘alleged violations’, and at which they may be warned about an expulsion from the party. If they will not obey the party indications, the respective members can lose their membership

¹⁹² Art. 3, Statute of the Communist Party of Moldova (CPRM), <http://www.e-democracy.md/files/parties/pcrm-statute-2008-ro.pdf>

¹⁹³ Art. 3–8, Statute of the ‘Our Moldova Alliance’, <http://www.e-democracy.md/files/parties/amn-statute-2008-ro.pdf>

for a provisional period of time, they can be revoked from their leadership positions, or denied political support’.

For instance, in the “Our Moldova Alliance” statute, membership is suspended, in case of disciplinary irregularities occurring in a deliberate and repeated manner or after displaying ignorance of decisions taken by the leading bodies of the Alliance Our Moldova. Members automatically lose their membership if they have been convicted, being limited in their political and civic rights by a judicial decision, or have enrolled in another political party. In all these cases, party Charters entitle executive bodies to document the applied penalties, register decisions, and inform state bodies on all these actions, in due time, as regulated by the constitutive documents of political parties, according to the legislation.

4.2. LEGALLY ENFORCEABLE RIGHTS OF POLITICAL PARTIES AND THEIR ORGANISATIONAL STRUCTURE

The rights of political parties are specified in Art. 16 of the Law on Political Parties. The parties shall enjoy the following rights pertaining to political process, based on free competition principles: (1) equal right to participate in the general elections and local election of both I and II tiers; (2) right to participate in election campaigns, and their candidates running for elected positions are offered free and fair airtime, as established by law, on public TV and radio channels; (3) right to hold meetings, demonstrations and other activities, as established by law. Art. 17 also includes a number of political rights, such as: (4) free dissemination of ideas and information about their own activities, (5) free participation through the means they have at their disposal and nomination of candidates to the elections, organised on the basis of the election laws, (6) establish and run own mass media, and undertake publishing activities, in line with the law. Compared with the Law on Public Associations, parties have only three basic rights, while public associations have fourteen, including *inter alia* activities (Art. 24) such as:

- free distribution of information,
- set up their own mass media,
- run publishing activities,
- represent and defend the legitimate interests of their members,
- receive from the public authorities information relevant to the statutory activities,
- create, if they consider it necessary, their own local structures,
- engage in economic activities resulting from the charter aims via commercial societies or cooperatives,
- participate in national and international tenders, in order to implement various social policies or receive subsidies from the state, as well as

- promote fellowships abroad, from various foundations and national/international organisations, as well as from private individuals.

Public associations enter into various bilateral or multilateral cooperation frameworks in technical-scientific, economic, finance or production fields, to deliver services or undertake other kind of activities, aiming to advance their statutory charter goals. They may contract moral or legal persons on specific works, deal with intellectual property rights, execute various projects of scientific cooperation, design, or to commission reports and analyse drafts and programmes, which are relevant to the public, as well as participate in joint committees set up by public authorities. Public associations may have their own denominations and logos, organise meetings and other public actions, having the authority to exercise in full all other competencies that do not contravene the current legislation regarding public associations, as conferred by the Civil Code and the Code of civil procedures¹⁹⁴.

Political parties have other rights stipulated by laws and their statutes, which make the provisions of Art. 16 less exhaustive and full. In particular, political parties have the right to go to court to enforce their rights, according to the main provisions of the Code of Civil Procedure, Code of Administrative Court Procedure and other procedural codes. Parties have some specific rights which are not assigned to any other kind of associations, such as the right to nominate candidates for elections (Art. 41) for various elected positions, and for which parties will compete through intensive election campaigns. Political parties may also submit their selected lists of candidates to be approved by the respective Election Commissions (Art. 42–44), use public media free of charge during election campaigns (Art. 46), nominate members for district and polling commissions, acquire property from distribution and sale of certain types of goods and services. However, political parties do not have specific privileges or excessive protection in relation to the state or public authorities or judiciary courts. Therefore, the legislation on parties stipulates specific procedures for suspending or terminating their activities art. 22 of the Law stipulate that a political party shall terminate its activity through:

- a) Reorganization, according to the provisions of the present law, which leads to losing its legal status as a result;
- b) Self-dissolution, by the decision of its supreme body;
- c) Dissolution by decision of the Chisinau Court of Appeal, at the request of the Ministry of Justice;
- d) Declaration of the party's unconstitutionality by a decision of the Constitutional Court.

¹⁹⁴ Law on Public Associations, modified by Law No. 178-XVI of 20.07.2007, modified by Law No. 205-XVI of 28.07.05, and modified by Law No. 263-XIV din 24.12.98.

According to the same Art. 22 (2), Ministry of Justice shall initiate legal proceedings at the Chisinau Court of Appeal in order to dissolve a political party if at least one of the following reasons is present:

- a) the party is acting according to its statute and programme, when the amendments and completions to these documents were not registered in compliance with the law.
- b) more than a year after the decision of the Chisinau Court of Appeal on the limitation of the party's activity became final, the party carries out actions similar to those which led to the limitation of the party's activity.
- c) the party did not participate with its list of candidates in two consecutive electoral campaigns for election to Parliament or has won in each of these elections a smaller number of votes than the number of members necessary for registration of a political party;
- d) the party's activity is carried out through illicit ways or means, with acts of violence;
- e) the party was declared unconstitutional by a decision of the Constitutional Court.

A final decision of the Court of Appeal (Chisinau) is then sent to the Ministry of Justice, which should record the start of the party's liquidation procedure in the Register of Political Parties. To execute a final decision of the Court of Appeal, the Ministry of Justice shall set up a commission for the liquidation of the political party. A political party ceases to exist only after the liquidation procedure ends and the party is then removed from the Register of Political Parties. After the termination of the political party's activity, its assets are transferred, free of charge, to the State to be used for charitable purposes.

Art. 23 of the Law define in great detail the liquidation procedure for parties. According to it, dissolution of a political party is launched with the participation of the Ministry of Justice, by the party's governing body or by other persons assigned by the General Assembly of the party. The aforementioned Decision on the liquidation of a political party, adopted by the General Assembly of the party, sets the procedure and period of liquidation, the destination of assets that remain after liquidation, as well as a deadline for creditors to present their claims. This period shall last at least 30 days and starts with the date of publication of this decision in the official legislative magazine, as it is the *Monitorul Oficial*¹⁹⁵. The main duties and responsibilities are exercised through political party's main executive bodies. Parties may build up their internal structures according to their own views, plans and

¹⁹⁵ Monitorul Oficial is the official magazine printing out all legislative and normative acts of the Moldovan authorities

resources. Nevertheless, the Ministry of Justice may request at the registration procedure that applicant parties set up their own Supervisory authorities, such as review and control committees, and appoint also a functional Committee of ethics and litigation. Both kinds of functions are extremely important to ensure that political party members can resort to internal remedies in case different suspicions or disputes arise at the party level, before any litigation is brought to a Court, according to the existing legislation.

The main leading bodies of political parties are: General Assembly, National Councils, Party Chairmen, assisted by Vice-chairs, Secretaries, and chairs of territorial branches. Political parties may call their supreme authorities in a different way, but generally parties follow the same organisational structure that is defined in great detail by the Law on Political Parties, and the standard charters recommended by the Ministry of Justice. Political Parties set up their functional organisation from the bottom: primary organisations (village, communal, city level), sub-national governments (rayon, sector, municipal) and special territorial units (Gagauzia). Most of the political parties have as their supreme authorities: a National Congress or a National Conference, Chairman of the territorial (primary) organisations, Chairman of the Party and a Central Permanent Bureau at the national level (Art. 4.3.3, Statute of the Our Moldova Alliance). The CPRM has set up its annual Congress as the supreme assembly, which is convened once every four years by the Central Committee (Art. 35).

The Charter of the Social Democratic Party includes (Art. 77) the following structure of bodies¹⁹⁶: Congress of the Party, Chairman, General Secretary, National Council, Political Bureau, and Executive Committee. The Congress serves as the supreme body of this party, being entitled to elect, by secret vote, the Chairmen, the General Secretary, as well as the National Council. Party statutory documents shall enable two thirds of the delegates from territorial organizations of the party to amend the Statute, endorsing or amending the party programme according to the existing legal provisions of the charter. Further, parties define specific responsibilities exercised by their executive representatives. As such, the Liberal Democratic Party of Moldova sets up its own hierarchy of bodies: at the level of the primary organization, General Assembly and Chairman; at the level of territorial organization, Conference, Territorial political council, Territorial standing bureau and Chairman, National Congress, National Political Council, Central Permanent Bureau and Chairman¹⁹⁷.

¹⁹⁶ Art. 77, Statute of the Social Democratic Party, <http://www.e-democracy.md/files/parties/psd-statute-2007-ro.pdf>

¹⁹⁷ Art. 4.2.1, Statute of the Liberal Democratic Party of Moldova, <http://www.e-democracy.md/files/parties/pldm-statute-2007-ro.pdf>

Art. 14 of the Law on Political Parties requests that parties shall have ‘central’ and ‘territorial’ (local) tiers of representation, i.e. party territorial organisations. This implies that parties shall act and evolve via recognized and legitimated membership, delegating their own representatives in various party bodies, structures and forums, following a rather sophisticated architecture of regulations and procedures prescribed by their statutory documents. The Law stipulates that parties shall set up their territorial organisations based on the current territorial administrative organisation (rayons and communes). The supreme decision-making body of parties is the general assembly, and their delegates at the national level (Art. 15). Party charters set up the specific procedure and periodicity of its annual assemblies, which can be attended only by the empowered party members.

Table No. 8 – Organisational Matrix of political parties



The Law on Political Parties (Art. 13) stipulates a specific set of elements that must be included in the statute submitted for registration to the Ministry of Justice. For instance, every statute shall include:

- Full name and acronym of the party
- Description of the permanent logos used by the party, in white-black and colour, attached;
- Special reference on the objectives pursued in the party's programme activities
- Procedure for designating delegates to the general assembly of the party
- Rights and obligations of the party members
- Disciplinary sanctions, and conventional procedure that will be applied to the party members in case of irregularities committed, and the responsible body to apply sanctions;
- Structure of the executive bodies, elective procedure, as well as their activities and competencies;
- Authority of the party that has the power to start the reorganisation of the party or form an alliance with other parties
- Authority to designate candidates in general or local elections, and who is entitled to amend the list of candidates
- Procedure for suspending the functioning of political parties
- Sources of party financing, institutional framework to manage the party properties, in line with the law;
- Accountability of the party finances, authorities that supervise the work of party accountants;
- Internal audits, procedure to initiate financial control
- Official representative authorities of the parties to public authorities, or other legal and physical persons.

4.3. LEADERSHIP IN POLITICAL PARTIES

The Law on Political Parties and the Law on Public Associations do not include specific provisions on the rights and obligations of membership. Art. 13 of the Law stipulates the obligation of political parties to inform the Ministry of Justice about the authorised leaders, who shall represent the party in relations with public authorities and other individuals and legal entities. In all other aspects, leadership is an exclusive matter of the political parties concerned. Leader of political parties shall be selected amongst party members, being elected at the regular or extraordinary political assemblies, organised in conformity with party statutory documents. Extraordinary congresses are called by the Central Committee at the request of at least half of the municipal and rayon committees of the party. The Congress of the CPRM is entitled to adopt the programme and statute of the party, conduct hear-

ings of the Central Committee and the Central Committee of Revisions, define the strategy and tactics of the party, elect the Chair of the party, elect the structure of the Central Committee, etc.

However, the Law on Political Parties (2007) does not stipulate conditions for transparent and accountable activities of parties, except financial reporting requested by the new Law (Art. 30 – financial reports). Art. 31 of the Law stipulates the compulsory character of making information about the financing of election campaigns public. This include the obligation of every candidate to report, every two weeks until the end of campaign, in accordance with the specific regulation of the CEC, on financial means of the party in the campaign, and sources of income.

If the information is incomplete, the CEC is entitled to request additional data from the respective parties about the amounts received and their sources, which will later on be posted by the CEC on its institutional web page. Since the Law bans parties from receiving anonymous donations (Art. 27 of the Law), this should mean that parties must keep records of donations, making public the names of the contributors, amounts donated, etc. It is unclear however how the new system operates, and to what extent this ensures higher accountability of parties.

4.4. PARTIES' 'INTERNAL DEMOCRACY'

The 2007 Law on Political Parties does not define in explicit terms what is or should be understood through the term – ‘internal party democracy’, leaving it to the parties to establish as a matter of internal practices and considerations what would be the necessary ingredients and procedure to keep party members politically united. Since political parties are registered as ‘legal entities’, it is obvious that parties in Moldova must generally stay in line with the main principles and democratic norms enshrined in the Moldovan Constitution. One of the main instruments in ensuring a party’s internal democracy is the recognition of the ‘principle of equality of members’ in the statutory documents presented by political parties to the Ministry of Justice. This principle is further outlined by a number of procedures that must be followed when addressing possible disputes or internal conflicts, usually by working out a solution of compromise, between or within political parties.

This principle of conflict mediation is enshrined in the largest majority of the constitutive party documents, becoming a condition for the registration of parties at the Ministry of Justice. However, the explicit regulation of ‘internal democracy’ is not specifically set as an obligation by the new Law on Political Parties of 2007, although this can be inferred from indirect mechanisms stipulated by statutory

documents submitted for registration to the Ministry of Justice. Party members may send a complaint to the Ministry of Justice if they feel their rights have been infringed essentially or major irregularities have marred the application of the main statutory documents. Thereby, they can apply the existing provisions of the Art. 21 of the Law on Political Parties, providing that ‘activities of a political party can be limited if the party actions have gravely prejudiced political pluralism or fundamental democratic principles’.

This mechanism can be seen as an ultimate action or resort, since parties have been often been affected by deep and irreversible fragmentations and splits, when individual members have contested some decisions made by the party leadership, and called for an intervention from the Ministry of Justice. This was recently the case of V. Untila’s complaint against ‘Our Moldova’ Alliance (OMA), following the organization of its National Congress held in December 2009¹⁹⁸, which confirmed the need for a more precise and effective mediation mechanism. As a Vice-chair seeking a possible election as the Party Chair, Mr Untila contested the correctness of the vote’s calculation, and submitted a request to the Ministry of Justice to mediate his dispute with the incumbent leader of OMA, Serafim Urechean. Passionately disputing the re-election of the incumbent leader of OMA, the contestant called the Ministry of Justice ‘to limit the activities of OMA, or even suspend the entire functioning of it until the complete resolution of internal disputes of the respective party’, backing his request with support received from 18 territorial branches of this party¹⁹⁹. On request, the Ministry of Justice may instruct party leaders to undertake the necessary measures in order to revise or suspend activities for one month, and if the notification has no effect, it may limit party activities for a six-month period, following a specific decision of the Appeal Court, requested by the Ministry of Justice.

Political parties should respect the existing laws in the Republic of Moldova, and base all their activities and decisions on the statutory provisions, registered by the Ministry of Justice (Art. 18 of the Law on Political Parties). In case of legislation revisions, parties shall bring their statutory documents into conformity with the legal norms according to the new procedures. Parties must meet their contractual obligations with their registered properties, but (Art. 19–4) no party will be accountable for the obligations of its members, nor party members for the obligations of their parties’. Art. 12 of the Law on Political Parties requests the applicant parties to establish the necessary structures in line with the competence on finances

¹⁹⁸ V. Untila, *Vom contesta la MJ alegerea presedintelui AMN, Urechean*, www.unimedia.md/?mod=news&id=15239

¹⁹⁹ Untila demands lifting of the Our Moldova Alliance, Flux, December 18, 2009, <http://www.flux.md/editii/200999/articole/8492/>

and properties, thus setting up a balance between their executive and deliberative bodies. As such, regular party conferences or congresses shall address the issues of financial accountability, via institutionalised bodies of internal audit and financial controls. The oversight and controlling function is exercised by the bodies envisioned by the statutes, holding higher competencies and authority, deriving from the National Assemblies or National Councils.

This ensures a clearer delimitation of roles, between the executive and deliberative functions exercised by the party leadership, avoiding the concentration of excessive powers into the hands of authoritarian leaders. The latter requirement guarantees, at least in theory, an effective mechanism of control, stipulating various ways to resolve possible conflicts in an effective and legitimate way. The supreme decision making body of political parties is the Congress, which is convened every four years. Since it may coincide with the aftermath of a new political cycle, the Congresses are used to reconfirm the authority of the upper representative political bodies (Chairman, General Secretary), or replace some or all, if the internal political situation will demand this.

Extraordinary Assemblies or National Party Congresses are called at the request of one-third of rayon organisations, or as it is stipulated in the statutory documents. Only through authoritative deliberations at the Congress level, can party leaders incorporate new amendments to their party Programmes or Charters, and adopt various Party strategies. Equally, only Party Congresses may decide the election of the Party Leaders (Chairman and Vice-chairmen) for a stipulated mandate – usually at four or five – years timeframe, appoint Members of the National Council, together with other supervisory bodies – Censorship and Litigation/Ethical Committees. Between the regular Congresses (scheduled for every four years), a National Political Council governs as the ‘upper decision-making body or party authority’, which should be convened at least twice a year, at the request of at least one-third of its members. The National Council is entitled to work out and coordinate the implementation of the political strategy and tactics of parties, elect or re-elect its Vice Chairs, General Secretary, members of the Executive Political Council, and define their own fields and tasks. It is also the mission of the National Council to decide upon the size of the party staff, endorse leaders of women’s and youth organisations, accept new members, or decide upon elections and political alliances with other parties.

Party top-ranking officials generally include the following: the Chairman and the Vice chairs, who run the main political affairs on behalf of their parties. The Chairman presides over the National Council, chairs the Political Executive Council, and represents his party outside and inside, the country. The Censorship Committee

is the main party body for financial revision and control, acting on the basis of its own regulations, adopted by the National Council. It is entitled to supervise and control the appropriate use of financial resources, verify the way of spending budgetary allocations, on the basis of which it will report its findings and proposals to the Executive Political Council, and National Council or Congress, at regular intervals. Litigation/Ethical Committee is a jurisdictional body, entitled to investigate all requests, notifications and complaints against members of the National Council, mediating existing disputes, and resolving existing conflict situations, if any.

Art. 10 of the Law on Political Parties stipulates that amendments to the statute and programmes of political parties shall be conducted according to the party's internal regulations, which are to be communicated to the Ministry of Justice within a 30-day period from the adoption of the respective amendments. New party rules or amendments to the statutory documents are to be adopted by the party General Assemblies. For example, Art. 47 of the Democratic Party (DPM) Charter, Art. 17–2 of the Our Moldova Alliance (OMA) states that 'a Congress shall be convened if the statutory provisions will be contested or pursued for change by the leading authorities of the party'. In the case of the Communist Party (CPRM), 'amendments to the statute can be brought only by the Party Republican Conferences' (Art. 37, CPRM Statute), but the real decision-making power resides exclusively in the Central Committee of the Communist Party, which is convoked to deliberate on the main political issues of the party agenda at least once every four months.

The political parties, although differentiating between full members and probationary members, allow participation in the representative bodies for the national leadership only to full-fledged party members. They can attend party annual congresses, joint political conferences, or endorse new candidates to apply for party membership, or submit a proposal to include them on the party lists for election race. This situation reveals a practice that goes beyond formal membership in parties as a precondition for political representation. Similarly, it tells about a serious clash between formal criteria of membership ensured via conventional participation in the party politics, and the political selection of candidates for an election campaign, which is the prerogative of the Chairman. Although the new Law on Political Parties devotes many provisions to party financing, it does not elucidate enough the existing arrangements between 'party contributors' and 'party political authorities', leaving it merely as a matter of leadership choices.

The situation is even more complicated since funding promised through the new Law on Political Parties was suspended in 2009, while by law, political parties shall comply with considerable limitations on access to individual donations (Art. 26–2 and 26–3: 'party incomes from donations cannot exceed 0.1% of the total income of the

state budget for the current year', and 'donations made by legal entities to a party or to several parties in a budgetary year cannot exceed 1,000 average monthly salaries per national economy in the respective year', etc). Selective application of the Law on Political Parties signals an inability by the state authorities to enforce national legislation, and that a 'grey-economy' will continue to supply the main resources for parties, as beneficiaries of oligarchs. It is presumed that the 2007 Law did not essentially cure the identified problems of party regulations in Moldova, and this has affected the functioning of the entire legal framework for political party operations.

Currently, most of the political parties do not regulate strict quotas or other rules in their statutes for women as well as religious, ethnic or, other kinds of minorities. In fact, quotas are not prescribed by the existing laws, following the general principle of the adherence of parties to the main freedoms, rights and obligations, according to the existing conventions and normative instruments in Moldova. In practice however, parties decide individually to follow various rules aiming to enhance their political appeal to some social, professional, or other categories of party supporters, to promote women, or youths, or representatives of national minorities.

Thus, most political parties decided to set up their party-based organisations of youths, women, teachers, farmers, business clubs, local authorities, lawyers, etc. as a sign of their special attention to the respective social or professional category. In many cases however, this was intentionally applied to 'dissociate' these groups from possible claims of membership in the 'real' tiers of leadership of the party. In spite of the multiple groups and organisations, most of the parties hold rather rigid rules on their internal hierarchies, selection of candidates on party election, nomination to executive positions, far from the most meritocratic criteria. Specific provisions (Art. 42–1/5) of the Moldovan Constitution request political parties to be 'democratic' since it declares 'unconstitutional' those parties that 'militate by their aims or activities against political pluralism, the rule of law, the sovereignty and independence, and the territorial integrity of Moldova'.

The term 'democratic' is also addressed by the Law on Political Parties, which stipulates that (Art. 1) 'parties are voluntary associations, with a legal personality, of citizens of Moldova 'entitled to vote', and also that political parties, as 'democratic institutes of the rule of law state, promote democratic values and political pluralism' by participating in the presentation and support of candidates during elections, to the formation of the public authorities, stimulate the participation of citizens in elections, and exercise state authority, in accordance with the law'.

Moldovan law restricts for political parties only those activities that jeopardize the existing constitutional principles and norms (Art. 41–1-6 of the Constitution). Art.

3 of the Law on Political Parties explicitly bans political parties that 'employ illegal or violent means, militate against the democratic values and rule of law in Moldova, in contempt of the fundamental principles of democracy'. In addition, the Law prohibits political parties from practising 'military or paramilitary activities, and other forms of activity banned by law'²⁰⁰.

²⁰⁰ Moldova had a precedent of banning the Communist Party in 1991, as a result of the 'coup d'état', taking place in Moscow during 19–21 August, 1991 in an attempt to take control from the then Soviet President Mikhail Gorbachev. The putsch collapsed three days later and Gorbachev returned to government, which eventually led to the dissolution of the USSR, and prosecution of the 'putschists', leading to a ban of the Communist party, in all ex-Soviet republics. In 1994, with the adoption of the first Constitution of Moldova, legislators revised this act, and decided to register again the Communist Party, according to the new legislation passed meanwhile in Moldova.

V. Parties in Elections

5.1. ORGANIZATION OF ELECTIONS: REGULATIONS, PRACTICES AND ACTORS

Since 1991 till 2009, there were 11 election campaigns, leading to the election of five parliaments, interspersed by four local and seven presidential elections, regulated by different election laws. The organisation of elections in Moldova is regulated by an Election Code, adopted by Law No. 1381-XIII of 21.11.1997, which has registered until the end of April 2010 considerable amendments, approved by the Moldovan Parliament through 28 organic laws and five special decisions of the Parliament. One should also note that many of the current Election Code provisions served as object of scrutiny at the Constitutional Court, at the individual notifications. Various amendments, criticisms and public debates on the election regulations clearly illustrate the importance of a unified code of election regulations for Moldova, in spite of its obvious flaws, or even intended imperfections, as they were seen by the competing actors in order to articulate and promote their interests.

In Moldova, elections are regulated by the Election Code, which incorporates all norms, procedures, rules and techniques, authorities and dispositions to organise all types of elections²⁰¹. A Central Election Commission (CEC) serves as the upper specialized state authority, entitled to implement the election policy, to organize and uphold regular elections (art. 16, Election Code). Having 9 full-right Members, the Moldovan CEC is being formed through appointed representatives (1 – by the President, 1 – by the Government, and 7 – by the Parliament, among which 5 shall be delegated by the opposition parties, ‘proportional to the number of seats acquired through elections’. By law, Members of CEC cannot be members of political

²⁰¹ Election Code, No. 1381-XIII of 21.11.1997, Art. 41, Chapter VI – Monitorul Oficial No. 81/667 din 08.12.1997.

parties or other social-political organisations, although it is obvious that ‘those appointed by parties will advocate, and will be suspected to be the promoters of their original parties’. Members of CEC will be confirmed by a simple majority of the elected MPs of the Moldovan Parliament, receiving the statute of immovability for the term of their mandate, and having no other authority that would prescribe them how to decide on their behalf.

Adopted in 2007, the Election Code is the most comprehensive unified law on elections: national and local, and referendums, except elections in Gagauzia, which is an autonomous territorial administrative region in the south of Moldova. The Election Code provides for a pure proportional electoral system. This means a distribution of seats in representative bodies (Parliament, local and sub-national councils) in proportion to the number of votes received during elections. The Moldovan election system is defined by party-list based proportional representation in a single national constituency²⁰², for the election of 101 MPs to Parliament. The system is sometimes described as absolute proportional or pure proportional; it provides clear advantages to political parties, as opposed to independent candidates, very high election thresholds (3% for independent candidates and 5% for parties), a prohibition of electoral blocs, a ‘validation threshold’, and considerable restriction to the participation in elections of regional political groups.

This proportional system sets a 3% threshold for independent candidates, a 5% threshold for political parties, and rules out the creation of party coalitions (blocs) for elections. As a result, electors vote for closed party lists or for self-nominated independent candidates. Eligible independent candidates receive their mandates first and the remaining mandates are then allocated among eligible party lists proportionally to the votes cast for them using the d’Hondt method. Elections are considered valid if at least 50% of registered voters attend the turnout. The total number of registered voters includes voters registered on both the regular and the supplementary voters’ lists. If this turnout requirement is not met, a second round of voting is conducted within 14 days on the basis of the same candidates and voters’ lists, requiring a minimum turnout of at least one-third of the electorate. If the repeat election fails to meet the lowered turnout requirement, new elections are to be called.

²⁰² Decision No. 1613 of the Moldovan Parliament, dated October 19, 1993, regarding the organisation of parliamentary elections in one single election district, was adopted with the aim of allow Moldovan citizens residing in the Eastern rayons of the country (Transnistria) to vote outside of their places of residence, controlled by the separatist guards/forces.

The rigidity of this election system has been contested repeatedly by political parties, as well as the think tank community. Arguing against the existing election Law, which sees the whole country as a single electoral circumscription for the purposes of calculation of the votes cast and distribution of seats, some experts have provided the argument that this contributed to the fact that 60% to 75% of the MPs, elected in the latest elections reside in the capital of the country. This affects the representative character of the elected authorities, while further disadvantaging regional elites, as well as regional communities. Very high thresholds for parties, exclusion of blocs and unequal treatment of independent candidates have usually resulted in a rather large proportion of 'lost votes', later on redistributed to the first-winners of the competition, while specific analysis of the election data shows that redistribution reached from 18% to 28% of the total votes cast on election day.

Thus, in spite of the generally ordered way of election organisation in the Republic of Moldova, political parties have contested regularly the effectiveness and overall impact of the existing election regulations, requesting a radical change of the existing election system, launching public debates, or even claiming they are willing to change this through a wide national referendum. In 2000, Democratic Convention of Moldova (CDM) and the Movement for a Democratic and Prosperous Moldova (MMDP) called for the need to hold a referendum on the most appropriate election system for Moldova, but were unable to collect the necessary number of supporters. In 2003, another political party, 'Braghis Alliance', launched the initiative of adopting a mixed election system, through which 50% of the deputies would be elected through a proportional system, while another 50% would be elected via a majority election system. The authors of the initiative have concluded that the 'pure proportional system' is totally inadequate to Moldova, and that it does not reflect the diversity of the country's organisation, and its voters.

Another argument was offered by opinion polls, suggesting that ordinary citizens (61%) favour the use of a majority system, compared with 10% support for a proportional, and 12% for a mixed system, whereas 17% having no opinion at all in this regard.²⁰³ Between 2008 and 2009, two parties continued to challenge the existing election code, suggesting the urgent reform of the election system – Liberal Democratic Party of Moldova (PLDM) and Our Moldova Alliance (AMN). Both parties launched a national campaign to hold a referendum, but got less supporters than necessary (200, 000), while later, they inscribed this reform as a priority among the objectives defining the governance programme for Moldova, in September 2009. United by the same idea of reforming the election system, both parties differed on the desired model. Thus, PLDM advocated for the introduction

²⁰³ Barometer of Public Opinion, IPP, May 2010, www.ipp.md;

of a mixed election system (50% to 50%), while AMN demanded a uninominal system of elections for general elections, leaving unspecified the share of mandates voted proportionally, compared to those voted via uninominal districts (majoritarian system).

Requested to evaluate the existing pro and cons in such debates over an election system for Moldova, the Venice Commission of the Council of Europe declared in its Joint Opinion that existing legislation for elections can ensure implementation of the general principles related to equality, but there are still important issues, which should be eliminated or fixed. A rather challenging combination of extra-legal factors, such as: corruption, economic disarray and suspicions regarding the independence of the judiciary, could further create additional constraints on the election system, influencing negatively the context and outcome of elections. The final report of the International Election Observation Mission to the Moldovan elections of 2005, made several observations and noted some key deficiencies, which need to be revised²⁰⁴. In particular, it emphasized the urgent need to:

- Reduce the election threshold (4% for political parties, 8% for election blocs, and 3% for independent candidates), with the aim of reducing the number of ‘lost votes’.
- Change the existent ‘one-country-one-election constituency’ model, thus allowing additional ways to represent the territorial interests, i.e. by encouraging a wider and more adequate representation for the national minorities living in specific areas.
- Ensure equal opportunities for election candidates to access the public media
- Stop uncontrolled use of administrative resources in elections
- Revise completely and update voters’ lists throughout the country, ensuring their validity.

The incumbent Communist party did not redress shortcomings and, instead, it operated changes that worsened the situation of small parties for elections. First of all, it has introduced changes to the composition of the Membership of the CEC (Central Election Commission), which, after 2005, was more representative of the political parties represented in parliament, according to their proportional size, and less made up of other members: professional bodies, the judiciary and local governments. Thus, all CEC members have been appointed on behalf of the President, Parliament and Supreme Court, with no non-affiliated or civil society

²⁰⁴ OSCE/ODIHR Monitoring Observation Mission Report (2005), Republic of Moldova: Parliamentary Elections of March 6, 2005, OSCE/ODIHR Monitoring Observation Mission Final Report, http://www.osce.org/documents/odihr/2005/06/14919_ro.pdf.

members. As the Communist Party had at the time 71 seats in Parliament, it received thus the 'lion's share' of the CEC members, so that one or two parties could dispose of two-thirds of the members of the CEC. Political parties without a fraction in Parliament could not send their representatives, so that they remained practically with almost no representation in the current CEC, whose mandates expires in November 2010, being replaced by new Members only after the elections of November 2010.

Second, the conspicuous relationship between the ruling CPRM (Communist Party) and Christian Democratic Popular Party (CDPP) – following the 2005 elections – made up a kind of 'alliance' within the CEC, which could offset any attempt to raise and address problems in the Central Election Commission. This had clearly given an advantage to the large parliamentary parties, and over-politicized the election organisation, since small extra-parliamentary parties and other observers only have a consultative right during elections.

Another setback was that the changes in the CEC structure run contrary to one of the cornerstones of the Electoral Code drafted back in 1997, namely ensuring the continuity of election activities, and professional standards. Moreover, the threshold for getting more seats used to be higher for blocs than for parties. Thus, combined with the increase of the threshold for parliamentary representation, the removal of the possibility for political parties and social-political organisations to form electoral blocs was seen as a cause for the increased number of lost votes. The threshold for getting seats in the Moldovan Parliament has been changed repeatedly: in 2005, it was lowered from 6% to 4% for parties and from between 9% and 12% to 8% for blocs. This threshold reduction was seen by the OSCE/ODIHR and the Venice Commission as an improvement. However, in 2008 the authorities of Moldova again raised the threshold for participating in the allocation of seats from 4% to 5% of the valid votes in the country as a whole. This move was criticized for leading to a higher number of wasted votes.

As the facts have shown, 'pure proportional systems' have their drawbacks, since they create in-built incentives favouring smaller parties, who have managed to win a number of votes proportional to at least one seat in the representative body. This negatively affects larger national parties. Unlike the majority (uni-nominal) system, the proportional electoral system is supposed to guarantee a higher 'representativeness' by acknowledging a balanced representation of electoral preferences or expressed votes. Therefore, the uninominal system favours bi-partisan legislatures, mixed with temporary coalitions involving small and medium-sized parties, but creates some distortions in the representation of the population. The pure proportional systems on the other hand incorporate significant distortions in the

proportionality of representation and generally favour a bi-partisan system to the detriment of small and medium-size parties²⁰⁵.

There are opinions, however, that too many political parties in Parliament, or local councils, would be detrimental to political stability and the efficacy of the government. This was in fact the argument voiced by the authors of the 2008 amendments to the Election Code, increasing the 'election threshold' to 5% and abolishing election blocs. Under the 5%-threshold proportional system, a party will only receive seats if it obtains at least 5% of votes. Thus, the thresholds compensate in the election system the diffusion effect of the wide diversity of opinions in society. For example, if the representative body has 100 vacant seats, in a pure proportional system a party has to win 1% of votes to get one seat. In this way, in theory, such a representative body can include up to 100 representatives of different parties.

However, of course, the use of thresholds produces certain distortions to the proportionality of the proportional system, but it is intended to set a balance between the principle of balanced representation and the government's ability to function. It is obvious that the threshold clause was not supposed to undermine the whole idea of a proportional electoral system, but rather to correct one of its disadvantages. This is why several states that have a proportional election system do not accept an electoral threshold exceeding 5%, or decided to use multiple-thresholds, to ensure flexibility of effects during elections²⁰⁶. Judicial ruling of the German Federal Constitutional Court in Schleswig-Holstein about the cases of Voters' Association (1952), Danish Minority (1954), Bavarian Party (1957), and National Unity Election (1990) have extensively developed the concept of the electoral threshold limitations. For instance, in the Schleswig-Holstein Voters' Association case (1952) the Court invalidated a 7% electoral threshold suggested by a German land – Schleswig-Holstein. In its decision, the Federal Constitutional Court argued that such an exaggerated threshold undermined the principle of equality as applied to parties.

Since 1991, Moldova has organised eleven elections (five parliamentary, four local and two presidential), which were conducted based on various electoral laws. Initially, after the 1993 electoral reform, Election law No. 1609-XII of 14 October 1993

²⁰⁵ Thus, if Party A gets 51% of the votes in half the constituencies and Party B gets 51% of the votes in the other half of constituencies and Party C gets in each of these circumscriptions 35% of the votes, Party A and B will share all the seats in the representative body, while Party C will have none. In this way a party which represents the interests of 35% of population will not be allowed to the legislative decision-making process at all.

²⁰⁶ In Canada, one proposal to reform the electoral system would see a 5% national threshold, 1% of the votes and one seat in the House of Commons, or 2% nationally and 15% of the votes in any one province. <http://www.economicexpert.com/a/Election:threshold.html>

provided for a limited proportional system for elections. Multiple-mandate electoral districts were to be established according to the second level administrative territorial units, and the mandates for each district had to be proportional to the number of citizens eligible to vote residing in that district. Later however, multiple mandate districts were abolished, and elections were conducted on the basis of a fully proportional system, based on a 'one-country-one-constituency model'²⁰⁷, which implies that mandates were distributed according to the d'Hondt formula, proportional to the votes cast in favour of those parties and candidates, with an additional redistribution of votes collected from the parties that did not pass the election threshold to those who succeeded. In 1997, two basic issues prompted politicians to accept a reform of the election system: repeated delays of the new administrative territorial organisation, and the practical failure to ensure direct and democratic elections in Transnistria, a secessionist province of the Republic of Moldova, where the majority of the population hold Moldovan citizenship.

The amendments to the Election Code conflicted however with the existing interests and interaction of political parties, since this diminished seriously the role of territorial leaders, as well as the principle of the territorial organisation of political parties (party branches), while increasing the role of national leaders in deciding upon the party lists for the election campaigns. This law was adopted in 1997 with the aim of providing a standardised organisation of elections and strengthening the codes of conduct for the CEC. Nevertheless, debates over the 'fairness and adequacy' of the election system in Moldova continued after 1997. Despite a relatively orderly organisation of elections, some of the political groups, such as the Democratic Convention and 'For a Democratic and Prosperous Moldova', attempted in 2000 to call for a referendum to change the proportional system towards a mixed one.

In 2003, another political group, 'Braghis Alliance', pushed in its turn a draft law introducing a mixed electoral system in Moldova, whereby half of the MPs would be elected via a proportional system and half via a majority system. Politicians claim that the current proportional system is inadequate to reflect the diversity of the electorate in Moldova, ending in skewed political interests and even misrepresenting the true will of voters and groups of voters by distributing certain votes to the opposite political parties. For instance, approximately 60 to 75% of the elected MPs resided in the capital city in the last three general elections.

²⁰⁷ Parliamentary Decision No. 1613, of October 19, 1993, decided to organise the 1994 parliamentary elections in one single electoral constituency, in order to allow Moldovan citizens residing in Transnistria to vote outside of their residential settlements, controlled by separatist forces, for the national legislature.

High thresholds of representation for parties, electoral blocs and candidates result in a large proportion of votes ‘lost’, later redistributed in favour of the winning parties, sometimes reaching between 18 and 28% of all votes. Another argument in favour of changing the electoral system was the alleged public support for this, polls showing that more citizens (61%) are in favour of a majoritarian election system, 10% for a proportional system, 12% a mixed system and 17% are undecided²⁰⁸. The Council of Europe has recommended to the Moldovan authorities to consider a serious revision of the existing election laws. The OSCE/ODIHR and the Venice Commission of the Council of Europe repeatedly recommended the removal of the turnout requirement as it allows for cycles of failed elections²⁰⁹. Only as a result of the early elections on 29 July, following the dissolution of the newly elected Parliament, was the Election Code changed to validate the results with only 30% of participation of the registered voters. Before 2008, electoral alliances had to reach extremely high thresholds: 4% for a political party, 7% for two parties forming an alliance, and 9% for a 3-member election alliance. Claiming election blocs are used by ‘unrepresentative parties’ to enter Parliament, the ruling Communist party, in conjunction with the CPDD, succeeded in amending the Election Code in 2008, thus banning electoral alliances, but increasing the threshold for parties from 4% to 5%.

One of the most widespread criticisms of the current election system is that it fails to make the elected politicians politically accountable to their direct voters, since they are mainly accountable to their party leaders. In fact, lists of proposed candidates for registration in elections are decided only by the parties’ leadership, in accordance with their own views and political preferences, sometimes even in complete ignorance of the parties’ internal procedures. Therefore, preferences expressed by the voters will not affect the order of election of individual candidates, at least for the lists of candidates proposed by political parties. Since no independent candidates have succeeded in crossing the high threshold of 3%, parties are in fact the only architects of the Moldovan legislative house, and no break with the existing traditions is expected to appear soon. Following the organisation of the local elections (3 and 17, June 2007), the Assembly showed its concern for the fact that ‘some aspects of the electoral process still fall short of European standards for democratic elections’²¹⁰. In particular, country rapporteurs of the Parliamentary Assembly of

²⁰⁸ Barometer of Public Opinion, IPP, Opinion poll commissioned by IPP and conducted by IMAS, August 2000, www.ipp.md

²⁰⁹ The OSCE/ODIHR and Venice Commission Joint Opinion on the Election Code of Moldova as of 10 April 2008 (CDL-AD(208)022), p. 15.

²¹⁰ Resolution 1572 (2007) – Honouring of obligations and commitments by Moldova, Assembly debate on 2 October 2007 (31st Sitting) (see Doc. 11374, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Co-rapporteurs: Mrs Durrieu and Mr Vareikis). Text adopted by the Assembly on 2 October 2007 (31st Sitting)

the Council of Europe have noted cases of intimidation and pressure on candidates during the campaign, lack of pluralism in media coverage of the electoral campaign and the inability of the media to provide diverse sources of information. The Assembly also observed ‘inappropriate application of some election procedures, the undermining of the secrecy of vote, and a complicated procedure for the consideration of complaints, which resulted in a delay in publishing the results of the vote’.

These problems are recurrent in Moldovan electoral practice and cannot be tolerated in a Council of Europe member state, aspiring to build a pluralist democratic society based on the rule of law principles. Other problems were related to the lack of clear progress in the implementation of the electronic registry of voters, and irregularities related to the supplementary lists of voters, which constantly attracted criticism from the international and national observers during the elections²¹¹. Concerns over the accuracy of the lists, including obvious discrepancies between the official rolls and the actual voters are indirectly confirmed by the fact that some of the state agencies keep at least three separate population registries (Health insurance, Pension and Identity Cards), with no integration or verification of these lists with the electoral rolls managed locally by the municipal governments.

Since people continued to vote on supplementary lists, analysts noted that between 5 to 10% were not entered in the official National Registry of Voters. However, the absentee voting (e.g. by correspondence, or post) is not regulated, not even mentioned in the Electoral Code. Therefore, those who do not follow the uniform proceedings of elections and are not included in the voters’ rolls are absentees. This also applies to the participation of voters residing abroad, specifically with efforts made by the consular and other diplomatic missions abroad²¹². Although the existing laws refer to the right to vote for Moldovans working abroad in the existing diplomatic and consular missions, its application appeared to be more difficult.²¹³ Since more than half of the Moldovan citizens working abroad reside in EU countries, their participation would represent a major factor in general elections and was seen by political parties with mixed feelings. Returning to Moldova to vote is not feasible for most

– Last updated: 05.04.2010: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/tao7/ERES1572.htm>

²¹¹ Art. 39 of the Electoral Code stipulates that “Voter rolls shall be developed by the town authorities in two copies for every polling station. After being established, the rolls will be checked with actual voters who are on the list, at their domicile. Then the rolls will be signed by the mayor and made public no later than 10 days before Election Day.”

²¹² IOM estimates that more than 40% of the active population of Moldova works abroad.

²¹³ Art. 26 I lit. h, stipulates the responsibility of the CEC “to resolve issues regarding the participation in elections of those citizens who are outside the country at the time of voting”.

because of time and distance, while in addition there are too few voting locations abroad – limited to the consular offices and embassies of Moldova in some capitals.

On the other hand, Moldova is one of the countries with the highest rates of external migration, being rated as the world's top receiver of migrant remittances as a percentage share of GDP by the World Bank's Migration and Remittances Fact book in 2008²¹⁴. According to the data provided by International Organization for Migration (IOM), Moldova is also a leading country in the world in terms of its external migration, since around 40% of the Moldovan population live in households that receive remittances from abroad²¹⁵. Official data show that around 300–350,000 Moldovan citizens are permanently residing abroad, while a further 200 to 300,000 of other Moldovan citizens reside for provisional periods of time abroad. Surveys show also that almost 40 to 50% of Moldovan households receive financial support from persons working abroad, which further expands the relevance of the latter. Of course, the underlined issues had far-reaching effects in the following elections, since lower turn-out invalidated three out of four rounds of elections in the capital city of Moldova in 2006, while in 2009 lack of appropriate actions in the field of electoral rolls was perceived as an invitation to fraud, or a rather ambivalent response to the previous recommendations made to the Moldovan authorities by the EU.

Political parties and foreign observers have outlined the urgent need to create the most adequate conditions for Moldovans voting abroad. A Joint Opinion of the Venice Commission and OSCE/ODIHR has stressed that the Election Code should be more specific in the procedures and ways of opening new election precincts abroad, in addition to the consular offices, belonging to the Moldovan embassies²¹⁶. For obvious reasons, many other transitional states have adopted practices for voting abroad, via mail, internet, or in person. A recent study published at the request of OSCE Mission in Moldova outlines that 54 states of the world allow voting in person at their diplomatic missions abroad, appreciating this as the most acceptable form of voting, 25 states use mail voting, while 27 states have already acquired a good reputation in ensuring electronic voting abroad (Estonia, Netherlands, Austria, Belgium, New Zealand and Sweden)²¹⁷.

²¹⁴ Migration and the Republic of Moldova, European Social Watch Report 2009, <http://www.socialwatch.eu/wcm/Moldova.html>

²¹⁵ Migration in Moldova: a Country Profile, IOM, 2008: http://iom.md/materials/moldova_migration_profile_april_2008.pdf

²¹⁶ Joint Opinion of the Venice Commission, adopted by the Council for Democratic Elections at its 33rd Reunion (Venice, June 3, 2010) and Venice Commission, at its 83rd Plenary Session (Venice, June 4, 2010).

²¹⁷ Study 'Voting Abroad; International Practices and Recommendations for Moldova', OSCE/Adept, June 2010

However, the initiative to expand voting abroad may be a challenging task for the executive authorities, i.e. for the Central Election Commission. Among the most important factors that could hinder a wider participation of voters temporarily residing abroad, can be listed: (1) great geographic dispersion of the citizens of Moldova working abroad, (2) complexity of the logistical problems related to the organisation of voting precincts abroad on the territory of foreign states, (3) unknown number of Moldovan citizens residing abroad, (4) extremely limited periods of time envisioned for the organisation of elections abroad, and (5) limited resources available to the Central Election Commission for the organisation of elections. The older system, which outlined the possibility for voting abroad through the existing consular offices of the Republic of Moldova abroad, is largely seen as non-effective. For instance, on April 5, 2009, only 16,805 voters have voted abroad, while on July 29, 2009, voter numbers only slightly increased to 17,544²¹⁸. But, the absolute number of voters abroad has increased in geometrical progression: with 1948 voters in 1994, 3193 in 1998, 3806 in 2001, 10,038 in 2005, and 17,544 in 2009. The trend is obvious, and one may conclude that voters abroad are becoming more and more interested to participate in the election process, and that Moldovan authorities should make every effort in order to expand existing facilities to allow voting abroad.

In addition to voting abroad, a considerable setback of the election process in Moldova was the existing thresholds, both for the validation of the results, as well as calculation of election results. Usually, election thresholds were calculated on the basis of the valid votes (and not the total of votes cast); thus, elimination of the invalid votes from the count lowers the threshold. A single party is much more likely to be able to benefit from that difference than an election bloc. International experts have also questioned the use of validation thresholds set up by the Election Code at 50% of the total number of voters included on the voters' lists for the election to be valid. The problem here is linked with the obvious discrepancy with the calculation of the total turnout (50% registered voters for the validation of parliamentary elections, Art. 91, Invalid elections).

In 2007, Parliament introduced a series of amendments to the Election Code²¹⁹, setting additional restrictions for individuals holding multiple citizenships, in addition to the Moldovan one. Thus, persons holding more than one citizenship were called to declare at the time of their registration for a runoff election, holding administrative responsibility for not declaring their status. In case they were successful, by the time their mandates had been validated, individuals holding multiple citizenships

²¹⁸ Central Election Commission: www.cec.md. Data compiled from two consecutive tours of elections in 2009.

²¹⁹ Law amending the Election Code. No. 273-XVI of 07.12.2007.

had to provide documents certifying that they had renounced the other citizenships or that they had retracted their initial application for citizenship. Failure to declare another citizenship could lead to a ‘possible cancellation of the validated mandates by the Constitutional Court, at the request of the Central Election Commission’. These changes to the Election Code caused lots of criticisms and controversy in Moldovan society, but also lead to critical observations in the Joint Opinion of the Venice Commission and OSCE/ODIHR on the Election Code, which echoed serious concerns about the latest amendments, and called on Moldovan authorities to further work on reform, in particular related to: the electoral threshold; the removal of the possibilities for parties to form a pre-election alliance or a bloc; and the restrictions related to the right of Moldovan citizens with double/multiple nationalities to take up seats in Parliament²²⁰.

The imposed restrictions on multiple citizenship holders led some politicians to appeal to the Constitutional Court, which however declared them ‘constitutional’ and in conformity with the European Convention on citizenship²²¹. Exhausting all existing remedies at the national level, the issue was appealed to the European Court for Human Rights, in the case ‘Tanase and Chirtoaca versus RM’. The Court decided unanimously, on 17 November 2008, that the above mentioned restrictions imposed by law in Moldova violate art. 3 of the Protocol No. 1 of the European Convention on Human Rights (ECHR), describing as a major contradiction the fact that the right to hold multiple citizenship is provided, but that the ability of people holding multiple citizenships to be elected to Parliament is restricted. This was seen as a serious infringement of the earlier recommendations of the Venice Commission on the stability of election law. It should be outlined that although the Constitutional Court decision (No. 9) was repealed by the ECHR decision, having primacy over domestic courts, in accordance with the ECHR statute (art. 4, Constitution), the Constitutional Court has never modified its previous decision, which brought this case to Strasbourg.

Another serious amendment to the Election Code was voted by the Moldovan Parliament on 10 April 2008²²², with the aim to restrict and outlaw the creation of election blocs. Against serious criticism from various actors²²³, the two major

²²⁰ Venice Commission at its 76th Plenary Session (Venice, 17–18 October 2008), Moldova: Stock-taking of co-operation with the Council of Europe, **26 March 2009 – Information Documents** SG/Inf(2009)1

²²¹ Decision of the Constitutional Court, No. 9 of 26.05.2009 regarding the control of constitutionality of some provisions of the Law No. 273-XVI of December 7, 2007 and the Law No. 76-XVI of April 10, 2008, printed in Monitorul Oficial nr.99–100/9 din 05.06.2009.

²²² Law on amendments to the Election Code, No. 76-XVI of 10.04.2008

²²³ There are certain regional and minority groups, such as Gagauz and Bulgarians, whose number of voters amount to less than 6 % of the electorate.

parties of the Moldovan Parliament adopted with ease a number of serious amendments, justifying their actions by trying to avoid 'an excessive fragmentation of the future Parliament', and therefore raising the threshold for individual parties to 6% (from 4%). Other new restrictions introduced by the same law in 2008 were aimed at the 'additional regulation of the right to vote, restricting the convicted persons for serious offences, exceptionally serious crime, as well persons which are banned to hold official positions, by definitive judicial decisions. The amendments also included the regulation of some supplementary aspects aimed at removing from their positions those persons, who are party members in spite of their professional restrictions, and who can exploit administrative resources, due to their high-ranked position (both at the national and local government level). The same amendments included additional conditions to be met by the CEC Members, such as: career experience of at least ten years in the legal field or local public administration, holding only citizenship of the Republic of Moldova; but also, a special procedure enabling CEC to cancel registration of the election contestants via judicial decisions for serious violations of the Election Code, the right of political parties to nominate as their candidates only their party members, or individuals without political affiliation, the right of individuals to run for various elected positions on behalf of a single political party, recognition of internet and mobile phone advertising as parts of the election campaign, registration of election contestants in the printed voting bulletins in an order drawn from lots. The legislators attempted also to curb some of the problems of previous elections, by clarifying the personal documents, on the basis of which people could vote; allowing contesting parts to request a recalculation of votes, or appealing in courts the actions (or inactions) made by electoral bodies.

After the 2008 amendments of the Election Code, several aspects of the electoral legislation – i.e. election threshold and prohibition of election blocs – have remained amongst the major issues of public debate. On the eve of the parliamentary elections of 29 July 2009, the Parliament of the Republic of Moldova adopted a new Law No. 25-XVII of 15.06.2009. The law reduced the election threshold for political parties (from 6% to 5%), lowered the electoral participation threshold for the validation of elections (from $\frac{1}{2}$ to $\frac{1}{3}$ of the number of individuals included on the voter rolls (election lists), and cancelled the participation threshold for the repeat elections of July 29, 2009. The concerns about the validation of results for the 29 July 2009 elections were quite real, since the ruling Communists decided to set the election day for a Wednesday, breaking the tradition in Moldova of holding elections only on Sundays; there were also concerns that holding the elections in summer could lower turnout, and hinder the validation of the expected results. Thus, changing the "rules of the game" at the time was seen as a "lesser evil" in order to avoid plunging Moldova into a series of invalid elections.

But only with the end of the election campaign did the new political majority show its interest in addressing again the contested aspects of the election legislation. Between December 2009 and February 2010, the Moldovan Parliament adopted three new laws on amending and completing the Election Code. Thus, by Law No. 127-XVIII of 23.12.2009, the Parliament abolished the existing restrictions for multiple citizenship holders to participate in elections and be elected for various positions of the state, putting into effect the Decision of 27.04.2010 adopted by the Grand Chamber of the ECHR, and thus excluding all unnecessary restrictions and obstacles for candidates participating in the parliamentary elections. Law No. 131-XVIII of 23.12.2009 followed next on Parliamentary agenda, aiming to exclude the chapter on penalties, which were then incorporated into the existing Criminal Code. In the same vein, Parliament adopted on 26 February 2010 another Law (No. 165-XIII) amending art. 130 of the Election Code on the organization of new local elections. According to the above mentioned amendments, local authorities are required to notify the CEC within ten days of any circumstances which can generate new elections (resignation, revocation, or impossibility of exercising direct functions by a Mayor, dissolution of a local council, or territorial-administrative reorganization). This allows the CEC to set in the date for new elections 30 days from the confirmation of the above mentioned circumstance, but not more than 60 days in the future.

Following the creation of a Parliamentary Committee to improve the Election Code, consistent work has been initiated by various working groups, national and international experts, aiming to improve the organisation of elections. On 18 June 2010, Parliament adopted new amendments to the Election Code by reducing the election threshold from 5% to 4% for individual political parties. The election threshold was also reduced for election blocs: for blocs consisting of two parties, the thresholds were reduced from 7% to 6%, while for election blocs with more than two parties, the threshold was set at 9%. The threshold for independent candidates was equally reduced, from 3% to 2%. In addition to that, new changes to Election Code assigned specific responsibilities to the CEC and Ministry of Foreign Affairs in preparing the necessary conditions for voting abroad, under a specific agreement with the host country, where Moldovans are provisionally residing for work. The amendments include specific provisions on the oversight of voting abroad and the management and scrutiny of the polling stations opened outside the regular Consular or Embassy offices of the Republic of Moldova. Particularly interesting are the proposed amendments concerning the organisation of elections outside of the country (Art. 29–1), which state that:

‘All polling stations located abroad belong to the Chisinau Municipality election sector, are directly managed by the CEC, but organised under the strict responsi-

bility of the Minister of Foreign Affairs' Art. 29–3 of the newly amended Election Code stipulates that,

'Moldovan Embassies and Consular Offices may establish, if allowed by the national authorities of the respective states, new voting stations in other cities, in strict correlation with areas densely populated by citizens of Moldova, guaranteeing security and correctness of elections, as well as technical possibilities and conditions to ensure free and correct elections'.

Under new amendments of the Election Code, the Parliament included a much clearer definition of the statute of national and international observers; it also included the term 'Electronic Register', providing thus a specific instrument for regular maintenance and development of a database of voters. Parliament has accepted the creation of a well-defined nation-wide system for training election officials through the creation of a Centre for Continuous Training of Election Officials (CCTEO). This includes a permanent staff training school and a database, maintained regularly by the CEC.

One should note however that most of the changes that have been introduced in the Election Code during 2007–2009 reveal a largely spontaneous and contradictory character of amendments. It is therefore almost natural that the net outcome of the frequent changes of the election rules has led to serious violations of the international standards on elections, and continuous recommendations on behalf of European and international organisations addressing these kinds of setbacks, while the general performance of democratic institutions was seriously affected by the political and election instability.

5.2. RULES FOR APPOINTMENT OF CANDIDATES IN ELECTIONS

Art. 41 of the Election Code regulates the designation of candidates in elections. The official procedure starts 60 days before any parliamentary elections and ends 30 days before the day of elections, while in the case of local elections, designation of candidates start directly after the creation of the election districts, operating via election councils (40 days before the day of elections – Art. 120). Candidates can be nominated for elections by: (1) registered political parties and other social-political organisations, acting on the basis of their charters and Moldovan law; (2) citizens of Moldova who advance their own candidacies (independent candidates).

On the day following the announcement of elections, but no later than 30 days before the day of the elections, CEC and electoral district committees will start

receiving applications from candidates registered for the runoff (Art. 44). Applications must include: copies of the records of the party meetings where the respective candidates have been designated for elections, subscription lists with the necessary number of signatories in support of the independent candidates, CV of the candidate, consent of the candidate declaring his/her willingness to participate in elections, personal statement of the candidate reporting his/her income, bank accounts, properties, revenues from the previous two years before elections, shares owned, properties rented, personal statement leaving official positions incompatible by law with being a candidate, election logo (electronic and hard copy). The CEC sets the specific procedure for receiving applications, which will affect the order on the election lists for the candidates (parties and independent).

Legislation bans participation of a single candidate for more than one party, but also imposes specific restrictions on the candidates – who cannot sit in a polling station, for instance. National election authorities (Central Election Commission) will issue individual certificates for the election candidates, no later than three days from the date of registration, and will publish this in the public or state publications. CEC has the obligation to ensure publication of the full lists of registered candidates, through its territorial electoral polling stations, in the time frame set by the Election Code, with all the necessary details registered, logos and party affiliation, if any, which will also allow district election councils to present the final lists to the public in their individual polling station. Under art. 126–1, political parties taking part in local elections must submit a certain minimum number of candidates on a party list, amounting to half the number of mandates in a given district council, reflected by the provisions of the art. 79 for general elections.

In 2007, the above requirements were misused by some election district councils, using the withdrawal of some candidates as a ground for suspending entire candidate lists, since the number of the remaining candidates fell, below the required number in local elections²²⁴. The format of the ballot for parliamentary elections is approved by a CEC decision, after consulting district election councils for local elections (Art. 48, Chapter 8 of the Election Code). The ballot is divided in equal squares, according to the number of candidates registered for the election. The size of the ballot must be sufficient to include the name, surname, birth date, job, profession of the respective candidates, the name (if any) of the party which advanced them as party candidates and its election logo. Election bodies must refuse similar signs or logos on the same ballot. Election candidates are listed on the ballot in an order resulting from lots, drawn by the respective electoral body, on receipt of

²²⁴ Case included in the OSCE/ODIHR Election Observation Mission Final Report, Local Elections: 3–17 June, 2007

all the application from the contestants. Ballots are made in accordance with the Law on languages (bilingual – Russian and Romanian/Moldovan). In case of concomitant organisation of different kinds of elections, ballots are printed in different colours.

The organisation of elections is financed in the Republic of Moldova from the state budget, including all costs estimated by CEC and allocated through a decision of the Parliament that sets up the framework for preparing and conducting national or local elections, according to the existing laws²²⁵. The total cost of elections is decided by the Moldovan Parliament, based on the estimates proposed by CEC, within the limits set by the state budget for the year's election organisation. By law, foreign support for election campaign – direct or indirect – as well as for election candidates is strictly prohibited. Funds that are confirmed to be foreign financing for political parties are to be confiscated and transferred to the state budget (Art. 36), and the candidates (parties) in question are suspended from the election.

Election provisions allow candidates to receive interest-free loans from the state for participation in elections (Art. 37). A special procedure is applied in this regard, and funds will be issued to the designated individuals or legal entities, registered by the Ministry of Finance, which will be responsible for the appropriate use of this loan. The main rules for the provision of financial support of campaigns are generally related to the requirement of reporting all finances and other kinds of material support for the campaign and making them public before and after the campaign (Art. 38), of the opening of a special 'election account' by the contestants, to which the loans will be paid, and which will also be used for other kinds of donations from physical and legal persons (national). The legislation sets up a strong ban for candidates to receive donations from: people who are under 18 years of age, financial organisations, anonymous persons, charities and churches. Practices related to joint sponsorship of candidates from parties are generally possible, but not frequent.

By Art. 41 of the Election Code, parties can designate as candidates their own party members, as well as people with no political affiliation; however, they can enter only one list of candidates in a single district. Art. 126 stipulates special conditions under which candidacies are registered as independent or party candidates. For elections to take place, the number of candidates must be at least half of the number of mandates allocated for the respective election district, with a maximum of five substitute candidates. Parties may support only one candidate for the position of mayor in one election district, since no one can compete in several election districts

²²⁵ Art. 35 of the Election Code, Chapter IV. No. 1381-XIII din 21.11.97, Monitorul Oficial al R. Moldova nr.81/667 din 08.12.1997

at the same level. In local elections, one person can run for a councillor's position in both tiers of local governments (village/city and rayon) simultaneously. Similarly, one person can run for the position of mayor and a councillor's mandate at the local level, but cannot run for the same positions in more than one district.

In a Joint Opinion, OSCE/ODIHR and the Venice Commission criticized the ban on conscripted military personnel voting in local elections (Art. 123–1 of the Code). It also found harsh the existing restrictions on voting for 'persons convicted to deprivation of liberty by a final judgment of the law court for serious, very serious and exceptionally serious crimes', since the paragraph also includes those persons whose sentence has been fully served²²⁶. The OSCE/ODIHR Joint position on the Election Code mentioned cases of entire lists being deregistered following individual cases of withdrawal of candidates. Shortcomings in Articles 42 and 43, which regulate the collection of signatures in support of independent candidates, indicated in the last Joint Opinion, have remained unaddressed²²⁷. Another change made in 2008 to Article 44 of the Election Code aimed to clarify the date for submission for the registration of documents, as well as set a minimum period between 'the passing of the decision on the place and time for receiving documents and the actual time for receiving the documents' is seen as positive. However, the code remained unclear on the issue of procedures for the verification of the documents submitted by candidates for registration, as well as on the question of what happens if any of the information is found to be inaccurate.

In 2008 however, the Moldovan Parliament brought new changes to the election regulations, which instead of addressing the main concerns of the previous reports, added new restrictions. A new paragraph to article 13(2) denied the right to be elected in parliamentary elections to 'persons who have, beside the Republic of Moldova nationality, another nationality for the position of deputy in the conditions of Art. 75'. Article 75(3) states that a person may stand as a candidate with multiple citizenship, provided he/she on election renounces his/her other citizenships, as that is seen as an incompatibility. These restrictions were set up by the Communist Party to impede participation in the election of a number of opposition leaders, who allegedly retained multiple citizenships, but in conformity with the Law on dual citizenship, adopted by the Republic of Moldova in 2003.

²²⁶ Joint Opinion on the Election Code, April 10, 2008, European Commission for Democracy through law (Venice Commission), Document adopted by the Venice Commission at its 76th Plenary Session, Venice 17–18 October 2008, p. 7

²²⁷ Joint Opinion on the Election Code, 27 March 2007 CDL-AD(2007)040, par. 35–43

On December 27, 2007, this issue was brought to the ECHR on the grounds of discrimination against citizens of Moldova having multiple citizenships to be elected for the Parliament of Moldova. On 18 November, 2008, the European Court of Human Rights issued a judgment in the case of *Tănase and Chirtoacă v Moldova* (application no 7/08)²²⁸. The Court held unanimously that there had been a violation of Article three of the first Protocol (right to free elections) to the European Convention on Human Rights concerning Mr Tănase's complaint that a new electoral law in Moldova breached his right to stand as a candidate in free elections and to take his seat in Parliament if elected²²⁹. The above mentioned restrictions suggest the intention of the ruling Communists to over-politicise the issue of double citizenship, in an attempt to withdraw opposition leaders, suspected of having other (Romanian) citizenship by the Moldovan authorities. Although the Moldovan authorities have appealed subsequently against the ECHR's initial judgment, afterwards, another decision of the ECHR Grand Chamber left unchanged the previous decision taken in this case.

Only in January 2010 were these issues addressed in a new draft law proposed to Parliament by a Special Committee for the Adjustment of the Election Code, following the Decision of the Parliament of Moldova (No. 39-XVIII) regarding the creation of the Special Parliamentary Committee for the improvement of the election laws (October 15, 2009). In general terms, the new amendments incorporate a wide range of amendments to the main regulatory acts for the organisation of elections, considering several previous reports, analyses and opinions, addressing the existing observations on Moldovan legislation during 2007–2009. The proposals include full reference to the previous Joint Opinion No. 455 of December 17, 2007 of the European Commission for Democracy through Law (Venice Commission) and of the OSCE/ODIHR, doc. No. CDL-AD (2007) 040 and Joint Opinion No. 484 of October 23, 2008 of the European Commission for Democracy through Law (Venice Commission) and OSCE/ODIHR, doc no. CDL-AD (2008)022, international monitoring reports of elections in Moldova during 2007–2009 (Council of Europe, OSCE/ODIHR), independent domestic monitoring reports during 2007–2009, provided by the Coalition 2007–2009, as well as the proper recommendations of the Central Election Commission, other interested parties, and civil society organisations.

²²⁸ CEDO decides on the case of Tanase and Chirtoaca versus Moldova. <http://www.lhr.md/news/116.html>

²²⁹ The speaker of the Moldovan parliament, Mr Marian Lupu, visited Strasbourg on 7–8 December 2008, inter alia, to discuss the follow-up to the recommendations of the Venice Commission and the Court's decision.

Under new changes, the Moldovan authorities will aim to increase the participation in elections of its citizens living abroad. A revised provision of the Art. 29 stipulates that:

“in addition to the election precincts organized by the diplomatic missions and consular offices abroad, with the consent of the competent authorities of the host countries, the Republic of Moldova may set up voting precincts in other cities. Organisation of the above new precincts shall be set up by CEC, at the proposal of the Government, in cooperation with the Ministry of Foreign Affairs and European Integration, and other authorities of the central government, on the basis of the preliminary registration of citizens residing abroad”.

The registration of citizens willing to participate in the election process shall be regulated by specific instructions, elaborated by the Central Election Commission. Further on, the CEC is entitled to ensure coordination and organisation of the new election precincts abroad (art. 29–4), in strict cooperation with the Ministry of Foreign Affairs, allowing party representatives to oversee this process abroad (art. 64). It is also envisioned that all expenditures required by the organisation of additional election precincts abroad will be covered from the overall budget approved by the Parliament for elections, excepting observation missions, whose costs shall be financed by the applicant observers (parties or civil society organisations). Art. 39 of the Election Code was added with a new paragraph (11) providing that ‘Moldova citizens residing permanently abroad and registered by the consular offices of these states, but who may be in Moldova by the day of parliamentary elections, have the right to vote in a special polling station set up by the CEC. Registration of these voters will be conducted on the basis of the supplementary voter lists, upon individual confirmation’.

The new (2010) amendments to the Election Code aim to exclude an existing restriction on the presence on party lists of candidates with no party membership (Art. 41–2), to decrease the election threshold from 5% to 4% for parties and from 3% to 2% for independent candidates, and accept the creation of party blocs/coalitions in elections, which are to meet a threshold of 6%. Thus, election blocs are to be set up on the basis of registered political parties, according to the existing laws of the Republic of Moldova, other socio-political organisations, registered by the CEC for the parliamentary or local elections, they can appoint non-party members on their party lists for the election race, starting with 15 days from the date of registration. Independent candidates can be registered for local elections if they are supported by at least 2% of the registered voters in the respective election district, divided by the number of mandates for the local council, but in total not less than 50 persons. If candidates compete for the Mayor’s position (Art. 27), they are requested

to confirm support from at least 5% of the number of registered voters in the respective election district, but not less than 150 persons, and not more than 10,000. The draft law proposes the following changes: Art. 13 (1–c) ‘individuals convicted to deprivation of liberty by a final judgment of the law court for serious or exceptionally serious crimes, who are serving their sentence, as well as persons who were deprived of their right to vote by a judicial final decision. The Ministry of Interior will inform the appropriate election authorities about the existence of prohibitions’. The proposed text of amendments also includes the provision for candidates to have ‘exclusive citizenships’ (Art. 19–1).

Aiming to respond to a series of criticisms expressed by previous Rapporteurs on Moldova²³⁰ on the restriction of the right to vote for all convicted prisoners, which was seen as incompatible with Art. 3 of the First Protocol (Right to elections) of the Convention for the Protection of Human Right and Fundamental Freedoms, the authors of the Election Code revision have addressed this issue by narrowing the categories of those are deprived by the right to vote, and aimed to make this restriction proportionate to the committed crimes. It is aimed that individuals convicted of serious crimes would retain their right to vote, while those convicted of very and exceptionally serious crimes would be stripped of this right, appealing to the principle of ‘proportionality’ to the crimes committed. This is certainly in line with the main principles of the Convention for the Protection of Human Rights and Fundamental Freedoms, articles 3 of the first Protocol and 14 of the Convention,²³¹ and Article 38(3) of the Moldovan Constitution, which enshrines the right ‘to stand for election, under the law, to all citizens of Moldova enjoying the right to vote’.

Art. 13 of the Election Code stipulates in its new paragraph 1 (c) that ‘persons who are deprived of their right to vote through a final judiciary decision will not vote. Election authorities are informed about the existence of restrictions by the Ministry of Internal Affairs, Ministry of Justice, local governments, and other authorities, which deposit this information’. The amendments to the Election Code also included a provision that: ‘persons detained on the basis of an order of arrest, persons convicted of a deprivation of liberty, whose deprivation is not set by a final decision of judiciary, persons who are executing an administrative sanction under a provisional form of arrest, persons convicted to deprivation of liberty by a final

²³⁰ Joint Opinion on the Election Code of Moldova as of 27 March, 2007 (CDL-AD(2007)040, paragraph 12, Joint Opinion on the Election Code of Moldova as of 10 April 2008 (CDL-AD(2008)022), paragraph 15

²³¹ European Convention on Nationality, ratified by Moldova in November 1999, provides clearly that “Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party; See also, the first Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, (Paris, 20.III.1952, ETS No. 009); Article 3 – Right to free elections.

judgment of the law court for minor infractions, less grave and grave, may be included on the voting lists by the administration of penitentiary institutions' (Art. 29–7), thus, responding to the provisions Joint Opinion (2007) and Joint Opinion (2008). The new amendments brought to the Election Code also attempt to clarify that existing restrictions only apply to individuals who are serving a sentence and have pending criminal records. Nevertheless, the new amendments have not yet provided a serious and satisfactory response to the existing restrictions for the conscripted military personnel, which still remains unaddressed by the Parliament of Moldova, in spite of the issues raised in previous Joint Opinions of the OSCE/ODIHR and Council of Europe Experts. The new Code amendments have equally missed a chance to address a number of previous recommendations regarding additional guarantees for elderly voters or voters with disabilities on general accessibility issues²³².

Among the draft proposals, the Special Commission included also a comprehensive re-check of the voters' list nation-wide, implemented by local government officials under the strict scrutiny of the Central Election Commission, and many other provisions, which are positively assessed by the most recent Joint Opinion on the Draft Working Text amending the Election Code of Moldova²³³. In particular, the new analysis of the proposed amendments outlines that Moldovan authorities have fully or partially addressed the issues related to:

- removing turnout requirements for elections to be recognized as valid in order to avoid potential endless cycles of failed elections (turnout requirement for an election to be valid was lowered from half to one third of registered voters and eliminated in case of repeated elections);
- decreasing the legal thresholds for winning parliamentary seats (from 5% to 4% for political parties, keeping a higher turnout for election blocks of 7% for blocks created by two parties and 9% for blocks with 3 and more parties, and from 3 to 2% for independent candidates);
- removing the requirements for candidates with multiple citizenships winning a seat in parliament to renounce other citizenship(s) in order to be able to take up the seat;
- reviewing the procedure for recalling election commission members as this has the potential to undermine the independence and stability of election administration;

²³² Joint Opinion on the Election Code of Moldova as of 10 April 2008 (CDL-AD (2008)022, paragraph 22

²³³ Joint Opinion adopted by the Council for Democratic Elections at its 33rd Meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010) on the basis of comments by Mr Kare Vollan, Expert, Venice Commission, Norway, Mr Donald Bisson, Expert, OSCE/ODIHR, USA.

- compelling the CEC to publish detailed election results by polling station on its website as soon as they have been processed by the district electoral commissions;
- setting up safeguards against multiple voting in case the election day registration is to be maintained;
- defining the powers and responsibilities of various bodies reviewing complaints and appeals so as to avoid conflicts of jurisdiction;
- not to grant the appellants the right to choose an appeal body and to require that complaints be filed in court only after an appeal has been taken to the higher electoral body;
- to clarify the decision making authority of CEC members with deliberative and consultative vote;
- to regulate the conditions for de-registering candidates or lists of candidates.

But, other 'essential' topics remained unaddressed in the opinion of the rapporteurs, including *inter alia*:

- removing the possibility that an entire list may be cancelled if it falls under the minimum of candidates in case individual candidates have been de-registered by CEC;
- lifting restrictions on the right to campaign in order not to preclude a meaningful pre-electoral campaign, as well as not to contradict general principles of freedom of speech and expression;
- streamlining further the signature collection and verification procedures in order to ensure that they do not impede inclusive candidate registration;
- granting conscripts the right to vote in local elections;
- creating possibilities for adequate participation in elected bodies of national minorities and mainstream interests at regional level.

One of the serious setbacks that needs to be settled in full is related to the issue of the accuracy of voter lists, which has been one of the most contested and suspected areas of election frauds during the 2009 election(s). The verified voter lists (electoral rolls) must address the data updated by the National Electronic Voter's Registry, which should include all citizens with a right to vote who reside in the respective area at the moment of completing the lists. Access to the lists is to be granted not later than 20 days before the day of elections, in electronic form and on the web site of the CEC. Following this verification, local governments are to update their lists, starting with 1 January until 1 March, within their area. To avoid multiple voting, local authorities are to include a personal code number, in addition to the name, birth date and place of residence.

5.3. PARTIES IN CAMPAIGNS

The Moldovan Constitution (adopted in 1994, and most recently amended in 2000 and in 2006) and the 1997 Election Code (last amended in 2008) represent the most relevant legislation outlining the organisation of elections, as well as referenda. Additional regulations concerning local and parliamentary elections can be traced also to the Law on Political Parties (2007), Law on Public Assemblies, organic laws on the functioning of the Moldovan Courts, as well as regulations and decisions issued by the CEC. Moldovan legislation sets up a general framework of norms and regulations aimed at ensuring the fairness and democratic character of elections, covering also the technical and financial aspects of the electoral campaign, defining the rights of independent or party-affiliated candidates during campaigns. Nevertheless, the election legislation itself guarantees a number of rights for candidates. For instance, candidates in parliamentary elections may stop working temporarily during campaigns, and after their legal registration, travel free-of-charge across the country using any kind of transport (except taxi), and during local elections in the area of their election district.

Art. 47 of the Code regulates the campaign activities of parties and independent candidates, assisted by trusted persons, encouraging them to debate publicly on their own and the others' political programmes, etc. However, campaigning is authorised only for registered candidates (party or individual), according to the existing regulations and laws. Following the ban of pre-electoral alliances, adopted in 2008, lists of many political parties have included candidates that were formerly prominent members of other parties. Whilst candidates do not need to be members of the nominating party, neither can they be members of any other party.

Local authorities are responsible, according to the law, to provide within three days from the registration of the election candidates, special places for election materials and posters, billboards, etc, also allocating the places where candidates can meet with their voters. The Election Code calls for uniform distribution of the airtime, requesting public and private media to set up equal, i.e. proportional, conditions for the candidates (Art. 47). Specific acts adopted by the National Broadcasting Company regulate the distribution of airtime for electoral candidates, affiliated to parties or independent candidates, following clear rules for the administration of public and private media, and limiting the time allocated to political candidates for elections. A special chapter of the Code is reserved for the obligations of the public broadcasting institutions to provide free airtime to the election candidates during campaigns within the limits set up by the CEC.

Election candidates can purchase airtime according to the existing commercial tariffs, but not more than two hours for the entire election campaign, and not more

than two minutes daily at each broadcasting institution. Political debates must be organised in groups or for all registered candidates together, thus ensuring equal chances for all to participate in debates. If some political candidates are refused mass media access for political campaigning, they can launch a lawsuit in the respective court for alleged infringement of the legislation. All programmes, informative or advertising spots, are to be broadcast in full consideration of the limits and standards set up by the Central Election Commission for the campaign and, if some of them infringe the rights of other candidates, the latter shall receive airtime to respond in the same conditions. In addition, Election Code clearly stipulates that during election campaigns, or a referendum, airtime provided to the press offices of the main public authorities cannot serve the election campaigns' (art. 47–11). The Election Code restricts campaigning in the mass media on the day of elections, but sanctions have hardly been applied in the latest elections. This provision can be interpreted as a specific ban on 'third party campaigning', which has been widely abused by the formerly ruling party in two consecutive campaigns during 2009. In fact, the latest national and international observation reports in 2009 showed clearly that elections were marred by multiple irregularities.

The latest Joint Opinion of the OSCE/ODIHR and the Venice Commission of the Council of Europe concluded that while the Election Code provides an adequate basis for the conduct of democratic elections, the latest changes were not comprehensive, and have not addressed most of the previous recommendations. While 'some of the amendments bring about technical improvements to the organisation of the electoral process, it is unfortunate that some of them, such as new restrictions to the right to be elected, represent a setback. Overall, the extent to which the amendments addressed previous recommendations of OSCE/ODIHR and the Venice Commission has been limited.'²³⁴ Questionable amendments included the increase of the electoral threshold for party representation in Parliament²³⁵, the prohibition on forming pre-electoral coalitions and the limitation of rights of persons with multiple citizenships²³⁶ to become members of Parliament. These raised concerns among opposition parties, and affected the political pluralism enshrined by Constitution, as well as its international commitments.

²³⁴ Joint Opinion on the Election Code of Moldova as of 10 April 2008 (CDL-AD (2008)022, paragraph II

²³⁵ Some 15 per cent of votes cast in this election, slightly less than in previous elections, will not be represented in Parliament due to the six per cent threshold.

²³⁶ On 18 November 2008, the European Court of Human Rights (ECHR) ruled against the Republic of Moldova, judging that this restriction violates the right to be elected under Article 3 of the first Protocol to the European Convention on Human Rights. ECHR ruling of 18 November 2008 in the case of Tanase and Chirtoaca vs. Moldova (application no.7/08). The government has appealed this decision to the Grand Chamber of the ECHR on 6 April 2009.

As shown in the Joint Opinion by the Venice Commission over potential limitations of the right of free expression and speech problems in paragraphs (1) and (12) of Article 47 of the code remained unaddressed²³⁷, and were used to provide undue benefits to the ruling party candidates, as it appears from the final observation reports of OSCE/ODIHR on the April / July elections²³⁸. The legal ban towards election candidates taking advantage of their incumbent positions has not been applied in practice. The abuse of ‘administrative resources’ by the incumbent government was noted in the observation reports. Art. 46 of the Code states that ‘candidates participate on a quality basis in the campaign, enjoying equal rights to use mass media, i.e. Radio and TV, financed by the state budget’. However, the elections of 2009 showed blatant violations of the election principles, through biased state-run media, significant procedural shortcomings and allegations of election fraud²³⁹.

Combined, these provisions created obstacles for the representation of parties, candidates and citizens belonging to national minorities and political opposition, thus weakening pluralism. In its 1666 Resolution (2009), the Parliamentary Assembly of the Council of Europe deplored the ‘partial compliance of the Moldovan authorities with its earlier recommendations, regarding the improvement of the electoral process and the strengthening of democratic institutions before the parliamentary elections of 5 April 2009’. The Assembly suggested to the new Parliament to take immediate action, after the elections, to adopt an action plan with concrete measures and deadlines on the implementation of Moldovan election laws.

²³⁷ See the OSCE/ODIHR Guidelines for Reviewing a Legal Framework for Elections, pages 20–21, available at http://www.osce.org/odihr/item_11_13588.html.

²³⁸ OSCE/ODIHR EOM Post-Election Interim Report is available at www.osce.org/odihrelections/36107.html.

²³⁹ The functioning of democratic institutions in Moldova Resolution 1666 (2009, Assembly debate on 29 April 2009 (15th Sitting) (see Doc. 11878, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe

Table No. 9 Results of the parliamentary elections in Moldova, 5 April and 29 July 2009

	5 April (results of the official recount of 15 April), slightly different from the first results			29 July (repeated general elections, as a result of the dissolution of Parliament on 3 June)		
	Votes	Votes (%)	Seats	Votes	Votes (%)	Seats
Party of Communists (PCRM)	760551	49,5	60	706732	44,7	48
Liberal Party (PL)	201879	13,1	15	232108	14,7	15
Liberal Democratic Party of Moldova (PDLM)	191113	12,4	15	262028	16,6	18
Social Democratic Party (SDP)	150155	9,8	11	116194	7,4	7
Christian Democratic People's Party (PPCD)	56866	3,7	–	29434	1,9	–
Democratic Party of Moldova (PDM)	45698	3,0	–	198268	12,5	13
Centrist Union of Moldova (UCM)	42211	2,80	–	–	–	–
European Action Movement (AEM)	15481	1,0	–	–	–	–
Others (independents)	26479	1,7	–	6117	0,4	–
Votes cast	1556083			1591757		
Invalid votes	18996			10240		
Registered electorate	2586309			2708381		
Turnout (%)	57,5			58,8		

Source: Central Election Commission (2009)

5.4. WOMEN IN PARTIES AND ELECTION

Under the Constitution of the Republic of Moldova, men and women enjoy equal rights (Chapter II, Fundamental Rights and Freedoms – art. 16 (2), Art. 43–50). The equality of rights is further developed by the Election Code (art. 11 – Right to vote, art. 12 – Right to be elected) and by the Law on ensuring the gender equality between women and men (No. 5-XVI of 09.02.2006). In particular, the specific legislation on gender equality defines explicitly in its art. 7 ‘equal chances in elections, in the activities of parties and other socio-political organisations’, setting up specific responsibilities to the Central Election Commission, territorial councils and district offices, political parties and their leaders in securing an equal share of seats for women and men, on the candidates’ lists, without discrimination’. The Republic of Moldova is a signatory state to the UN Convention on the Political Rights of Women, as well as to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, since 1994), and acceded to the Optional

Protocol to the CEDAW in 2006. In 2007, a Department for Equal Opportunity and Prevention of Violence of the Ministry for Social Protection, Family and Child was set up, aiming to undertake an assessment of the implementation of the Equal Opportunities Law, while in 29 December 2009, the Cabinet of Ministers adopted a National programme to ensure equal opportunities during 2010–2015 (Participation in public and political decision-making).

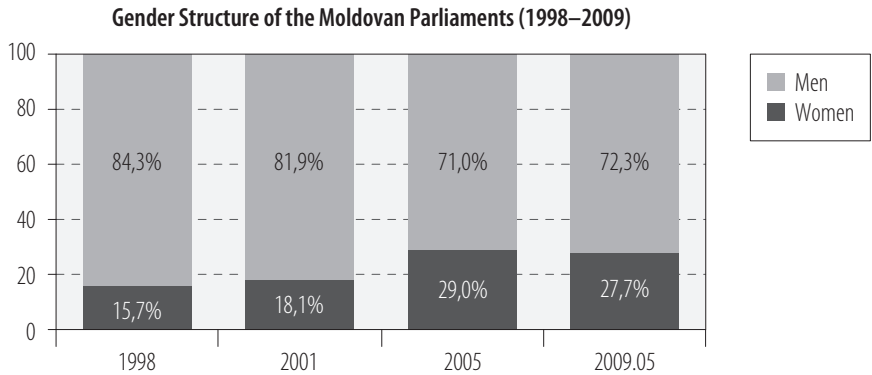
In spite of sound international and national legal acts and expertise, providing a basis for equal participation of women and men, women remain visibly ‘under-represented’ in political life, especially at higher levels of decision-making bodies. There are no legally established electoral quotas for women in Moldova and, as such, political parties are free to decide on the number of women they nominate. To a large extent, even the concept of an ‘affirmative action’ policy is largely unknown to the politicians, as well as to national authorities. Nevertheless, one should point out that the issue of ‘gender balance’ or ‘gender opportunities’ has become increasingly familiar in recent years, since considerable educational efforts have been made to cover this topics, promoting innovative standards, following the examples of the EU states.

The Law on Ensuring Equal Opportunities for Women and Men²⁴⁰, adopted in February 2006, contains a specific provision on equal opportunities in the electoral sphere and obliges the election administration and political parties to observe the principle of gender equality. However, the Election Code does not include any sort of specific provisions, aiming to ensure equal or enhanced women’s representation or representatives of the national minority groups on the lists of candidates. Therefore, women leaders state that ‘in spite of the existence of several women-based party organisations, followed by bombastic statements, this has added nothing to the real position on the party lists, and that the only real change in political life is that women have been basically relegated to the post of campaign agitators’²⁴¹.

²⁴⁰ Law on Ensuring Equal Opportunities for Women and Men, No. 5-XVI of 9 February 2006. Prior to adoption, the draft law included a 30 per cent quota requirement for women on lists; however, the requirement was eventually dropped as many considered quotas to be discriminatory.

²⁴¹ Catinca Mardarovici, Political Club of Women 50/50, www.e-democracy.md

Table No. 10 – Comparative overview of the gender-representation of the last 4 Parliaments



Source: Alexei Buzu, Expert, Center for Partnership in Development, April 2010

Specialized associations on gender opportunities have noted that in the Republic of Moldova the representation of women in parties, as well as in various public authorities, is not adequate to the real number of women. Although 51,9% of the Moldovan population is made up of women, less than 20% of politicians in the Moldovan Parliament were women. Only 22 women succeeded in become MPs as a result of the 2005 parliamentary elections, and less than 15 women were elected in the 2009 parliamentary elections. The local elections of 2007 brought into the Chisinau Municipal Council 16 women out of 51 councillors. Since the Republic of Moldova uses a closed-list proportional representation system, this could be quite a good basis to link the existing system to a legally binding gender quota, deriving from the Equal Opportunity Law, but implementation of this objective is clearly not being considered by the political parties.

The Pro-Gender Alliance claimed in 2009 that ‘the representation of women in political parties of Moldova has worsened in comparison with the 2005 elections’. They say that this is ‘in part because party leaders do not trust women in their parties, and therefore, women do not show up in eligible places, being pushed more toward the bottom of the list’. In fact, only the Christian Democratic Popular Party imposed a 50/50 gender balance quota during the 2005 elections, but not in 2009, when the party was defeated. Activists of the Pro-Gen Alliance advocate a Law on gender equality providing for 30% of legislators to be women, but their voices were hardly heard or listened to during the turmoil of the 2009 elections.

Out of 1,188 candidates that ran in the April 2009 elections, 328 were women, including one independent candidate. Only one party, MAE, included five women among their top ten candidates. Women lead two political parties, also leading

their respective party lists. Two other parties, AMN and UCM, did not have any woman among the first ten candidates on their lists. The PLDM, which has an internal 30% quota requirement in its statute, had the lowest proportion of women on the list and only one among the top ten candidates. Reports show that none of the seven parties running in the 2009 elections offered half of the places in the first 20 to women. Gender balance in the first 20 places on the lists leans heavily towards male²⁴². Leaders of the 'Pro-Gen Alliance', which was created in October 2008 by 22 independent NGOs, advocate for the improvement of the current under-represented status of women in politics. The Alliance militates for an active gender agenda of the electoral programmes, proposed by Moldovan political parties to the voters, and carries out cross-sectoral work with various national and local partners, who are in favour of a gender balanced participation of women in politics.

With this aim, Pro-Gen Experts proposed amendments to the Election Code and connected legislation, aiming to clarify by law and terms of proceedings the term 'equal chances' in the decision-making, political or election process, following the Recommendation (2003) 3 of the Committee of Ministers of the Council of Europe on equal participation of women and men in political process, with the purpose of fair representation of women and men in all decision-making authorities, which should not be below 40%. Another proposal would see additional requirements in terms of measures to increase gender equality for parties that wish to apply for public financing. Such measures could include conditions on improving the position of women on party lists, internal gender data disaggregation, as well as annual planning to increase gender balance in the effective policy-making bodies of the party. Although most of the political parties relatively quickly endorsed the innovative practice of creating women-party associations, aiming thus to mobilize potential voters or supporting staff amongst women, parties appeared to be quite aware of the benefits resulting from the discovery of additional voters from women segments.

Some of the parties have already adjusted their statutory charters, including explicit provisions of gender representation. Thus, art. 1.9 of the Statute of the Liberal Democratic Party (LDPM) provides the following provision:

'The party advocates for equal opportunities for both genders, by aiming for at least 30% of women in the decision-making bodies for men and women, as well as for the elective positions where the party will run',

²⁴² Committee for Freedom of the Press, 2009, www.ijc.md/publicatii/CLP/02.10_Small_number_of_women_on_party_lists_for_April_Parliamentary_elction.pdf

For its part, the Statute of the Christian Democratic Popular Party (CDPP), includes the following special subchapter (9) aiming to ensure full equality of women and men, represented by the party;

‘We recognize the right of every person to determine his/her own fate. Our party considers the right of women to participate equally with men in political, social, professional, scientific, artistic and cultural life, with no discrimination. We advocate for the practical application of the rights women do have in any other activities, not only in the home-related activities, in order to eliminate any discrimination, and increase the women’s opportunities in all forms of public life, i.e. in politics and administration of the public affairs. CDPP has its own association representing women, which is primarily focused on the implementation of women’s rights in political life and society’.

On similar vein, the Statute of the Social Democratic Party (SDPM) includes in art. 31 the following provision:

‘Our party shall ensure in the composition of all councils of all levels and all eligible lists the full representation of both genders, proportional with the proportional representation of the men and women as members in the party, but not less than a third ensured to women’.

It should be stressed that this practice of differentiating gender participation in the programmes and charters, regulating the management of political parties is a relatively new way to promote ‘equality of women and men in politics’, which is not an easy issue even for the most advanced democracies of Western Europe.

In Germany, for instance, the prevalent opinion is that ‘affirmative action’, or ‘positive discrimination measures’ contradict the principle of equality. In Sweden, as well, the current election system does not include any specific procedures to ensure against possible discrimination of women, or other vulnerable groups: there are no reserved seats in the councils (local or national) for national minorities, but most of the political parties have already incorporated voluntarily certain internal regulations, which allow, for instance, that every second name on the list of candidates shall be a women. But, this perhaps reflects a positive tradition of Sweden, since there are no similar practices in Estonia, Norway, Portugal, Ireland, Netherlands, Slovakia, Romania, Finland and the UK. Gender balance is pursued through specific procedures in the Czech Republic, but this certainly does not represent a widespread practice.

5.5. REPRESENTATION OF ETHNIC MINORITIES IN POLITICAL PARTIES

National minorities in Moldova represent almost 24% of the whole population, and are generally actively following politics and elections organised for different levels of governance. According to the 2004 census, Moldova's largest minority are the Ukrainians (8.4%, with 282,406 persons), followed by the Russian minority (4.9%–2–1.219%), the Gagauz (4.4%), Bulgarians (1.9%), Roma (0.4%), and Jews (0.1%). The Census does not include people from the breakaway region of Transnistria, where the proportion of Ukrainians and Russians is equal to the Moldovan population, but where the Moldovan national laws cannot be applied because of the unsuccessful peace negotiations. Due to a harsh opposition of the separatist leaders of Transnistria towards the ideas of peaceful re-integration of this territory with the rest of the Republic of Moldova, the conflict settlement solutions remained 'frozen', and in spite of the updated format for negotiations, held in the '5 + 2' instead of previous '3+2' format, democratic resolution of the conflict seem to be a far distant perspective.

Since its Declaration of independence, the Republic of Moldova has established a rather sophisticated range of laws protecting the rights and freedoms of citizens belonging to national minorities, short of ratification of the European Convention of regional languages, which is still pending. Owing to its Law on National Minorities of 2001, Moldova has been commended by the Council of Europe for its efforts to ensure dialogue with representatives of national minorities, particularly with regard to changes in Moldovan legislation. For example, legislation on elections guarantees the printing of campaign materials in ethnic minority languages. The organisation of elections provides equal opportunities for participation to all citizens of Moldova, regardless of their ethnic background, faith or language. This is considered some of the most important provisions of the Code of Good Practice in Electoral Matters, elaborated by the Venice Commission, ensuring equal suffrage, and encompassing: equal voting rights, one vote principle (each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes; equal voting power (seats must be evenly distributed between the constituencies).

Election documents and ballots are both available in the state language, but also in other minority languages – for instance, in Russian. This is seen by OSCE officials as a highly commendable practice of special treatment of national minorities²⁴³.

²⁴³ Nicolas Kaczorowski, OSCE/ODIHR, HDIM.ODIHR/252/07, September 28, 2007 – Minority Participation in Electoral Process: summary of findings. http://www.osce.org/documents/odihr/2007/09/26778_en.pdf

However, Moldova has not accepted to enshrine any special rules or 'allocated seats' in its national legislative Parliament for national, ethnic or linguistic minorities. Although some of the representatives of the national minorities claimed it would be beneficial for the country's representation to have 'reserved seats' in the unicameral Moldovan Parliament, so far this has been not seriously discussed by the national legislative, since it considers the equality principle – providing no discrimination (positive or negative) to the citizens – as a morally acceptable solution. One explanation is related to the fact that Moldova is still home to the unsettled conflict in Transnistria, whereby it cannot apply national legislation throughout the whole national territory. Some of the national minorities use Russian still as a *lingua franca* in everyday communication, and despite different ethnic background (Gagauz, Ukrainian, Bulgarian) many of them use it as a main language.

However, it is also widely accepted that representation of ethnic minorities in the major political parties is not satisfactory, but at the same time that this cannot be imposed to political parties, since participation in politics is a voluntary action. One could outline that this could have resulted from a multiplicity of factors. First of all, the Russian-language speakers are mainly confined to the large cities, being a visible minority there, but clearly outnumbered at national level by the titular group, largely residing outside of the capital. Statistics show that if by 1998, the titular group constituted only 64.5% of the total population, then in 2004, it represented already 75.6%, while the largest minority ethnic groups shrank by almost half, with the exception of the Gagauz national group. Second, the specific provisions of the Law on Political Parties requested from the participating actors a higher presence at the territorial level; thus, concentrated ethnic groups could not compete against larger national political parties, with wider representation, and to a larger extent, accepted by the population. Third, limited use of the official language by national minorities in the Republic of Moldova has hampered a higher recruitment in these groups by the main national parties. Some of them have set up their own 'minority parties', which have enjoyed a marginal, if vocal, role. As a result, people think left wing parties are more supportive of the Russian-speaking voters, whereas right wing leans more towards pro-European, pro-Romanian views and identities. Nevertheless, this picture is to some extent misleading and too simplified.

This is illustrated by the case in Gagauzia, which operates on the basis of a special statute of territorial administrative autonomy, adopted in December 1994 to protect the cultural autonomy of the Gagauz people, as a form of internal self-determination, which further evolved as the only case of political devolution in Moldova. By its Law (No. 344-XIII) on the special legal statute of Gagauz Yeri, the Moldovan Parliament adopted a legal basis allowing the creation of a special territorial autonomy for the Gagauz people, which consists of all those localities where the proportion

of the Gagauz population exceeded 50% at the time of a referendum. Local referenda were held at the beginning of 1995 to allow local communities to decide whether they want to be part of the Gagauz autonomous area, or not. The regional law-making body of the autonomy is a People's Assembly, which is directly elected by the people. The main powers include education, culture, local development, budgetary and taxation issues, social security and urban planning and environment. Moreover, the Gagauz Assembly may also participate in formulating Moldova's domestic and foreign policy and may challenge national laws before the Constitutional Court if they interfere in the Gagauzian jurisdiction.

Gagauzia is governed by a Parliament and a Governor, who was elected for the first time directly in June 1995. Since 1998 Gagauzia has also had its own Constitution. Alongside Russian and Moldavian (Romanian), Gagauzian is the official language of the autonomous entity. Its territory is not contiguous, but consists of a core area around the capital Comrat, including the area of Ceadir Lunga, and three enclaves around the city of Vulcanesti in the south and the villages of Copceac and Carbo-lia. Setting up a territorial autonomy contributed decisively to end a harsh conflict between the Gagauz people and the central government in Chisinau. The head of the executive is the Governor, who is directly elected by the population of Gagauz Yeri for a 4-year-term. He is *ex officio* also a member of the Moldovan Government.

As for the judicial branch, the Court of Gagauzia acts as an appeal forum for local judicial districts. Its judges are appointed by the president of Moldova on proposal of the Assembly of Gagauz-Yeri. The Chief Judge of the Court of Gagauzia is *ex officio* a member of the Supreme Court of Moldova. The perspective of the concerned political institutions and forces has differed, as have the positions of the concerned local population, Gagauzian or non-Gagauzians. There was some criticism of the incomplete power sharing between national and regional governments, but this is generally a result of a still high degree of centralised policies in Moldova. Nevertheless, on 25 July 2003, the Moldovan Parliament adopted the law (No. 344-XV) by which it amends the Constitution of the Republic of Moldova, enshrining in Art. 111 the statute of the Gagauz Yeri²⁴⁴.

The case of Gagauz Yeri is a case of paramount importance for other states that have faced ethnic mobilization and / or effects of external factors, or resurfacing strong nationalist forces. Regarded as a successful example of managing politicized regionalism via peaceful means, the region attracted significant attention from the

²⁴⁴ Until 2003, Gagauz autonomy was treated by the Constitution of the Republic of Moldova as a potential fact, on a par with Transnistria, with whom further talks will provide the basis for a long-standing special statute of the region.

Council of Europe and OSCE, who regularly monitor its regional/local elections, and mediate potential disagreements between the central and regional authorities. It is highly improbable that other precedents could be set up in Moldova, since Ukrainian and Russian national minorities are not living in concentrated areas, while Bulgarian and Roma communities are less prepared to claim a similar statute of territorial autonomy. Gagauzia's autonomy set an example of both territorial autonomy and of minorities' collective rights which is still controversial, taking more time to see how it will evolve in the longer run.

In Macedonia, 'reserved seats' for small ethnic communities are used for ethnic Turks, Roma, Vlachs, Serbs, Bosnians, specifically for national elections. In Romania, organisations of citizens belonging to national minorities represented in Parliament may advance candidates in local elections²⁴⁵. The impact of an electoral system on the representation of minorities is felt most clearly when national minorities have their own parties. No special provisions to enhance the role of national minorities exist in the Portuguese election regulations, while immigrants of other nationalities are entitled to stand for election and vote. In the Czech Republic, committees for national minorities²⁴⁶ are in place to compensate for the lack of special reference to national minorities in the election laws. Some provisions of national laws aim to prevent distortion of the national minorities' voices. For instance, the Croatian Act on the rights of National Minorities stipulates that all national minorities have the right to an appropriate level of representation in their local governments and prescribe some specific procedures to ensure that, even when members of these groups could not be elected (for instance by increasing the number of the councils).

Political participation of the national minorities in elections is quite impressive, with a higher participation where they live in concentrated areas. It reached over 70% in Gagauzia and 80% in the Bulgarian-populated district of Taraclia in 2005, while it was below the national average of participation in two of the largest cities of the Republic of Moldova (Municipalities of Chisinau and Balti – below 50%). In 2005, a few parties based on ethnic ties with Russian-speaking segments of the population ('Patria-Rodina', 'Ravnopravie') attempted to influence the 'ethnic vote' into an anti-Western, pro-Russian pro-Transnistrian direction, but they hardly garnered 8,72% altogether, and their parties were unable to cross the threshold. In fact, most of their votes come from the regions populated by ethnic minorities that used to vote for the Communist Party. Afterwards, these groups have gravitated around

²⁴⁵ Law on local elections, No. 67/2004, reprinted in *Monitorul Oficial al Romaniei*, Part I, No. 333 of May 17, 2007, Art. 7

²⁴⁶ 270 committees for national minorities were registered in 2007 by Governmental reports.

the incumbent 'ruling party', calling their specific audiences (and voters) to support the elections of their preferred parties, to curb the risk of being eliminated because of consecutive failure to participate in elections. Some of these groups deplored in September-October that the new governing coalition has a small number of ethnic minorities in the executive or on their party lists. The reply was that parties are free and open entities, which can be joined by free citizens.

Moldovan authorities have acknowledged and accepted the arguments of the Venice Commission and OSCE/ODIHR, who have stressed the importance of taking into account sizable national minorities living on its territory when deciding on an electoral system, recommending that an 'electoral system for Parliament should create possibilities for adequate participation in public life of national minorities and mainstream interests at regional level'²⁴⁷. Legislation on political parties, as well as the Election Code, provides no obstacle whatsoever for the participation in the election process of persons belonging to ethnic or linguistic minorities. Neither of these texts create any distinction in the exercise of the fundamental rights, protected by the Constitution, 'on any ground such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Of special relevance for the Moldovan authorities is also the Framework Convention for the Protection of National Minorities (FCNM), which is the most specific legally binding instrument ensuring the protection of national minorities in the Council of Europe member states. Art. 15 of the FCNM states that 'the Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them'. As the explanatory report points out, it is the obligation of the signatories (member states of the Council of Europe) to set up appropriate conditions through which 'equality is ensured in elections between persons belonging to national minorities and those forming part of the majority'. In this regard, representative associations of the national minorities must also be consulted about legislation amendments, encouraging participation of their experts in the decision-making processes and elected bodies both at national level and local levels (decentralised or local forms of government).

²⁴⁷ Joint Opinion on the Election Code of Moldova as of 27 March, 2007 CDL-AD (2007), beginning of par.84,

VI. Sources of political financing

6.1. PUBLIC SUBVENTIONS

The financing of political parties represents a highly sensitive but extremely important aspect of the political process, outlined by international documents and domestic legislation.²⁴⁸ It is expected that the system adopted by a state will enable national authorities to prevent political corruption, ensure representation of the electorate through fair, free, and democratic elections, effectively design and implement mechanisms to limit private donations, oversee the size of spending in campaigns, monitor and control political financing, and assign clear responsibilities and penalties for any violations of the law.

Considering the above, the adoption of a new Law on Political Parties in 2007 was seen as a 'clear step forward in creating a modern political finance system in Moldova,' and in strengthening the political system, on the basis of a comprehensive document, including substantial improvements if compared with previous party regulations.²⁴⁹ However, international experts have outlined both the positive and negative aspects of the newly adopted document on political parties. A number of innovations in the new Law on Political Parties were hailed: clear contribution limits, direct financing to political parties, as well as the regular reporting of finances and election campaign expenditures requested from political parties. These reports

²⁴⁸ UN Convention against Corruption (New York, 31.10.2003); Resolution (97) 24 of the Council of Ministers on the twenty guiding principles for the fight against corruption (06.11.1997); Recommendation (2003) 4 concerning general rules against corruption in financing political parties and election campaigns of the Committee of Ministers for the state-members, Council of Europe, 08.04.2003

²⁴⁹ Marcin Walecki, Expert Opinion on the Law on Political Parties in the Republic of Moldova adopted by the Parliament in December 2007

were to be posted on the CEC web-site, thus facilitating genuine overview by the public, mass media, and active civil society groups.

Nevertheless, the new law has ignored important recommendations made by the Council of Europe experts, e.g. proportional sanctions and a single monitoring body, thus limiting the overall benefits of the proposed reform of public financing, while independent experts found major flaws in the new legislation in the field of indirect financing ('third-party funding'), oversight of public financing, implementation of the penalties and responsibilities, and national authority for oversight and enforcement. The Law on Political Parties provides in Art. 5 for 'state support to political parties' and the aim 'to assist adequate development of the institutionalized pluralism.'

For this purpose, the Moldovan Parliament decided to develop by law a mixed model of party funding, which provides political parties with an appropriate legal framework to collect limited private donations together with a guaranteed share of public funding. The approach adopted in Moldova was in line with the specific recommendations of the Council of Europe that state support should be limited to reasonable contributions that do not allow state agencies to interfere in the independence of political parties.

The Law stipulates in Art. 28–6 that resources assigned to political parties are paid into their official accounts, following the rules established by the Central Election Commission, based on the number of votes accumulated by the parties. Sources of financing are disclosed only after the election campaigns, when the final results are usually confirmed and complaints and appeals are resolved. This has violated some important rights of ordinary voters, who are restricted from getting highly relevant information on parties, as well as their financial contributors/sponsors, prior to the date when they cast their votes. By law, payments from regular public financing shall be paid to political parties through special accounts on a monthly basis in equal instalments during the entire year. In case a party loses the right to apply for public financing, the payment of the remaining amount will be suspended from the month following the date when the party loses its right. In the case of the reorganisation of parties having the right to public funding, their unaltered right will be transferred to the legal successors of the reorganised political parties (Art. 28–9).

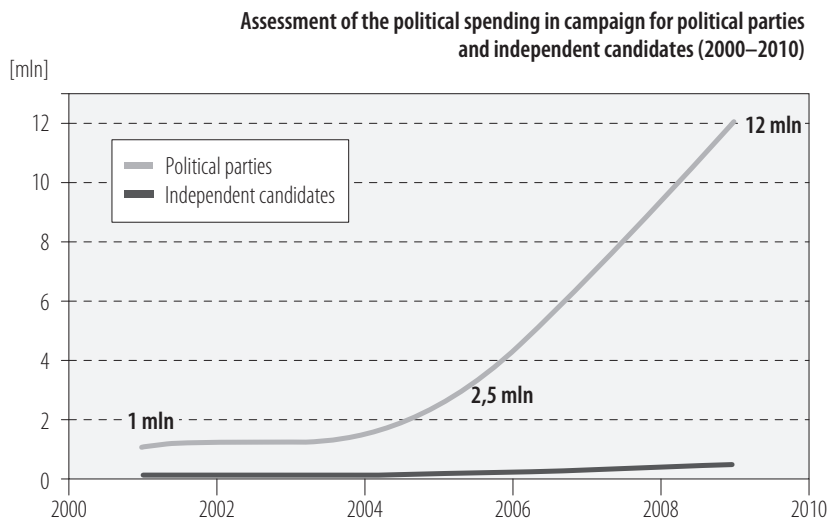
Art. 5–2 explicitly forbids discrimination against political parties in allocating state support for election campaigns. The 2007 Law defines specifically the situations in which political parties may lose their right to receive financing, specifically 'when and if their activity has been limited or suspended; if parties have lost their legal status, if they violated the regulations on party financing, or they are in the process

of self-liquidation.’ The law lists the categories of spending that are eligible under current regulations. Thus, state subsidies to political parties can be used (Art. 29 of the Law) – ‘for the maintenance of offices, staff costs, mass media advertising, international and domestic travel, communications, organisation and logistics costs for party activities, protocol costs, membership fees in various international organisations or networks to which the parties are affiliated, supplies, election spending, as well as capital investments in property the parties need for their activities.’ Previously, experts recommended that the new law require political parties to return public funds to the State when they failed to provide a detailed account of the expenditures. In Article 29, the Law states that misused public subsidies shall be returned to the State following a decision by the Court of Appeal in Chisinau. Furthermore, Article 26, Par. (3–4) introduced certain contribution limits:

- Donations made by an individual to one or more political parties during a budgetary year shall not exceed 500 times the average monthly salary;
- Donations made by a legal person to one or more political parties during a budgetary year shall not exceed 1,000 times the average monthly salary.

In addition, pursuant to Article 26, ‘political parties shall not accept material support in any form from other state or international organisations, enterprises, and organisations financed by the state or with state or foreign capital, non-commercial organisations, trade unions, philanthropic and religious organisations, citizens of the Republic of Moldova who are still minors, those residing abroad, or non-citizens of the Republic of Moldova.’ The Law also states that each political party shall keep a record of donations received, where the name and address of the donor shall be provided along with the donated amount. The legal regulations are not clear as to whether the date of the donation needs to be reported.

Those political parties that exceed the ceiling of spending established in the Law, as well as political parties that receive funding in violation of the existing legal provisions, lose the right to access state financing. As a result, a political party that has lost its right to apply for financing from the state budget may regain this right only after the upcoming election (Art. 28–4). Parties that have lost their right to state financing as a result of irregularities found in the reporting of incomes will regain this right only after remedying the infringements that justified the suspension of funding.

Table No. 11 Evaluation of party financing limits (2000–2010)

Source: Data analysis based on the information presented by the CEC

Another development resulting from this legal framework is the introduction of direct public funding. It should be noted that the new public funding system also includes parties not represented in Parliament; these parties can receive funding if they receive more than 50 mandates in local elections. The Law also provides that state subsidies shall be paid to the political parties in equal monthly payments, which should help them with their daily activities. Furthermore, Article 29 stipulates what political parties can use state subsidies for. This includes: 1) expenses for the maintenance of premises; 2) personnel expenses; 3) propaganda and press expenses; 4) travel expenses within the country and abroad; and 5) telecommunication expenses. The only controversial activity that might lead to potential conflict of interest and dubious use of public funds is ‘investments in real estate and movables required for the activity of the parties.’ Moldovan law has assigned the authority for the supervision and enforcement of party financing to multiple executive agencies and state bodies.

Practical observations suggest that the Central Electoral Commission has limited responsibility for campaign finance monitoring. First, if the information submitted by a political party is incomplete, the CEC may request the party to provide additional data or information on the amount of spending made by this party, on the accounts, and on the original sources of these funds. Second, according to Article 31 of Paragraph (3), the CEC does not have authority to carry out audits on its own,

but must ask ‘competent bodies’ to check whether a political party received or used financial resources inappropriately during the electoral campaign. Additionally, the above articles are vague; they do not specify the bodies competent to carry out such controls at the CEC’s request nor do they determine the period for each party to send additional information or for the ‘competent bodies’ to conduct investigations on financial misconduct. The law also stipulates that the Auditing Chamber, the Ministry of Finance, and the Ministry of Justice will supervise the appropriate use of state funding by the respective parties (Art. 30), and in case of irregularities, finances will be returned to the state budget by these parties, following a decision of the Appeal Court. It is unclear however how funds that have been used inappropriately will be reimbursed to the state budget if the leadership changes, but the provisions of Art. 18 of the same law states that ‘members of political parties are not liable for the obligations of their respective political parties.’

The basic assumption of the Moldovan legislators was that a number of restrictions on the use of both private and public funding by political parties will generally improve the functioning of the political system, accountability, and transparency.²⁵⁰ Moldovan legislators aimed to create a level playing field and prevent any single political party from becoming an unfettered organisation with unlimited financial muscles. Art. 28 of the Law on Political Parties stipulates that annual subsidies from the state budget for the financing of political parties represent 0.2% of the budgetary resources for the relevant year, and will be distributed as follows:

- 50% – in accordance with the mandates received in general elections, as validated by the Constitutional Court of the new legislature, and
- 50% – in accordance with the number of votes received in local elections, on the condition that political parties have received no less than 50 mandates in the representative bodies of the 2nd tier of governments.

However, allocation of 50% public financing, proportional to the number of received mandates cannot be seen as the fairest way to ensure equitable and equal conditions for all election competitors, since this automatically keeps parties that received fewer votes than the existing election threshold outside the financing criteria. Keeping the number of mandates as the main method for allocation of financing from the budget creates another limitation of the political competition, and later on, also the allocation of public financing. Thus, excessively high election thresholds (6% or 9%)

²⁵⁰ Political parties shall submit to the Central Electoral Commission (CEC) reports on financial funds, including election campaign expenses and sources of funds. Parties should also submit additional financial information every two weeks until the end of the campaign period. In addition, final reports for the entire electoral period shall be presented to the Central Electoral Commission within one month from the date the election results are publicized.

are extremely relevant for the post-election period, since it helps to convert accumulated votes into parliamentary mandates. Thus, if the ruling Communist Party accumulated in the most recent campaign (2009) at least ten mandates because of the proportional election system, this created a strategic advantage in securing additional resources, later on, at the moment of receiving state financing.

If the Law on Political Parties of 2007 would have applied the system of public financing from 2007 onwards then the ruling party would have received 34.18% of the total financing for 2007, as a result of the accumulated 465 local mandates for mayor, OMA – 16.79% (220 mandates), Democratic Party – 9.74 (117 mandates) and CDPP – 8.50% (98 mandates).²⁵¹ Two other social-democratic parties (Party of Social Democracy and Social Democratic Party – with 4.84% and 4.78%) remained clearly outside the financing criteria, due to the existing threshold and allocation of funds on the basis of seats.²⁵²

Since April 5, 2009, the elections were the first that could apply the special chapter on public financing of the Law on Political Parties (2007), and it is possible to simulate how election results influence the allocation of state budget resources to the political parties. Thus, 0.2% of the revenues of the state budget in 2009 came to almost 35.40 million lei, in accordance with art. 28 provisions regulating the financing of parties in Moldova. 50% of the above-mentioned amount is 17.7 million and equivalent to the maximum amount of donations received by the parties in 2009, which shall be distributed according to the mandates received in national elections.

A simple calculation shows that the Communist Party of Moldova (CPRM) would have received almost ten million lei, reflecting its 60 mandates (or 59.41%) received in the April 5, 2009 elections, followed by the Liberal Party – 2.6 million, equivalent to 15 mandates (14.85%) and the Liberal Democratic Party – 2.6, equivalent to 15 mandates, Our Moldova Alliance – 1.93 million, equivalent to 11 mandates (or 10.89%). Applying the same mechanism for the remaining 50% of state budget financing, estimated on the basis of local election results, one finds that the Communist Party of Moldova would have received 8.7 million, equivalent to almost 34.18% of votes in the 2007 elections, followed by Our Moldova Alliance with 4.3 million, equivalent to 16.79% of the votes, the Democratic Party with 2.49 million, equivalent to 9.74% of the votes, the Christian Democratic Popular Party with 2.1 million and equivalent to 8.5%. On the basis of these estimates, we can see what

²⁵¹ Electorală 2007, Chişinău, 2007, p. 501.

²⁵² Ibid. p. 501

would have been the effects of the state financing system, applied in the 2007 and 2009²⁵³ elections, if the Law on Political Parties were applied in 2009:

Table No. 12 Estimated Budgetary Financing in 2009 (simulation)

	Budgetary allocation on the basis of election scores for parliamentary elections (April 5, 2009)	Budgetary allocation on the basis of election scores for local elections (June 2007)	Total	% of the total budgetary allocation to political parties
Communist Party of Moldova	10,536,304.09	8,759,267.11	19,295,571.20	54.4%
Our Moldova Alliance	1,931,330.61	4,302,486.74	6,233,817.35	17.58%
Liberal Party of Moldova	2,633,632.65	–	2,633,632.65	7.42%
Liberal Democratic Party of Moldova	2,633,632.65	–	2,633,632.65	7.42%
Democratic Party of Moldova	–	2,495,300.43	2,495,300.43	7.04%
Christian Democratic Popular Party	–	2,177,845.72	2,177,845.72	6.14%
Total	17,734,900.00	17,734,900.00	35,469,800.00	100%

Source: Election Results, Central Election Commission

As it can be seen clearly from the above estimates, the existing system laid down in the Law on Political Parties (2007) gives considerable advantages to the ruling party, and limits extremely any access of small or new political parties to budgetary financing. Application of the ‘proportionality’ principle in the allocation of public financing, without considering the principle of ‘equality’ is certainly propping up the dominant position of senior/ruling parties and could seriously jeopardize the principle of political pluralism. Due to the relatively high election threshold, most of the newly emerging political parties will simply not qualify for financing from the state budget, and will be out of reach from state subsidies. Moreover, since the adoption of the public financing system is conceptually based on equal opportunities for political actors, this causes serious doubts about the rationality of the existing financing system, suggesting that this should be further reconsidered and developed in law, ensuring more balanced positions for political actors in elections.

²⁵³ Results were estimated on the basis of the April 5, 2009 general elections only..

Pursuant to Article 30, political parties shall present annual financial reports to the Court of Accounts, the Ministry of Finance, and the Ministry of Justice. The Law introduces a strict annual deadline of, – 31 March, – when political parties are expected to present their financial reports in compliance with the law's requirements, and clearly defines that the unified format of the official reports, adopted through a specific Regulation of the Ministry of Justice on party reporting. Accordingly, the use of state subsidies shall be verified by the Court of Accounts and the use of funds from external sources shall be verified by the Ministry of Finance. Although the Court of Accounts has a high degree of independence, it will need to cooperate closely with agencies inside the government. Proper implementation of the Law will ensure that the agencies do not have overlapping responsibilities.

Donations from foreign and anonymous sources, as well as from charity or religious organisations, are prohibited. Registered candidates should present financial statements to the CEC every two weeks. The reports on the campaign expenditures of candidates are considered public information and are therefore to be posted on the CEC website. This is in line with the CM Recommendation 2003(4) on common rules against corruption in the field of political parties and electoral campaigns, which is the basic document for the evaluation of party financing rules and practices by GRECO.²⁵⁴ However, monitoring the implementation of the law has revealed a number of major flaws. To keep parties in the legal framework and ensure equal conditions of participation in elections, Moldovan authorities have set up maximum amounts for spending in campaigns, i.e. special restrictions for some categories of expenditures and/or limitations on spending on advertising. Studies reveal a sizeable growth of political spending in *campaigning from 2001* elections till the latest 2009 elections. If in 2001 the ceiling set by the CEC was estimated at 1 million lei,²⁵⁵ in 2005, it was 2.5 million lei, and in the 2009 general elections, it reached 12 million lei.²⁵⁶

The same spiral of spending is reflected in the participation of independent candidates: if in 2001, registered candidates could spend no more than 50,000 lei, in 2005

²⁵⁴ Recommendation (2003)4, of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted by the Committee of Ministers on 8 April 2003, at the 835th meeting of the Minister's Deputies.

²⁵⁵ Decision regarding the definition of the ceiling for financial means paid to election candidates in the parliamentary elections of February 25//Electorala 2001, Chişinău, 2001, p. 13.

²⁵⁶ Decision regarding the definition of the maximum ceiling for financial means paid to election candidates in the parliamentary elections of March 6, 2005, and Decision regarding the definition of the maximum ceiling for financial means paid to election candidates in the parliamentary elections of April 5, 2009.// www.cec.md

the amount reached 100,000 lei, and in 2009, it was 500,000 lei.²⁵⁷ In addition to the visible growth rate of political spending in campaigns, (about 2.5 times annual growth during the last eight years) independent evaluations have revealed multiple flaws and contradictions in the legislation. Thus, if an independent candidate does not have the right to spend more than 500,000 lei for his/her election race, it is difficult to argue that a person can provide a donation three times larger (1.57 million lei). This creates discrimination in favour of independent candidates compared to parties.²⁵⁸ In fact, the Election Code sets up obligations on the banks to authorise the opening of election accounts and to report funding received within 24 hours. The above mentioned requirement imposes an additional burden on banks, which could in fact be seen as an obligation which political parties per se should carry out. This obligation, which is mandatory for the banks and not for the political parties, weakens the responsibility of parties to be accountable in their use of resources.

The Central Election Commission may request, at its own discretion, an audit by the Auditing Chamber and the Main Fiscal State Inspectorate to check the conformity of the revenue sources, financial reporting, and appropriate use of the campaign resources by election candidates (Art. 38, 9). By law, all election authorities shall make public the data and information about campaign finances of the registered candidates and parties, in order to allow public access to this information, in addition to the regular (weekly) public presentations made via press conferences of the responsible authorities of the CEC.²⁵⁹ Analysis of political financing in Moldova requires considerable attention to be paid to the existing differences between the legal provisions, and the practical realities of the functioning of most political parties. Political financing has been neglected for a very long time as a key-element of political construction; therefore, sometimes the only data accessible about the amount of resources is from the Central Election Committee, the only public authority that is in charge of the organisation of different types of elections (local, general, presidential) in Moldova.

In addition to campaign financing, political parties must have the necessary finances to develop and run their statutory activities that require seed money and considerable resources. As facts have shown so far, membership fees are insufficient to establish, maintain, and develop truly viable political parties, particularly in a society in transition, with a largely impoverished population. This creates a rather serious dilemma related to the acceptance of a financing system for parties:

²⁵⁷ Ibid

²⁵⁸ Sergiu Lipcean, *Evaluarea finantarilor politice si a campaniilor electorale in Republica Moldova*, No. 5, 2009, IDIS Viitorul

²⁵⁹ *ibid*

should parties keep their spending low, depending on larger contributions from the state, or should they seek the support of larger private contributors, acknowledging that their traditional voters cannot provide the necessary contributions? With the adoption of the new Law on Political Parties (2007), political financing has been developed as an essential part of larger political reform in Moldova. The rationale behind such an important decision was that parties, receiving direct financing from the state, will automatically become more transparent, accountable, open to public scrutiny, and outside the state's regular supervision and financial control. For instance, art. 31 of the Law on Political Parties emphasises the public character of information concerning election campaigns, since spending by parties during campaigns represents information of public interest' and that 'this creates an obligation for parties to report regularly, in conformity with the specific regulation of the CEC on their appropriate spending in the campaign.

The Law on Political Parties defines in Art. 29 which spending is eligible for state financing and lists other fields where public financing cannot be spent. In case of 'excessive or inappropriate spending' political parties 'shall pay this funding back to the state budget,' according to the existing legal provisions, automatically losing their right to apply for funding. Consequently, state authorities are entitled to verify correct spending, in accordance with the legislation and on the basis of the financial reports submitted by the parties by March every year. This raises, however, two important issues: how the existing system of political finance encourages political parties and social-political movements to be accountable and functioning in accordance with the existing laws and regulations; and how political parties shall be managed and financed accordingly throughout the election campaign, but also in between the runoffs for elections, demanding a considerable re-assessment of the party management, under specific and acceptable rules, transparent patterns of party governance, which is still one of the most litigious aspects of party functioning.

Critical views have been expressed concerning the financing element in the new legislation on parties.²⁶⁰ Transparency International and Moldovan experts noted that 'provisions allowing people to finance parties with 500 times the minimum salary annually and legal entities with 1,000 times are at odds with the real situation of the country, since it does not correspond to the living standards of the population. For instance, this would mean that the maximum donations could reach as high as 1.3 million and 2.6 million lei, which could imply in fact a buying of party votes, which breaches the legislation. In most of the EU states, parties can be financed with a maximum of two to three times the minimum average annual salaries. Other critics have disagreed with the proposed level of state financing (from an original 0.02%

²⁶⁰ Infoprim-neo, 2009-01-31/16:55 <http://www.info-prim.md/?a=10&ay=21050&nD=2009/01/31>

to 0.2% of the state budget),²⁶¹ challenging the allocation of state financing solely on the basis of election results.

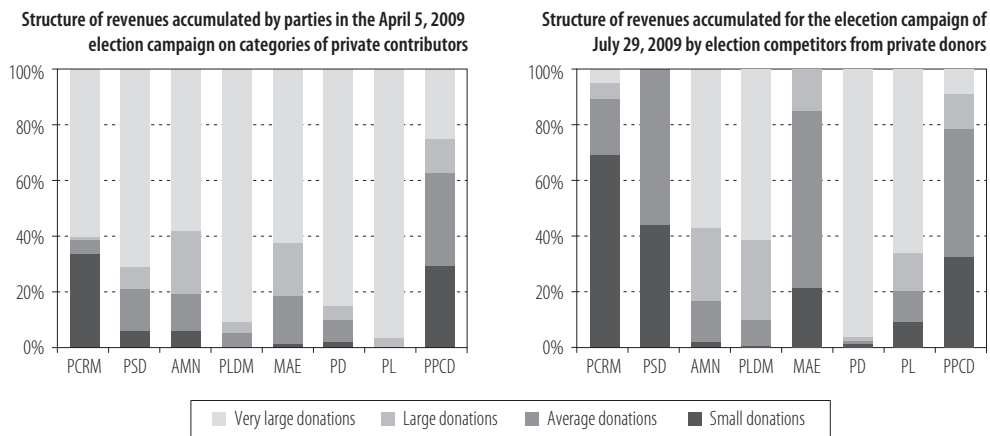
The general picture of the financing received by political parties in the last two campaigns of 2009 confirms the existence of several types of donations: (1) very large donations of 100,000 lei and more (around 6,800 Euros); (2) large donations between 50,000 and 100,000 lei (between 3,400 and 6,800 Euros), (3) average donations of over 10,000 lei, but less than 50,000 lei (680 to 3,400 Euros), and (4) very small donations of up to 10,000 lei inclusive (up to 680 Euros).²⁶² A rigorous analysis of the official contributions received by parties in the two runoffs of 2009, based on the data presented to the CEC by the candidates, reveals the fact that political parties in the Republic of Moldova are largely disconnected from the ordinary citizens, if one can regard financial contributions as a form of political participation, and even as an sign of the freedom of expression. Having apparently a rather narrow segment of contributors, and individual or legal persons that would accept to donate to election campaigns, political parties rely in large majority on 'big contributors' which allows them to absorb more resources than if they were seeking contributions from the specific segments of voters, that they would aim to represent from an ideological point of view.

Following the same argument, 'large and extra-large contributors,' i.e. so-called "party oligarchs," have provided over 70–80% of the accumulated resources of political parties that are officially deposited in the election accounts, according to the existing election rules. The concentration of financial means in the hands of a limited group of citizens raises suspicions about the degree of democracy inside the parties, increases the propensity towards corrupt behaviour, and raises serious doubts about the real interests pursued by the parties after the elections, when the investments should be returned, as the oligarchs often claim in advance.

²⁶¹ Igor Botan, Party Institutionalization and Elections, February 15, 2008, www.e-democracy.md/comments/political/200802151/

²⁶² Sergiu Lipcean, Assessing Party Financing along Election Campaigns of 2009 in Moldova, April 2010, http://www.viitorul.org/public/2175/ro/Finantarea_partidelor_politice.pdf

Table No. 13. Impact of the normative regulations on the financing of election campaigns in the 2009 elections in Moldova



Source: Conference on party regulations, April 2010, IDIS/OSCE/ODIHR

There is a lack of credible information about the accountability and transparency of party financing, i.e. sources of donations to parties. Political parties are responsible for regularly submitting their financial reports and not waiting until the CEC presents its official reports. However, the provisions of the Election Code allow several state bodies to supervise, control, or take measures, while restricting access to the parties' reports for the general public. Independent experts are concerned by the lack of transparency about party-owned offices that are luxurious and state-of-the-art, cars and luxury gifts that are not addressed by the provisions on party financing. There are similar concerns with respect to the lack of credible and trustworthy information reported by political parties, or double-accounting used by these parties to not disclose their actual spending during elections periods or outside them.

The application of the financing part of the 2007 Law on Political Parties has been delayed. At the end of 2009, the Government decided to suspend all financing because of the economic crisis. On December 12, 2009, the Parliament of Moldova decided to amend the Law (No. 64-XVIII of 12.11.2009), replacing 2009's state budgetary support for political parties with the year 2013.²⁶³ So far, no specific examples on how the law will function can be provided. By a decision adopted on February 6, 2009, the CEC has established the maximum permissible amount of resources that can be received by parties and independent candidates. This amounted to almost

²⁶³ Monitorul Oficial nr.171-172/533 din 27.11.2009

12 million lei for a political party and 0.5 million lei (500,000) for independent candidates, according to the post-election estimates.²⁶⁴

6.2. FUND-RAISING/CONTRIBUTION LIMITS

Private financing represents one of the most serious sources of income during and outside of election campaigns for political parties. The obvious positive aspects of private funding are related generally to the following: (1) through private giving to parties, citizens participate in the political process, strengthening their ties with electoral actors and creating means of public pressure from the “grass roots” supporters on party leaders; (2) private donations represent a flexible way to accumulate resources, in contrast to membership fees or public financing; (3) private donations are a legitimate instrument to acquire political funds, which can be affected by budgetary shortages, fostering a close link between party leaders and their supporters, in contrast to public financing, which can create a highly bureaucratic leadership scheme, removed from ordinary voters or supporters; (4) private sources may also increase the public accountability of parties, since the private owners could be more interested to track their ‘investments’ in parties supported, while parties need to prove their credibility in order to get new financing²⁶⁵.

The undeniably positive aspects of private party financing should not obscure however the negative aspects thereof, which are equally important to be noted. Thus, the main risks or threats related to private financing are generally related to the following aspects: (1) uncertainties related to the unstable will of private funding entities, which may increase their demands on parties, sometimes unacceptable to members; (2) unequal distribution of economic welfare amongst different social groups, which generates inequalities of public participation; (3) the danger that parties could rely more and more on certain oligarchic groups rather than on the voter’s support or party members, particularly in societies marked by striking social polarization in regards to the concentration of political influence amongst pressure groups. And, (4) private donations are usually linked in the eyes of the general public to corrupt politicians, creating the perception that they are detached from the public’s ideas or demands, and excessively dependent on some economic group interests.

Legislation on political parties stipulates that sources of funding include: membership fees, donations, or funds collected through various cultural, sport, or other

²⁶⁴ The parties submitted their interim financial reports to the CEC during the campaign on 3 March and 17 March. The CEC provided this information to the press and published it on its website.

²⁶⁵ Austin R., Tjernstorm, M. op. cit., p. 7., Ingrid van Biezen, op. cit., p. 20.

mass events, subsidies from the state, other incomes generated from the use of party properties (Art. 25). Membership fees are set by the parties, donations are regulated by law. The annual income of a political party cannot exceed 0.1% of the total revenues of the state budget in the respective year (Art. 26). Only two categories of donors to political parties are stipulated by law: private persons and legal persons; this does not include a detailed list of potential tax-exempt or other 'special' organisations. Donations from private persons cannot be larger than 500 of the average monthly salaries per economy (this limit applies also to the total individual membership fees paid annually, if the donor is a party member), while donations from legal persons per budgetary year cannot exceed 1,000 average monthly salaries, for the same year. All donations must be transparent and publicly accessible. If parties receive anonymous donations or payments that exceed the legal limits, they have the obligation to transfer the respective amounts to the state budget within ten days (Art. 27). The Law prohibits direct or indirect financing or other kind of material support of political parties by foreign organisations or foreign states, as well as by state-owned enterprises and other state-run organisations and institutions with state capital, or foreign capital, non-commercial organisations, trade unions, charities, religious organisations. However, no penalties have been imposed earlier by the CEC for fraudulent use of finances during elections, sending the wrong message to the parties, which at the end of the year disclosed few accounting or auditing reports.

In practice, individual candidates and parties use black/double accounts both during and outside campaigns for party-related activities. Some of them have never reported actual lines of expenditures, nor revenues resulting from various arrangements prior to political campaigns. Considerable support for party activities, air time, billboards, staffing, and other such things, usually results from a 'clientele-based' agreement with large business groups, or as a kind of 'risk-investment' in parties, which later pay back their 'campaign debts'. Some of the parties in Moldova have acquired considerable resources outside the legal provisions of the new legislation. For instance, the Communists favoured the adoption of a new Law on Political Parties in 2007, but agreed to enforce it only in January 2009, on the eve of general elections in Moldova, after the building of their new office, a five-floor building in the city centre. Other parties are zealously promoting their interests by buying voters before or during campaign, outside of any adequate oversight from the state-run executive bodies, thus acting contrary to the existing legal provisions.

This is perceived by numerous people as a sign of illicit use of administrative resources by the incumbent government, and of the extent of corruption in Moldova. Although legislation provides a rather sophisticated set of regulations on party financing originating from state, private and corporate sources, it does not explicitly

prohibit the use and abuse of administrative resources by the incumbent political parties. Thus, in most of the campaigns organised in Moldova, the incumbent governments have used their official positions to maximise their chances in the election campaigns. This included unrestricted use of official cars, offices, mass media, territorial offices of the Government, as well as welfare substantial payments from the state budget. State officials use mass media groups as an institutional advantage of their positions, violating the principles of 'fairness', 'equality' and 'universality' of elections. At the same time, citizens of Moldova residing abroad cannot contribute to financing political parties, which is seen as a discrimination against a large number of Moldovan citizens working abroad and occasionally travelling to their homes.

In 2010, amendments proposed to improve the Election Code included a new provision in its Art. 44 (8) which stated that 'candidates cannot use public assets and means (administrative resources) during election campaigns'. This issue is further addressed in Art. 47–4, which stipulates that 'moderators of election debates will not broadcast or include materials about the election candidates or their mandatory persons, meetings with the voters, surveys or visits by top officials who have not suspended their functions'. In a separate provision of the same article, the draft strongly emphasises the principles of equidistance, objectivity and moderation to be observed by the electronic mass media, saying that 'no election candidate shall be given priorities or advantages because of his or her current position'. During election campaigns, no public officials, listed in Art. 13–3 of the Code, will give interviews or provide statements through which they refer to their official functions after their registration as candidates for elections.'

6.3. LOANS APPLIED TO POLITICAL PARTIES

Political financing is regulated by the Election Code (Art. 38) and the Law on Political Parties (2007). Art. 35 of the Election Code (No. 1381 – XIII of Nov. 21, 1997) stipulates the various aspects and mechanism of ensuring direct state financing for the election campaigns, i.e. the means which the state will allocate to the election actors and loans from the state that can be applied for election purposes. Political parties may receive loans from the state budget for upcoming elections, according to art. 35 of the Election Code, which states that expenditures for the preparation and organisation of elections are covered by the state. The Central Election Commission is responsible for the elaboration of the Regulation on financing election campaigns and political parties, setting up the limits of financing that will be wired into the 'election funds' of the registered electoral parties and candidates. It is however the Parliament of the Republic of Moldova, which approves the total spending

for the upcoming election, deciding on the overall spending for the election process, divided into sub-components, such as: (1) financial means for the functioning of election bodies (permanent, like the CEC, or provisional like District or locally-based Election Councils), as well as (2) for the campaigning costs of the registered election actors (political parties and independent candidates).

In 2009, the Central Election Commission approved a special regulation on financing in campaigns²⁶⁶, as a response to multiple criticisms related to the non-implementation of the Law on Political Parties (financing part). By law, election campaigns or other direct or indirect forms of party financing are subject to: (a) public reporting – donations shall be made public in the mass media within one month from the beginning of the election campaign, (b) reporting of sources of income. Legislation prohibits the financing of campaigns from: citizens that have not yet reached 18 years, state/public funded organisations, anonymous persons, charity and religious organisations. All registered election candidates/parties are invited (but not bound) to open an Election Fund, which will collect the resources allocated for the respective campaign and other resources received from legal and physical persons. Limits of the allowed resources are set by the CEC. Every candidate will appoint a financial coordinator (treasurer).

Following Parliament's decision on the overall spending of elections for the respective year, the Central Election Committee is to decide on its own upon the size of campaign financing limits and loans which can be accessed by registered election competitors (art. 37–1, Election code). Thus, during the first parliamentary elections of April 5, 2009 each political party could receive not more than 12 million lei, while independent candidates could receive not more than 500,000 lei. The limits of admissible campaign financing dropped in the second repeated elections of July 28, 2009, which allowed parties to spend not more than seven million lei, while independent candidates were allowed not more than 500,000 lei. Similarly, the CEC approved to provide loans estimated at 32,000 lei for each political party and 5,000 lei for independent candidates in the first round of parliamentary elections (April 5, 2009), and 25,000 lei for parties and 3,000 lei for independent candidates in the second repeat elections of July 29, 2009²⁶⁷. It is equally the obligation of the CEC to set up and monitor the implementation of the accounts of political financing by election competitors during campaigns.

²⁶⁶ Regulation of financing election campaigns and of political parties, adopted by Central Election Commission, nr.2167 din 20 februarie 2009

²⁶⁷ Activity report of CEC for 2009, Data posted on: http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_3042Raport____522, accessed on 11.07.2010

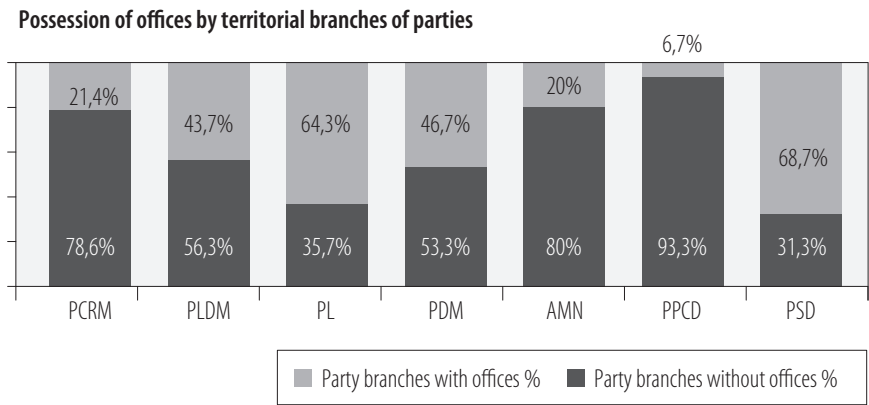
Candidates must report to the state on the amounts used and those which must be returned (if not spent), but existing disclosure procedures are vaguely defined and rarely followed by political parties. The Law on Political Parties (No. 294 – XIV) provides a more detailed description of the disclosure procedures and accountability rules, but its outstanding importance has been challenged by the fact that the application of the ‘public financing’ chapter has been postponed: from December 2009 to January 2013. Art. 37 of the Election Code provide for loans (without interests) to the financial officers representing registered election candidates (physical or legal entities, registered by the Ministry of Finance). Loans received from the state are completely or partially cancelled according to the total number of votes, received by the election candidate in the respective election district. This means that the total amount of financing is divided by the total number of voters that participated in elections, multiplied by the number of votes accumulated by the respective candidates and this is what should be reimbursed to the state budget. Election actors that received less than 3% of the total votes at the national level, or in the respective election districts, i.e. independent candidates that failed to be elected, will pay back the received state loans within two months from the date of elections, while the rest of the election candidates will return the above mentioned loans within four months. Art. 37 of the Election Code also stipulate that in case an elected mayor refuses to exercise his/her validated mandates, he/she will be requested to cover personally all expenses related to the organisation of elections in the respective election precinct or district.

6.4. MEMBERSHIP FEES FROM PARTY MEMBERS

Membership fees represent a symbolic part in the overall financing of political parties, including for campaigns, which are quite expensive and irregular. Incomes listed by the legislation on parties (derived from the economic activities of parties, i.e. publishing, membership fees, etc) far from cover the major expenses of parties, and as a result, parties search for new funding to help them implement their political ideas or ambitions. Thus, parties eventually find resources by dealing with various pressure groups, whose real impact on the party decision-making remains obscure though extremely relevant. As in other countries in transition, these groups may include banks, trans-national corporations, criminal structures or mafia-type businesses, reinforcing different suspicions shared by citizens towards political parties.

Extreme dependence on loans from oligarchs creates a formidable source of influence after elections by such pressure groups, since parties have to reward their ‘sponsors’ by providing a satisfactory return on their ‘investments’.

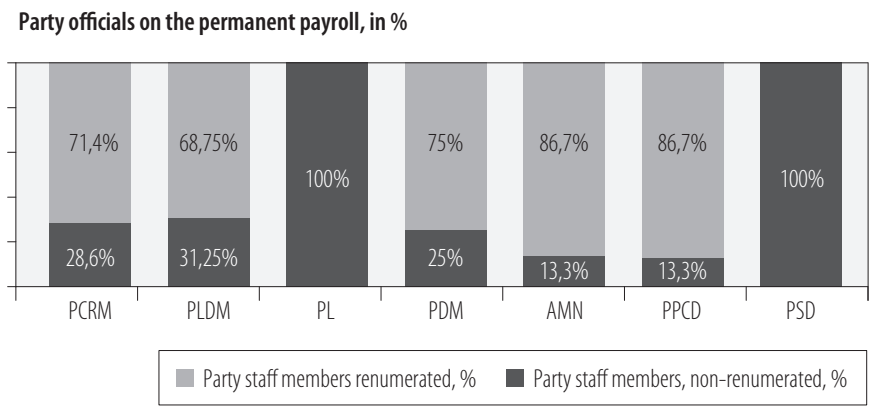
Table No. 14 Possession of offices by territorial branches of parties



Source: Andrei Volentir, Research on political party’s functional standards, April 2010

There are no ideal solutions or ideal legislations for party financing. Some of the countries affected by the impact of illegal political financing made a number of steps to ensure more accountability of the respective parties. The most effective way to ensure effective application of the legislation is to impose financial sanctions, complemented by clear limitations in state financial support in case of illegal financing. Thus, controlling accounts of the political parties via stricter rules, disclosure of sources of funding provides considerable leverage against corrupt behaviour, and guarantees decent conduct in elections and afterwards, represents an important ingredient of the viability of democratic institutions in any country. But, over regulating the aspects of party functioning may over-burden the application of the right of citizens to join and associate freely parties in political parties.

Table No. 15 – Remuneration operated by political parties to their staff members



Source: Andrei Volentir, Research on political party’s functional standards, April 2010

The Election Code sets a number of restrictions. For instance, third parties (legal and private persons) cannot order or finance election materials on behalf of the registered parties/candidates without consent from the latter, and must channel their resources through the existent ‘election fund’ of the respective candidates. Art. 36 is focused entirely on banning political financing from abroad, and cites the full list of entities or persons that may assist political parties or independent candidates during elections.

Funds accumulated in the election funds cannot be used for private benefit, and similarly, legislation bans registered candidates from offering money, gifts or donations (e.g. of a charitable character) during campaigns. Banks have the obligation to regularly inform the CEC about the transfers to the account of election candidates within 24 hours.

The Law sets up the competence of the responsible state authorities – authorized by the legislation with the supervision on financial aspects of the elections – to verify these incomes and request additional data on the sources or use of the respective transfers by the election candidates (Art. 38–9, Chapter IV, Election Code). The Central Election Commission, having under its jurisdiction all district election councils, is required to keep a Public Registry on party financing, listing the details of registered parties’ incomes and revenues, providing weekly reports on the volume of financial contributions received by election candidates, and sources of income.

A special totalling report on the election incomes must be made two days before elections, disclosing to the public all collected information on the financing of parties' or independent candidates' campaigns. Political parties can dispose, according to Art. 24 of the Law on parties, of their own properties, buildings, equipment, printing houses, cars, and other goods that are not banned by legislation. Accordingly, parties can conduct printing and publishing activities, other kinds of activities, related to the appropriate use and management of their own assets and run commercial activities that result from their charters. Incomes generated by party assets and properties shall be used for the pursuit of the specific goals of the parties, and cannot be distributed amongst their members. There are no specific restrictions for commercial activities conducted by parties in the context of elections. Since political parties are non-commercial entities, they do not pay taxes on profit, but their enterprises have to conduct their business in full accordance with general provisions of the fiscal code of Moldova.

6.5. ENFORCEMENT OF REGULATIONS

The Law on Political Parties designates a number of state/public authorities to supervise different aspects of the political activities of parties. In Moldova, the legal registration of parties is done by the Ministry of Justice, within one month from the date of the official submission of the application, to the Directorate for non-commercial organisations. A possible decision to decline registration can be appealed in the Appeal Court (Art. 8). The proportionality of sanctions for parties that committed irregularities is provided by Art. 28, which states that parties may lose their right to state funding if they break the existing regulations, or exceed the permitted ceiling for spending during campaigns.

Financial reports are to be presented by political parties to three state authorities: the Auditing Chamber, the Ministry of Finance and the Ministry of Justice, by 31 March every year (Art. 30). The Ministry of Finance, through its subordinated bodies (fiscal inspectorate) is supposed to check the correct use of budgetary resources and conformity of the financial management of the respective parties, in due time.

It is obvious however that the effective enforcement of the penalties imposed by the existing rules and legislation should be proportional to the gravity of the infringements, and sometimes this will mean monetary fines, other limitations related to the loss of some legal provisions, rather than imposing criminal penalties, or even a suspension of the political party. Criminal penalties might be regarded as inevitable in the case of very serious frauds or abuses of state resources, or in cases when political parties have provided deliberate false information on fi-

nancial reporting, which could raise the issue of not only administrative, but also criminal liability.

In the Republic of Moldova, the Ministry of Justice is the only public authority entitled to keep full evidence of the existing parties, their activities, performances, and statutory revisions, through its Registry of political parties (Art. 11). Although the Registry is declared 'public', the Ministry has not yet completed its work to make it available on its website or any other way²⁶⁸. The Minister of Justice is a Member of the Cabinet of Ministers, and holds responsibility to the Prime Minister²⁶⁹, but he is also accountable to Parliament, via legislative hearings, conducted on the basis of the Regulation of the Parliament of Moldova. The registration of political parties, termed 'non-commercial entities', is dealt with by a specialized division of the Ministry of Justice, the Directorate for Non-commercial Organisations, whose staff are recruited (at least theoretically) on the basis of the civil service law²⁷⁰. Consequently, the Directorate, with its staff, is fully financed from the state budget, being responsible to the Ministry for their evaluation performances and booked results. Particularly in the last four years, the Directorate has been intensely politicised by the former ruling party, which raised considerable criticism from society, and anger from parties²⁷¹.

Thus, the Centrist Alliance accused the Ministry of Justice of refusing to register V.Tarlev as Chair of his party, of political bias and disrespect of the procedural rules of the statute. This was seen as a confirmation of political pressure and harassment by the ruling party of potential rivals in upcoming elections. Similar stories were revealed by other parties attempting to register in the last five years. In 2007, the Ministry of Justice refused to register the European Action Movement (MAE), for alleged false signatures of support found in the statutory documents submitted for registration. Although the party won in court against this decision, the Ministry of Justice continued to delay registration and release of a legal certificate, which prevented MAE from participating in the 2007 local elections. In 2008, MAE adopted amendments to its Statute, in accordance with the new 2008 Law on Political Parties, changing its name into PMAE, and again the Ministry of Justice refused to approve the amendments, claiming that changing the name implies full reorgan-

²⁶⁸ Art. 11 stipulates that registration/irradiation of political parties, amendments to their statutes, and other changes shall be published in the Monitorul Oficial, and be made public on the website of the Ministry of Justice, on a regular basis.

²⁶⁹ Law on the Government of RM, no. 64-XII din 31.05.90

²⁷⁰ Law on civil service of the RM, No. 158-XVI din 04.07.2008

²⁷¹ Declaration of the Centrist Union of Moldova on the refusal to register the current party leader, V.Tarlev by the Ministry of Justice, <http://www.e-democracy.md/parties/docs/ucm/200901291/>

isation of the party, which was vehemently opposed by the party leadership, and reported to European organisations. These and other irregularities led ten ambassadors and two diplomatic missions in Moldova to address the country's leaders with a statement on the importance of guaranteeing full respect of the principles of political pluralism, effective competition of parties and candidates, as well as of ideas that express the interests of the voters of Moldova²⁷².

Referring to the 2nd paragraph of Conclusions on Moldova of the EU Council of October 13, 2008, the EU Ambassadors recalled in their first joint statement of July 17, 2008 Moldova's commitments to the OSCE and Council of Europe, i.e. those included in the Partnership and Cooperation Agreement, signed by the EU with the Republic of Moldova. They pointed out that 'some parties reported obstacles to their registration after the Law on Political Parties was adopted in 2007, hindering their participation in elections', and urged the Ministry of Justice 'to redress this situation'. All EU Ambassadors have expressed their large concern with the increasing number of criminal cases filed against opposition parties, calling the authorities to act in conformity with the law, impartially and responsibly, without subverting political pluralism for ephemeral tactical benefits. In less than a week, the Ministry of Justice responded to the Statement by denying practically all the accusations, claiming that in Moldova, the registration of parties takes place in a legal, neutral and transparent manner²⁷³. Moreover, on November 26, 2009, the Ministry of Justice released a communiqué in which it claimed media pressures, and requested EU officials to remain neutral, and not biased. Based on ideological preferences, CPRM has advanced in top positions persons who were heavily influenced by the preferences of the ruling party leaders, thus creating conflicts of interest when it comes to party registration or revision of their statutory documents.

The refusal to address the expressed concerns and critical reports on political association ceased only with the complete change of the Cabinet of Ministers in September 2009. The new Minister took several steps to improve the overall situation of the specialized division on non-commercial activities, as soon as it started to exercise its authority, although the complexity of tasks and priorities of the judiciary reform leave still a wide space for consistent upgrade and reforms.

²⁷² Joint Statement of the Heads of Head Missions of the EU Member States, November 18, 2008, <http://www.azi.md/ro/statement/283>

²⁷³ Party registration is done in a non-transparent and unfair way, Moldova.org, November 26, 2008, <http://politicom.moldova.org/news/inregistrarea-partidelor-politice-este-realizata-legal-si-transparent-sus-tine-ministerul-justitiei-168051-rom.html>

6.6. RESPONSIBILITY

The Law on Political Parties provides that the internal organisation of political parties shall be based on their statutory documents, as registered (and supervised by the legal authorities). This proves to be insufficient to hold party leadership accountable to party members, as several conflicts inside parties have recently shown. Art. 18 of the Law stipulates the 'liability of political parties for contractual obligations with their party properties'. However, legislation does not allow parties to meet the obligations of their individual members, and conversely, members of parties cannot be held liable for the obligations of the respective parties. The main legal obligations of political parties derive from the sub-chapter: 'Duties and liabilities', incorporating the following obligations:

- to observe the legislation of the Republic of Moldova and provisions of their statute;
- to adjust their documents to the legal norms, by amending and completing them in accordance with the established procedure, in case of legislative amendments, or in case it appears that statutes or programmes of the parties are not in compliance with the legal provisions.
- to keep party leaders liable for the obligations towards their own patrimony.

Art. 13 (g) of the Law explicitly requests political parties to include in their constitutive charters 'the rights and obligations', and also 'an internal mechanism of disciplinary sanctions'. Sanctions will be applied to the party members and leaders in accordance with the gravity of the attested irregularities. Penalties can be decided however only by the specifically established authorities, responsible with the enforcement attribution. Special provisions of art. 21 stipulate the conditions under which the activities of political parties can be limited, if 'these activities or actions have damaged seriously political pluralism or fundamental democratic principles'.

The Ministry of Justice may request in written to the leading authority of the respective party, to undertake all necessary measures in order to suspend the aforementioned actions or activities within a month's time, and to report to the Ministry about the results accomplished. However, if the special request of the Ministry remains unanswered, the Ministry is to notify the Chisinau Court of Appeal, in the course of five days' time from the termination of the above mentioned mandate, with the aim of imposing a limitation of the party's activities through a judiciary decision, excepting the periods prior to elections, when this situation cannot be enforced (Art. 21–8).

Art. 25 of the Law includes only a general and vague provision, stating that ‘parties infringing legal provisions regarding the funding of political parties and using financial means and material goods (assets), can suffer penalties in accordance with the law’. The phrasing about this possible sanction is ambiguous. Nevertheless, if this sanction is applied, the Court’s decisions will have to comply with the standards of the European Convention for Human Rights (ECHR). The Convention allows restrictions, but only when these restrictions meet certain requirements, such as being ‘necessary in a democratic society’.

6.7. TRANSPARENCY

The current legislation on political parties is not very specific about rules or regulations requesting transparent functioning, leaving this to the full discretion of party leaders and their internal party checks and balances. Citizens are free to associate with political parties, and make use of statutory regulations in order to express their views, or direct their parties towards the objectives they support. Few parties have adopted insofar explicit mechanisms to provide transparent and accountable documents to the public. Conditioned by the law’s requirements, parties establish censorship bodies, which are entitled to verify, on their own initiative, or at the request of party members, the use of party resources, at local and national level (Art. 52, Statute of DP). However, in most cases, their reports/findings are presented to a limited number of members, mainly party bodies (Council or Congress), and not made public. This selective and non-uniform application of the principle of transparency in the party’s activities creates a wide space for various interpretations, as well as for the discretionary use of political resources.

Art. 6–4 of the Law on Political Parties restricts participation in parties only for those who by their professional duties must stay outside political involvement. This category includes individuals who cannot be elected (Art. 13 of the Election Code), such as: conscripts, people aged less than 18 years, persons with dual citizenship, people who have lost their civil rights by judicial decision, or are in detention for very grave infractions, citizens of Moldova who cannot be members of parties because of their position.

A civil service law adopted in 2008 has left unregulated the possibility of civil servants to become members of a political party, which was criticized by independent experts, who have attempted to draw public attention to the growing politicization of the civil servants in Moldova. Instead, another law on the Code of conduct for public officials (No. 25 of 22.02.08) states ambiguously that ‘political membership of civil servants shall not influence their behaviour or decisions, nor the policies, de-

cisions and actions of the public authorities'²⁷⁴. This is translated by Art. 5 of the same law in a set of restrictions, including: participating in the collection of funds for the activities of political parties and other social-political organisations, using administrative resources in support of election candidates, displaying posters or symbols of political parties inside public offices, or their candidates, conducting agitation (literally – ‘propaganda’) in favour of any party, creating or contributing to the creation of party branches inside the public authorities. It is obvious that the conflicting provisions of the above mentioned laws can be interpreted by the ruling parties, as well as by the candidates running for public positions, in quite a diverse way, therefore, to progress, Moldovan authorities should review the situation of the civil service, in order to secure the neutrality and professional standards of the civil servants, and protect them against undue political influence, or the “election fever” of the political parties.

6.8. SANCTIONS TO PREVENT MISUSE OF STATE RESOURCES DURING CAMPAIGNS

Traditionally, the abuse of state resources by the incumbent ruling parties has consistently challenged the integrity of the political process in the Republic of Moldova, which is not unique in the post-Soviet space. Therefore, various groups monitoring elections have often dedicated a substantial part of their post-election recommendations to additional measures and means to curb the abuse of state resources to the benefit of the ruling party or parties in elections, and strengthen the institutional capacities of the regulatory bodies (such as, for instance, the Central Election Commission) to address this issue in a systematic and thorough manner. The Moldovan Election Code bans financing or material support of election campaign by budgetary departments (Art. 38), but stipulates no specific sanctions whatsoever for the abuse of administrative resources by politically appointed civil servants.

As election monitoring reports have shown, political parties use considerable resources from unaccountable sources, and submit partial information to the competent bodies (CEC, Auditing Chamber, and Fiscal Tax Inspectorate). Sharing responsibilities between three or even more state agencies results in poor implementation of the main regulations and restrictions, low accountability and superficial outcomes. It would seem that Moldova does not entirely fulfil the GRECO recommendations, in that it allows parties to not report in time, keep their accounts secret (Art. 13), and ignore the findings of independent monitoring on party financing. The Council of Ministers recommends specifically that ‘states should require

²⁷⁴ Law on the Code of Conduct for civil servants, No. 25 of 22.02.08, Monitorul Oficial Nr. 74–75, 01.01.2009

the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions' (Art. 16-Sanctions)²⁷⁵.

The Election code stipulates (Art. 37) an obligation of the private and public media to provide equal conditions for election candidates. The same article (37–11) states that during campaigns, media interventions of the Parliamentary, Presidential and Governmental press offices (i.e. their top level officials) cannot be used to conduct political agitation for or against political candidates, or referendums. The Moldovan legislation devoted only a superficial attention to the issues of 'undue use of administrative resources', or 'state power resources' (as it is defined in the Ukrainian laws). This has raised regular criticism from rival political groups, while encouraging incumbent political rulers to expand their instruments of influence.

Regular monitoring reports produced for the two consecutive waves of parliamentary elections in 2009 have described an extreme situation in which the entire state apparatus, including its territorial executive offices, have been working for the Communist Party. Coalition 2009 noted dozens of cases of direct and indirect implication of the state agencies (police, local agencies, state-run enterprises and services) campaigning for the incumbent ruling party, and making extensive use of state resources to the advantage of one political group²⁷⁶. There are three main categories of observed irregularities: (1) institutional, (2) budgetary and (3) media.

First, the report referred to the participation in elections of incumbent officials, allowed to remain in their official positions, using state resources for election purposes, thus taking undue advantage of state resources. Although the Election Code creates some legal protection for the incumbent Prime Minister and President (Art. 13), their actions, statements and behaviour represent a direct infringement on the principles of fairness in campaigns, equality of chances and equal access to media for the candidates. A study of political financing²⁷⁷ has estimated that during the spring elections in 2009, the ruling CPRM used a total of 7.47 million lei, in addition

²⁷⁵ Recommendation (2003)4, of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted by the Committee of Ministers on 8 April 2003, at the 835th meeting of the Ministers' Deputies.

²⁷⁶ Report on the monitoring of parliamentary elections, Coalition 2009, LADOM, http://www.alegeliber.md/files/rapoarte/raport_5_ladom_rom.pdf ; <http://www.revista22.ro/lista-neagra-a-candidatilor-la-alegerile-din-republica-moldova-5842.html>

²⁷⁷ Sergiu Lipcean, Evaluation of the financing of political parties and election campaigns in the Republic of Moldova, IDIS Viitorul, Politici Publice No. 5, 2009; This has been estimated on the basis of the payroll for the officials involved in election meetings, with days multiplied by the number of staffers involved for these election events, adding expenses related to travel expenses, and logistics.

to the officially reported expenses, for the use of media and institutional resources in the campaign by its high ranking officials.²⁷⁸

Another type of irregularities is generally referred to as the “abuse of administrative resources”, which takes place usually through the use of the incumbent government officials of important budgetary incentives during campaign. Limited institutional capacity of the Central Election Commission, combined with almost inexistent public accountability of the ruling parties, have allowed ruling parties in Moldova to absorb considerable resources from the available state funds and state agencies, which they can capitalize on for political influence for election results. Administrative resources are employed usually by the incumbent governments to reach out to a targeted number of “client groups”, such as: city councils, businesses, trade unions – in order to keep them integrated in the ‘party alliances’. One example of this, is experience of the second election campaign, organized in the Republic of Moldova for the date of July 29, 2009. During this legally-mandated election campaign period, the ruling Communist Party widely abused state resources, sometimes in expensive and sophisticated ways. Thus, the Communist Party has frequently used police officers and local prosecutors as their election agents, who have mobilized on their behalf a wide network of territorially-located governmental sub-divisions, offices and state-owned companies. In addition, the ruling Communists took advantage of a rather strange partnership with the dominant Orthodox church, a tributary of the Russian Christian Orthodox Patriarchate²⁷⁹. Independent media, as well as domestic observers, collected a wide array of evidence of the use of administrative resources, such as the use of state cars, offices and even helicopters by the incumbent ruling party officials, including the acting President. Only one case resulted in a conviction of the judiciary after an appeal from political contestants.

On 24 July, the Supreme Court of Justice ruled against the use of administrative resources by the incumbent Prime Minister, who regularly made use of her dual status, and made CPRM pay a penalty, from CPRM funds, for the expenses incurred for official trips. The appeal was made on behalf of the Our Moldova Alliance, who accused the Prime Minister (Zinaida Greceanii) of holding election meetings in Nisporeni during her tenure as incumbent Prime Minister, although dozens of other meetings remained unaddressed. This made civil society mobilise and build a wide network of civic initiatives prior to the election, combining monitoring the election campaign with public awareness activities²⁸⁰. Coalition 2009 reports re-

²⁷⁸ Idem

²⁷⁹ Report of the Civic Coalition for Free and Democratic Elections, 2009, http://www.alegeliber.md/files/rapoarte/raport_5_ladom_rom.pdf, See also: <http://www.ziare.com/articole/preoti+slujba+alegeri>;

²⁸⁰ Coalition 2009 website: <http://www.alegeliber.md/index.php/ro/documente>, Last updated: 06.04.2010.

vealed cases of Since election advertising costs 450 Euros a minute on TV and 80 Euros a minute on radio, the total for aired news with PCRM leaders was 417,220 Euros, or 5.84 mill Z ion lei, which is about 86.3% of the total campaign spending. Adding this unregistered spending to the officially reported spending, the CPRM spent 12.6 million lei, which exceeds the ceiling set by CEC.

Prior to elections, civil society organisations launched the Civic Initiative for a Clean Parliament, which has monitored candidates running for elections on criteria of scandals, use of administrative resources, undeclared incomes. Civil organisations have collected facts and the media coverage from different open sources, in order to create a “black list” of politicians, who could simply not appear on any TV shows, following strict indications of the company administration. Censorship of the opposition leaders was accompanied by a vocal “hate speech” campaign, conducted in harsh terms by biased media. Media campaign monitoring by the API and CIJ shows that the Public Broadcasting Company “Teleradio Moldova” was particularly biased in reporting the news. The monitoring groups reported fully on the organised events, length of events and interventions of election candidates in quantitative terms. Altogether, opposition parties reached hardly one third of the frequency of events compared with the ruling CPRM, which reigned almost undisputedly on the main four TV channels with national coverage. All news programmes reflected the government activities only in positive tones, offering prime time to the high ranking officials of state, while presenting the opposition only in dark colours and with negative labelling.

6.9. SANCTIONS TO PARTIES FOR DELIBERATE VIOLATIONS DURING CAMPAIGNS

The Law on Political Parties provides for a general obligation by parties to respect the existing legislation of the country and the provisions of their statutory documents (Art. 18). This implies that if some of party leaders’ statements or actions are considered illegal by a court decision requested by the Ministry of Justice, this may automatically lead to suspension of its activities for a maximum of six months. Such court decisions can be appealed in the Upper Supreme Court of Justice, while the Ministry of Justice cannot decide unilaterally upon any disciplinary or organisational sanctions on parties. Parties face considerable limitations for the restricted period, related to the right to establish mass media, the organisation of meetings, marches, other public meetings, use of bank accounts, except the cases when the respective parties must pay for their contracted obligations, other services and tax payments, fees or penalties (Art. 21). However, the Law does not allow parties to be suspended one month prior to local or general elections. Parties can be de-regis-

tered as well, in case of failing to conform to the newly adopted requirements of the legislation on political parties, in case their actions or activities break existing regulations or are perceived as ‘affecting the principle of political pluralism’.

Dissolution of political parties, as the most extreme sanction in the legislation, imposes on the Ministry of Justice the obligation to create a special committee for party liquidation, following a final decision of the Appeal Court (Art. 22). This is to be done within 30 days from the announcement of the liquidation procedure in the *Monitorul Oficial*, thus informing all possible creditors about the check on assets, payment of debts, and transfer of remaining properties to the state budget. Only after termination of the liquidation procedure will the Ministry of Justice remove the respective parties from its official Registry with a list of remaining funds and unpaid debts, to be decided through a liquidation Committee, jointly established by the state authorities and the respective party leaders.

Legislation of the Republic of Moldova – Criminal Code (CC), the Code for Administrative Contraventions (CAC) and the Electoral Code – provides certain sanctions for violations related to the electoral legislation. In accordance with the Council of Europe study, Art. 200/1 ‘Violation of electoral legislation’ of CAC, states *inter alia* that a person that used funds received from abroad or non-declared funds – shall be punished by a fine up to 30 conventional units, with confiscation of these funds (1 conventional unit = 20 Moldovan lei). Also, art. 162/1 of the CAC sanctions different types of violations of the accounting legislation, including failure to submit financial reports and submitting false information, with fines from three up to 75 conventional units. According to the existing Election Code, three kinds of penalties can be applied on those who violate election rules:

- Art. 69 – legal sanctions: in cases of impeding the free exercise of election rights of citizens, including disseminating deliberately false data about election candidates, or committing other actions that affect the campaign. In this case, the Central Election Commission may apply either a warning or cancellation of registration, (the latter requiring a final judicial decision).
- Art. 70 – penal sanctions: in cases which are prosecuted by the Penal Code, including cases of impeding the free exercise of the election rights, followed by grave violations that jeopardized the life of individuals, falsification of the election results, attacks at the polling stations, or stealing election documents. In this case, the Prosecution is notified about the seriousness of the committed actions, which represent a serious violation of the existing laws and causing grave prejudice to the election process.
- Art. 71 – administrative sanctions: in cases where administrative violations have been registered, breaking existing regulations of the Election Code, on the basis of minutes written by the Members of the Election Districts, Mayors, or police

officials. Violations are notified to the judiciary courts of the respective districts, and only a court may issue a decision, within two days, on the gravity of reported violations.

However, as the Joint opinion of the Venice Commission and OSCE – ODIHR of 2006 noted, articles 69–70 are rather vague and general, and could be applied in a way which violates the right to the freedom of expression and free opinions, infringing upon art. 10 of the EHRC, OSCE proclaimed principles and values, as well as fundamental freedoms of the Moldovan Constitution. It is therefore natural that the special parliamentary committee set up to amend the Election Code has stated its aim to revise the provisions of the art. 69, together with other art. 70 and 71, including direct references to the Penal Code and Contravention Code. Ideally, the legislation should define in greater details specific cases where violations of the law are punished, including a wider range of possible sanctions: from symbolical ones, referred to ‘fines’, ‘warnings’, to harsher and more serious ones, which could lead to the imprisonment of those found guilty. When there are appeals on serious violations, however, courts should base their final decisions on the existing standards in the legal space governed by the ECHR.

Here, however, other sorts of actions are possible. Some decisions taken by courts may not be proportional to the offence, especially in cases of minor violations. Violations of the political finance law can range from very minor infringements, such as a marginally late submission of financial reports, to major fraud. Ideally, the law should specify additional violations, punishable by a considerable fine or imprisonment²⁸¹. If such a sanction is applied, the Court’s decisions will have to comply with the standards of the European Court for Human Rights (ECHR). The Convention permits restrictions, but only when these restrictions meet certain requirements, such as ‘necessary in a democratic society’, or “pressing social need”.

²⁸¹ As forms of specific violations, the Law could have included: (1) material misrepresentations, including but not limited to fraudulent documentation, fraudulent donations and expenditures, (2) failure to report transactions in a disclosure statement, (3) submitting false or incomplete information, (4) failure to respond to the Agency’s requests for documentation or information, (5) conducting political finance activity not mentioned in the reporting account or through cooperation with surrogates, (6) incurring prohibited expenditures; (7) harassing Agency staff and external auditors; and (8) abusing state resources.

VII. Findings and recommendations on party regulations²⁸²

Political Parties are a fundamental element of the democratic system of a state and play an essential role in the representation and expression of political interests of citizens. They also represent an indispensable contribution to Moldova's political transition that builds on traditions of political pluralism and democratic governance. Constitutional provisions and the normative acts regulating the functioning of political parties and elections have been adjusted repeatedly since 1991, but the legislation is still far from perfect. Since political parties and election campaigns shape the institutional landscape, states must adhere to the proven standards and norms in order to guarantee fundamental freedoms and political liberties. Since misuse of restrictions would present a serious threat to the rule of law, democracy, human rights, equality and social justice, party regulations must be updated constantly and checked to see if they serve the purpose intended.

In Moldova, new legislation on political parties was adopted in 2007 under scant consultation with domestic stakeholders. Later, the Moldovan authorities decided to suspend the implementation of some provisions of the legislation on parties, particularly those most welcomed, such as the public financing of political parties. This has weakened the status and legitimacy of the existing Law on Political Parties *per se*. Thus, the Moldovan authorities need to resume the improvement of election and party regulations to address some of the most serious criticisms and problems observed before and during the elections in 2009.

²⁸² It should be reiterated that while this report has been produced with the financial assistance of the European Union, within the framework of a joint project of the European Union and the OSCE ODIHR, the views expressed in this report, and specifically the recommendations contained in it, can in no way be taken to reflect the official opinion of the European Union, nor do they necessarily reflect the policy and position of the OSCE ODIHR.

However, the Moldovan authorities should be careful about over-regulation, which may hinder self-governance and the creativity of parties forced to follow rigidly defined ways of conduct. Indeed political culture and informal standards can be seen as the most important ingredients in a state governed by the rule of law rather than a plethora of norms and regulations. Interesting initiatives were launched in Moldova at the end of January 2010 to amend the Election Code, but changes should be made more straightforward, improving other sectoral laws and regulations that pertain to elections and partisan policies in a democratic state. The following should be included in the further adjustments of the legislation on elections, political parties, and internal democracy:

7.1. IMPROVEMENT OF THE LAW ON POLITICAL PARTIES:

1. Simplify requirements for the registration of political parties, eliminating the existing complicated criteria of territorial representation but instead base registration on criteria of freedom of association, following Art. 11 of the European Convention on Human Rights and Fundamental Freedoms (1950).
2. Modernise the procedure of state supervision, with possible on-line registration of parties and maintenance of state registries on the basis of self-declared statements, but with complementary verification and monitoring, thus allowing new individual political groups to emerge and grow.
3. Expand institutional cooperative frameworks for the state authorities and agencies responsible for the monitoring of political parties, aimed at effective cooperation and exchange of information (e.g. regarding the tax status of donors). This could be done through a memorandum of joint actions to help agents and prosecutors quickly obtain the information they need from other agencies.
4. Allow citizens holding multiple citizenships to join political parties and run in elections, taking into consideration the experiences of other member states of the Council of Europe.
5. Adjust the current Law on Political Parties, in particular the regulations stipulating the level of private donations (individual or corporate), in order to reflect the overall socio-economic situation of the country and the real standards of living of the majority of citizens. The present logic of political financing creates discrimination in public funding to the benefit of the ruling parties at the expense of the opposition.
6. Allow private individual contributors to finance political actors using tax-based incentives, in order to encourage active and transparent contributions in support of political parties. Regulate in greater detail how political parties should apply provisions on financial and patrimonial disclosure, providing transparent

and accountable reports at the request of the public (citizens) or regulatory bodies or ministries.

7. Adjust the Law on public funding of political parties in order to improve access for newly-established or smaller political parties. This will instil confidence in fair political competition, based on equal and non-discriminatory conditions for all competitors and actors, taking into account not only the principle of proportionality, but also equality. One solution would be to replace the current mechanism of distribution of budgetary subventions, based on the number of mandates, with a distribution mechanism based on election results, aiming to redress the effects of concentration of resources into one or a limited number of recipients, thus excluding others from public financing. To expand the access to public funding, it is necessary to apply a lower threshold – other than the present electoral hurdle – so that smaller parties are encouraged to grow and become publicly accountable. This implies that the distribution formula must also be refined with regard to the allocated share for the local elections of first and second tiers of governments, which could be seen by some small parties as more important than the general parliamentary elections.
8. Public financing should generate additional incentives for political parties to accumulate revenues from private sources; in this regard, one solution would be that every financial unit collected by political parties through this mechanism could be supplemented with a corresponding equivalent from the state budget. This will reveal the interdependency between parties and their constituencies of voters, leading them to place a special emphasis on smaller donors, and increase territorial work.
9. The Central Election Commission should increase its role and authority to ensure the conformity of political financing. Since the CEC is the only authority in charge of election proceedings, it goes without saying that the CEC should also have the mission of monitoring, investigating, and checking the financial activities of political parties, and not only during election campaigns, but also in between. Sharing responsibilities with other state bodies, such as the Fiscal Inspectorate and the Auditing Chamber, not only complicates the institutional landscape, but genuinely diminishes its functional character, and makes it more difficult to effectively deal with identified frauds or irregularities. Parties should accept the authority of the CEC and the Ministry of Justice in respecting the terms of the annual financial reporting, revenues, and expenditures during campaigns, which would require a major change in the public attitude to political parties, and in the general attitudes of parties towards their legal obligations.
10. Clearly regulate how political parties should further enhance the role of their representative bodies, thus conforming to existing EU standards, and improve provisions for the gender balance, which should be subscribed to by democrat-

ic parties following existing standards of representation for women, men, and ethnic/linguistic minorities.

11. Clearly regulate a ban on unauthorised, unofficial, or other sources of financing to political parties during campaigns or other extra-campaign activities, including non-financial forms of state support, i.e. the use of 'administrative resources' in campaigns to the benefit of a single party or group of parties.
12. Clearly stipulate violations for which parties and their official representatives can be punished, using penalties proportionate to the offence committed. Such violations could include: the use of state resources for campaign or party activities; receiving contributions resulting from an abuse of state resources; exercising any form of pressure on legal and natural persons when soliciting contributions for a political party or candidate; preventing the enforcement agency's authorised officer or an external auditor from examining the records or auditing accounts kept by a political party; and transferring public resources to legal and natural persons for the benefit of political associations or election candidates.
13. Parties should keep separate accounts for state financing and private donations, which should allow party members, ordinary citizens, and party contributors to monitor and ensure strict observance with the party's charter regulations.
14. Revise party spending limits, in accordance with the actual costs of carrying out campaigns and the ordinary activities of a political party, according to the legal requirements specified in this report.
15. Exclude undue restrictions on the financing of political parties by citizens residing abroad, but adjust the limits to the practices and standards existing in other countries.
16. Strengthen the obligations of parties to report their spending during election campaigns, submit regular annual reports, and make these reports accessible to citizens, in addition to state-led controls or other verifications.
17. Implement the Law on Political Parties in full, including by securing the necessary financial support to political parties already in 2011, and create positive incentives for parties to comply with legal requirements.
18. More clearly dissociate political parties involved in elections from 'public-benefit non-commercial entities', which are supposed to act as unaffiliated, independent, and public associations that cannot run in elections.

7.2. IMPROVEMENT OF INTERNAL PARTY REGULATIONS:

19. Enhance party regulations on the selection of candidates for party lists, providing serious incentives for institutionalisation of internal control and accountability mechanisms against authoritarian leadership or illicit behaviour of the party elite.

20. Include mechanisms of 'affirmative action' in the Moldovan legislation to create possibilities for adequate participation in elected bodies of national minorities and mainstream interests at the regional level.
21. Clearly regulate administrative sanctions for political party officials in the case of deliberate actions that damage the party's activities.
22. Regulate more precisely party incomes, donations, fees, and revenues from party-controlled subordinate business entities, thus allowing ordinary members and the general public to see more clearly the level of party integrity.
23. Further improve the parties' internal regulations and practices to ensure the fair selection of candidates for elections, since this continues to create tensions and can account for the corrupt behaviour of party leaders.
24. Political parties need to install stricter mechanisms to control sources of funding during campaigns, which should correspond with the official reports presented to the state authorities annually.

7.3. IMPROVEMENT OF THE ELECTION CODE:

25. The electoral threshold established in 2008 for political parties and independent candidates should be revised and decreased (5% for parties, 3% for independent candidates), enabling more pluralism and participation.
26. A National Registry of Voters including a comprehensive review of the voters' lists should be implemented and used during the organisation of elections, restricting further the use of supplementary lists.
27. Ensure appropriate conditions for voting abroad for Moldovan citizens residing outside their country, with appropriate mechanisms and procedures to exercise a free, secret, and democratic right to vote.
28. Consider reformation of the existing proportional electoral system: from the current 'one-country-one-election constituency' to a mixed (proportional-majority system), based on regionally-defined multiple-constituencies..
29. Ensure a stricter control of political financing during campaigns, using appropriate mechanisms that ensure accountable and transparent management of public and private funds, allowing voters to access necessary data about the parties' or independent candidates' financial supporters.
30. Improve supervision capabilities and legal mandate of the Central Election Commission to monitor the implementation of financial obligations and reporting requirements by political parties running election campaigns. Since the CEC does not have its own competence to carry out audits, it should request 'competent bodies' to verify whether a political party has received illegal funds or used inappropriately election financing. This provision should be removed from the Election Code (Art. 31-para 3), and instead much clearer indications

should be provided about the competent bodies for monitoring political finance, determining the institutional framework, timeframe, roles for parties, and conducting investigations into financial misconduct.

31. Abide by the principle of presumption of innocence in those cases of violations of the law that can lead to the revocation of political candidacy.
32. Regulate in detail how administrative resources may not influence the organisation of elections, so as to prevent abuses from the incumbent state officials or civil servants to favour a specific political party.
33. Remove turnout requirements for elections to be recognised as valid in order to avoid potential endless cycles of failed elections.
34. Set up a separate election constituency for the breakaway region (Transnistria), and regulate conditions for the free participation of Moldovan citizens in elections.

Annex No. 1

Focus Group Discussions Analysis on the evaluation of the party regulations

METHODOLOGICAL ASPECTS:

Two focus group meetings were held on 16 and 17 April 2010 in Chisinau in the CBS-AXA office, and were moderated by two professional staffers of that sociological company. The above mentioned talks have been recorded on audio and video support, each lasting on average 135 minutes. These two focus group debates were carried out in April 2010 to include the direct involvement and experience of political parties. 22 participants attending two consecutive focus groups were divided into two categories: (1) 11 people from the mid-level staff of political parties, former candidates on parties' lists, party members, and potential members of Parliament; and (2) 11 people, including five female politicians, four former independent candidates in general parliamentary elections, and a large number of members of local branches of political parties.

ANALYSIS AND SUMMARY OF THE FOCUS GROUP RESULTS

- The question of political parties should be related to the existing situation in society. The low level of political culture among the population explains the reticent and even unfriendly attitude towards political parties. The surveys highlight the fact that political parties are the institutions 'with the lowest level of credibility'. More important, however, is the fact that, together with political parties, 'the same attitude is expressed about existing NGOs'. From this point, we can easily deduce that people do not understand the role and general impact

of both these institutions required to defend and even promote their interests, in a larger democratic context.

- The participants from both groups (FG1 and FG2) also confused the goals of a political party with those of an NGO. An obstacle to acceptance and understanding of the place and role of a political party or an NGO is the voluntary character of citizens' involvement in a public activity.
- The second obstacle is the obvious lack of a well-articulated and praised 'public space' where individual interests of citizens meet and common interests are defined. This is often seen as a kind of 'sphere' that goes beyond the area of individual / personal (self-directed) interests and which represents the interests of the community's will, or at least the part of the community that operates through 'us'. The previous (Soviet) regime left the population with the idea that 'everything that is hold in common' is in reality not-individual, being merely associated with the 'state ownership or fields of intervention', therefore, 'ours' is often understood as inappropriately 'theirs', confusing and systematically blocking the mobilization of the population in support of effective processes of democracy-related work, or decision-making operations. Moreover, everything that previously was 'common' implies a sense of profound coercion, thus people show little interest therein.
- Another cultural inhibition inherited from the past/ancient regime is related to the concept of 'party.' For a large part of the population, Communist Party means first of all 'state power', going beyond individual preferences or options. Thus, when supporters of the former ruling party vote for Communists, they believe they are voting for the state to stand, or to correct perceived injustices. Only those who wanted a change of power, but did not necessarily share Soviet nostalgia or communist principles, decided to rally with other political parties, which are therefore perceived as much weaker constructions
- Popular perceptions of party members and politicians are often negative: they are seen as "power hungry" people, often without values and principles, arrogant but poorly educated. To this already negative portrait of the 'party member as politician,' it must be noted that qualitative debates organized by CBS Axa indicated a wide 'ideological flexibility' of the largest number of political leaders, with a strong willingness to follow the latest trend on the eve of elections, as well as a tendency to see the 'political process' merely in terms of the 'election process'. There is a perception that there is only a minority of political leaders who are believed to behave in a different manner, which would confirm the perception about most politicians as self-centred, selfish and untrustworthy individuals.
- Discussions in FG2 on the issue of 'gender quotas' did not cast in a positive light the system of political parties or the political process in general. The fact that women can assert themselves more easily in local elections testifies, in fact, not only to the 'patriarchal character of the Moldovan society', but also that 'there

is a huge gap between central and local elites, mobilized through the political process'. But, opinions suggest not only that 'women are blocked at this [local] level, but that many local party activists who are actively involved in protesting against the centralistic policies of their [own] political parties are also blocked by party elites at the centre.'

- The political system is regularly shaken up by discontent of the territorial organisations and their migration to other parties with more democratic behaviour or 'open-minded' leaders. In other words, the central headquarters of the political parties in Moldova consistent lose support from the regions because of their parties' 'conservative'-minded structure. Parties are seen more as 'electoral vehicles' than live organisms, sharing political ideas, and changing society in a systematic, though incremental way. The largest majority of local/regional leaders invited to the debates, shared the opinion that many party members consciously subscribe to the fact that 'local branches' are despised by the party leadership, and that local scale means no influence. Local leaders were demoralized about the prospect that local branch leaders could reach the national level. Very few of the local leaders are seen as having a real ambition to reach the national level, and of those few who have this ambition, it appears that few have succeeded.

DEFINITIONS AND BEST PRACTICES IN POLITICS

- The participants gave a common definition to 'political party' with differences in wording but with the same meaning. According to them, a political party reaches power in order to secure the interests of its electoral base. However, this does not reflect the current reality whereby parties seek power to guarantee their own interests and not those of their electoral base.
- The definition above does not explain exactly the role and mission of a political party in society, and it does not stipulate what social segment it represents. The participants in the discussion do not identify what legal framework regulates political parties, what is the relationship that should exist between 'state power' and the political party.
- Following the same line of thinking, participants also proposed to replace in the law the notion of 'power' by that of 'governance', since this better corresponds to reality: there are various powers in the state. Such an insertion would also eliminate the confusion related to the takeover of the total state power by a political party.

Political Parties were Viewed by FG Participants as:

Participants in the Focus Groups expressed different ideas about political parties:

- an intermediary group between society and authorities;

- a proponent of a segment of society;
- a group of people that are united by common visions on the organisation of society or the political regime in power and are determined to fight to achieve their goals;
- a free meeting of citizens with political goals as to the management of public affairs;
- a group of people who want to ‘dip in the gravy’ of power... ‘led by a Führer’ ‘with a sack of money’.

In other words citizens do not associate on the basis of ideological values but with a more practical purpose, to lead. The focus groups considered it necessary that the legislation on political parties should define more rigorously the concept of political party, i.e. ‘a political party as a social segment’. The respondents think that ‘the current law is for mass parties’, which even after the amendments to the Law on Political Parties (2007) did not change entirely character as a document that had been drafted without consensus across political parties. Regarding financing of the parties the focus groups revealed that while the legislative framework has been recently modified, it ‘resulted in no consistent progress to stabilize political parties as legal entities’, working for the benefit of the society. In reality, participants suggested that ‘the old law is still in force and being applied’, since the new regulations were not properly implemented. The opinion of the participants is that politicians do not want to take a strong stance, particularly because financing could be jeopardized.

Asked about differences or associations between parties other voluntary non-commercial associations, participants were confused. Some of the respondents believe that ‘parties are to manage the state power’, while ‘non-commercial associations do not intend to challenge incumbent power through elections’; others believe that ‘both non-commercial organisations should be seen as active actors in the competition for power’. The second focus group participants discussed at length existing differences between NGOs and political parties, partly on account of their membership in various non-governmental structures. Two political parties have activities comparable to NGOs, respondents have concluded, but ‘with different goals and sometimes different means’. A political party has its own goals and tasks of a national nature, but NGO activities should pursue a sectoral or issue-focused nature. One aspect analyzed by participants referred also to the ‘political character of NGOs’. The main idea was that ‘it would be beneficial to de-couple some NGOs from being directly involved in politics since this makes their work and identity fuzzy, or indistinct from the political parties’ activities, or participation in elections’, but views on how to achieve this remained largely general, without reaching a widely accepted consensus.

Some participants wondered ‘whether a political party that obtains power is protected against authoritarianism’, and is able to express its constituency’s interests, or whether it will be automatically captured by ‘vested interests’, those which are not expressed through the will of the electorate, but result from different trade-offs, generated by power relations. This dilemma is ‘a matter of political culture and behaviour of the political leadership’. Most of political party leaders, say respondents, display ‘a superior and arrogant behaviour towards other representatives of society’. One can conclude that, compared with other forms of voluntary association, membership in a political party is associated with feelings of superiority or exclusivity of both the members and the structure in general.

LEGAL PROCEDURES FOR REGISTRATION OR RE-REGISTRATION

The conditions for registering a political party are very bureaucratic and formalistic, since it requires a very high level of representation through the current administrative territorial units. Most of the participating respondents viewed these conditions as ‘ways to limit the number of political parties’. There were critical views on the procedure to submit registration lists with original signatures to the Ministry of Justice, since many of the respondents called it a ‘lottery’, or a ‘charade’, because ‘it can easily be contested, rejected or even manipulated by the ruling power, imposing its rules on the state administration’. The most important problem with the registration of parties is generally related to the number of members required by the current Law on Political Parties for registration. It is considered excessively restrictive, without ensuring the goals it claims to reach.

The participants wanted the minimum number of members to be drastically reduced. Some hesitations about reducing the minimum number of members were expressed, given the possibility that the political process could be confused through so-called ‘shadow groups’ taking the guise of political parties. Another argument against lowering the minimum number of members was seen as the desire to exclude “local/regional parties” (sometimes associated with ethnic segments) from the political contest. Other participants pointed out the provision that bans political parties from participating in elections if they were registered less than one year before the date of elections. Nevertheless, this restriction cannot remedy the situation since ‘shadow parties’ could appear earlier, if someone is really supporting them.

The current registration conditions impede the development of local, ethnic, and other parties that cannot obtain territorial representation according to the requisites of the current applicable legislation. The participants noted that the current registration system for political parties was institutionally poor and unstable,

because it neglected the principles of ‘local autonomy and subsidiarity’, and discourages political contributions, even if the financial support to political parties is definitely vital to create professional and accountable political staff throughout the country. A comparison with practice in other countries was revealing: there is a wide difference, for instance, between the required number of signatures in Moldova and some countries like Spain or Canada, where only 200 to 300 signatories are required for registration. In these countries registration is approached in both a more effective and more relaxed manner. Some of the respondents noted that ‘they were confused as to how political parties are treated by law’. In theory, political parties are treated as equal entities, but their equality has different meanings and different practical application to the stakeholders in the Republic of Moldova.

The Participants’ Perceptions on How Parties are Created:

There are many ways to adapt legislation to the existing realities on the ground, and participants in the focus groups explained in great detail how they are dealing with the technicalities of the current legislation. Some quotes from participants are particularly revealing:

- “When I needed to create a party, I put on the list my mother, my mother-in-law who has passed away, and my father-in-law who is 95 years old and doesn’t know which party he belongs to. I just needed a number, and this is the case with the majority of parties and I would like to avoid this.”
- “The party representation in the regions is related to the internal strategy of the party but not to the requirements of the Minister of Justice, so few people know about party branches, which are galvanized only for short periods of time during elections, otherwise, no parties, no troubles’.
- “Moldova has nearly 30 political parties... but how many of them have still adequate representation in the whole country?... I think, if a party wants to get into power, it has to have representation in at least half of the territorial administrative units...and here we should see how many members we would have...a limit on an administrative unit. That’s the way I understand a party that has structures and that, when reaching power, can be well administered and exert its power properly.”

There are two pending issues concerning the registration and monitoring procedure: the legal requirements of the number of party members and the problem of discrimination against certain social segments. In the case of the first group, both ethnic and gender quotas were almost unanimously rejected by the focus groups. Some of the participants insisted that all citizens are equal, from which it should clearly result that both their rights and interests are treated equally. However, it

should be noted that representatives of national minorities and women did not participate in this discussion.

Perceptions about the Registration and Diversity of Political Parties

Parties are usually known by their leaders, not by their sophisticated programmes, or wide institutional architectures. Therefore, public support is definitely personal, emotional and not rational. One participant noted:

- “... when you ask a person an open question: please name those parties that you know...he names...one, two, or three... and then he gets stuck.... Since 1991, we had more than 144 political parties registered so far, but only those parties which have exercised power are really known by society,, while their leaders have been recognized widely as state representatives, because citizens choose from what they get to know.”

All the participants in the study viewed party re-registration as a way for those in power to manipulate the situation with the aim of excluding their rivals. Theoretically, the parties are treated equally. In practice, the parties that are closer to power will use bureaucratic instruments to handicap their rivals.

PARTIES AS ORGANIZATIONS/ INTERNAL DEMOCRACY

The Law on Parties is democratic; it does not impose restrictions based on gender, religion, or ethnicity. The only restriction is citizenship: the citizens of another country are prohibited from being members of a party.

An analysis of the discussion in both of the focus groups allows us to reach the conclusion that current political parties have a reduced degree of democracy: they are rather rigid, centralised, and all the problems are solved by the leader of the party. The leader of the party decides who can appear in the party newspaper, who is seen on TV, heard on Radio, and promoted for both electoral lists and state posts.

The main regulations on political parties do not expressly consider how democracy should work inside parties. There have been different opinions about the necessity of promoting by law internal democracy rules, and whether the state should not interfere with internal party life. Therefore, some of the participants insisted that the problem of ‘party democracy’ is internal and should be linked with the institutional and political culture and that only party members should decide on how to apply this concept, still unclear to many.

Perceptions of Democracy in Parties

Respondents displayed a great dose of mistrust in the self-governing mechanisms applied by parties. To many of them, strong leaders prevent internal democracy, and remedies cannot be imposed by outside regulations. Furthermore, the reality of party life often does not fit at all with the titles of parties. As one participant noted:

- “Could you please tell me the position of the CPRM, LP, and DP towards a given problem? The answer is not the party’s position; it is the position of the leader. Do not confuse the position of the leader with that of the party. The party position does not mean the leader’s position. What does the party position mean? It means that a collective body has discussed the problem and given a recommendation...”

Internal party democracy exists where ‘it is self-imposed by party members and not by legal regulations’. The participants believe that the lack of internal democracy is caused by a lower level of political culture. A party’s internal democracy is based on the party statute, i.e. a statute that is elaborated according to constitutional norms. It is easy to notice the lack of clear regulation of members’ rights and obligations. This affects the improvement of political culture.

Analysis of the discussions of the focus groups allows us to conclude that the current political parties are considered to be relatively undemocratic, quite rigid, and centralised.

WOMEN IN POLITICAL PARTIES AND ELECTIONS

The views of equal opportunities for women were confused and vague. Most participants in the discussion wanted a quota adopted for the leading posts and positions of political parties.

There were different opinions on this issue. A group of women in FG2 and everyone in FG1 embraced the notion of “free competition”, i.e. that no minimum quotas should be imposed for women and that instead women should compete freely with men.

By contrast, another group of women participants in FG2 called for the introduction of quotas (some wanted a 50: 50 quota). It should be noted that FG1 practically ignored the question of quotas for women. This showed the very ‘male’ approach of the Moldovan political process, and a limited understanding of the arguments surrounding the promotion of a more gender-balanced approach to politics.

Perceptions of Women's Representation in Political Parties

Women leaders want to change the image of the messages they want to convey to the party leadership. But at the same time opinions were very varied. To quote some participants:

- "... I do not want equal opportunities, I want equality of result. Final result. I mean a seat in Parliament, involvement in business, and everything that is related to life in general...So everybody should have opportunities, but again, I am not interested in the chances or possibilities. I want the result!"
- "No political party has been banned from the electoral campaign because it had a woman leader, what discrimination are we talking about?"
- "It is not good to have laws stipulating how many women should be in a political party, or setting up racial criteria. Although this is not the case in Moldova, it is generally correct to insert a clause on non-discrimination."

It is interesting to note that in the case of FG2 the problem of party representation in the territory had a more important place in discussions than in the case of the FG1. It was also stated that the quota issue for women was especially mentioned in the case of parliamentary elections and the upper structures of the state government and less in the case of the lower levels of state power. This may be because the number of women elected at the local level is already significantly higher than at the central level.

FINANCING OF POLITICAL PARTIES /PUBLIC FINANCING

The problem of financing political parties was divided into three aspects: funding from the state budget, contributions to political parties, and the transparent reporting of expenditures.

Financing from state budget is much more appealing since it creates the preconditions for the fair and monitored use of resources in political life. Financing from public resources was also associated with its potential advantages for the promotion of equal opportunities for women, who in this way cannot be rejected because they are unable to pay for a seat on the list.

In other opinions, the idea of creating incentives in public subsidies with the number of women on the party lists caused less concern.

Perceptions of Financing

- “You know, our legislation stops ordinary citizens from donating for instance 25 lei, if the contributor is currently residing in Iasi (Romania), as a Moldovan citizen, or studying there, but at the same time, other provisions of the law allow political parties to be financed with almost unbalanced amounts of private contributions, which encourages political corruption and alienation of party leaders from the public sense of reality. Small parties are created as investments, not for political performance.”
- “There is absolute equality and relative equality; here it’s relative equality, when given a chance to pay a channel so that the population can hear your programme. You have no money – that’s your business, you had a chance.”

The external financing of political parties was approached in a similar manner by both groups. One of the conclusions was that the restrictions for Moldovan citizens that live abroad and are willing to contribute to the financing of the political processes of the country must be abolished. On account of the massive emigration citizens of Moldova should be allowed to contribute to political parties while abroad.

The Law that prohibits the financing from abroad limits the rights of Moldova’s citizens who reside abroad to contribute to political parties. The participants of the focus groups discussed the need for an effective regulatory framework that cannot be misused by the electoral candidates. For instance, under the rules of external funding, somebody who deposits 5 lei from abroad in the account of party X will cause the party to be excluded from the election. Another issue discussed was indirect manipulations such as the promotion of an electoral candidate on a foreign television channel. Participants wondered how such forms of financing could be controlled or measured.

Perceptions of the Enforcement of Financial Control

Respondents say they see two different realities: one painted by the law, and another one the reality of political parties built up with huge money investments, and an almost unrestricted access to shadow resources. To quote some participants:

- “... With respect to external financing...it is a sensitive issue because in some countries it is allowed, and I understand very well why the legislation of our country is so prohibitive about this type of financing. In countries with diasporas...like Armenia or Israel, the parties would die without the diaspora. Having one million citizens abroad, we also have become a country with a diaspora,”
- “How do we think? A person who left Moldova ten years ago, moved somewhere abroad and became a citizen of that country, do you think that this is external financing or not? Everyone knows that external financing is a fact, everyone

knows that some political parties have benefited from Tiraspol funds. If we do not want political parties with hidden intentions, the state should not be so generous in giving 0.2 percent and should make it possible to see more clearly how political parties are being financed...the problem of external financing should be re-examined.”

FUNDRAISING AND CONTRIBUTION LIMITS

There seems to be little awareness of the meaning behind the legislation to anchor political parties to a public financing system; participants’ views showed little attention to this subject.

Some of them believe that in most of the cases, financing of political parties is ensured by political leadership, and therefore, this is resolved when the parties have a reputation and good image. Others recalled the experience of campaigning for financing of parties, like in the U.S. This model particularly impressed participants, who would like to approach fundraising in such a way. However, they remained sceptical about the transfer of such a model in Moldova, where confidence in political parties is very low or almost inexistent.

The participants approved generally the ceiling of admissible financing for parties, considering that limitations should create equal grounds for competition and accountability of parties. They have admitted however that parties do not present true information about their party spending, and one of the overarching issues is related to the enforcement of the law, duplication of efforts, lack of capable monitoring agencies. Some respondents stated that during election period, parties present reports with delays, or hide actual expenses, while after the elections, incumbent ruling parties will do everything in order to cover up irregularities.

TRANSPARENCY AND ABUSE OF ADMINISTRATIVE RESOURCES

The transparency of spending of a political party is a fundamental issue: once the leader of a party collects and manages the party’s funds, there can no longer be talk of transparency. On account of this issue, different conflicts can arise inside political parties as well as massive migration of members from party to party.

Political financing is clearly a sensitive issue amongst all participating respondents. Most of them fear that more regulations will settle existing irregularities, but could be used to impede small parties to run in elections.

Some have admitted that in the absence of a clear monitoring of party finances, the mass media should take this responsibility and inform the public on the effective use of money. Participants share the opinion that there is limited hope that incumbent power could be penalized for the use of administrative resources.

Perceptions of the Accountable and Transparent use of Resources

- “I let the ruling party use my concert hall, but when a small opposition party arrives...the mayor or the director of the institution does not allow them to use the hall ...and therefore this administrative resource must be regulated because in some cases indirect funding happens exactly like this.”
- “...in the collective farm it was considered that everyone must know what they did with the tractor, with the common property. The legacy of the party is not a common fortune, it is participatory wealth: each member puts in as much as they can, but there is a party structure for decision making, about what should be done with the money, the party itself organises what needs to be done and also the party can create structures that control those who use the money; that is a party responsibility, I don't think that the state should regulate this.”

REGULATORY AUTHORITY

The existence of a regulatory agency for party legislation was not an idea welcomed by the participants. Respondents believe that nobody can guarantee autonomy for such an agency, while the experience of other regulatory agencies proves to be unconvincing. Some believed that, by law, it is the Ministry of Justice who could enforce existing regulations, but there are other bodies – such as fiscal agencies, the Court of Accounts, the Central Election Commission – who could also play this role.

Perceptions of the Independent Status of Regulatory Agencies

Participants shared the opinion that it would be practically impossible to ensure the independent regulatory functions of any kind of regulatory agency, irrespective of the name or the means of operation, because any such agency will step on highly politicized ground, where all its actions will conflict with political actors. To quote the participants:

- “I think ...this kind of agency will never be independent...”
- “I think, in Moldova an effective centre for fighting corruption cannot be independent.”
- “However, I agree that party activities need to be scrutinized, including through regular financial control, for checking that legal provisions are observed; that is what other institutions do.

- “Even if you delegate now, meaning the state should...create an institution. It should find funds to financially support this institution that in its turn will employ different professionals in finance, logistics, etc. in order to verify the activity of the institution. Or the Ministry of Justice should continue doing its part with a Fiscal Inspectorate. It is easier...to let it stay as it is...”
- “But in our country where influences are possible everywhere, creating an institution...it is easily influenced ...It is the same as in the case of the elections, who pays more...”

Respondents believed that the Ministry of Justice is perhaps the most entitled agency to oversee all aspects of political parties operation, although some participants noted that civil society could be very helpful to compensate for the absence of such a regulatory agency. They wondered who would ensure the independence of a possible regulatory agency, considering the excessive intervention of the government in the judiciary.

PENALTIES

The current legal framework imposes tough penal sanctions if the state can confirm the use of illegal financing of political parties, or of foreign funds transferred to political parties. This kind of violations fall under the administrative and criminal codes, which need to be further developed and adjusted to reality. The Supreme Court of Justice, on the basis of the accumulated material, imposes most of the administrative penalties, and participants share the opinion that more categories of irregularities should be penalized, according to the law, such as buying votes and threats or intimidation of donors.

PERCEPTIONS OF HOW TO IMPROVE THE SYSTEM OF PENALTIES FOR IRREGULARITIES

The current system of penalties is not seen as being ‘effective’ by most of the participants. Some views included:

- “... Parties are forced to hide their effective spending, because they want to protect their sponsors. As a result, fake reports convey false information about the existing entities, causing mistrust...”
- “...Setting up adequate limits on donations, and clearly stipulate who can and who cannot be a sponsor for political parties.”
- “... Legislation does not require disclosure sources of sponsors, because this could endanger their business, thus, creating clear incentives not to finance parties and hide true identities of sponsors.”

- “...prohibit foreign donors, but differentiate between them and citizens of Moldova working overseas”
- “Increase penalties for exceeding the limits imposed on political financing, and creating acceptance of norms, while punishing party leaders for fake reports”

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2. Art. 3, Statute of the Communist Party of Moldova (CPRM), <http://www.e-democracy.md/files/parties/pcrm-statute-2008-ro.pdf>
3. Art. 3–8, Statute of the ‘Our Moldova Alliance’, <http://www.e-democracy.md/files/parties/amn-statute-2008-ro.pdf>
4. Art. 77, Statute of the Social Democratic Party, <http://www.e-democracy.md/files/parties/psd-statute-2007-ro.pdf>
5. Art. 4.2.1, Statute of the Liberal Democratic Party of Moldova, <http://www.e-democracy.md/files/parties/pldm-statute-2007-ro.pdf>
6. Programme of the Christian Democratic Popular Party, Chisinau, FPCD, 1992, p. 8- <http://www.ppcd.md/page.php?modul=HTMLPages&pid=9>

Annex No. 3

Draft Proposals for the Election Code

Nr.1381-XIII of 21.11.97, Monitorul Oficial al R.Moldova nr.81/667 of 08.12.1997
(Submitted to the Special Committee of Parliament on 6 May, 2010)

- 1. Review of Art. 73, Title III of the Election Code with the aim to establish six electoral districts, in the following form:**

Article 73. Parliamentary elections

(2) Elections of the Parliament are organised on the territory of Moldova in six election districts, through which 101 Members of Parliament are directly elected. These election districts are: District No. 1 – the Northern Development Region, District No. 2 – the Central Development Region, District No. 3 – the Southern Development Region, District No. 4 – Chisinau Municipality, District No. 5 – UTAG Găgăuzia, and District No. 6 – the Eastern regions of Moldova (Transnistria).

- 2. Amendment of Art. 86, Title III aiming to decrease the election threshold: from 5% for political parties and 3% for independent candidates to 3% for parties and 1% for independent candidates, which would allow for enhanced political pluralism and merit-based selection of the people's representatives, in the following way:**

Article 86. Setting the threshold of representatives

(2) The minimum threshold for representation is set at the following share of the votes freely expressed at the national level:

- a) for a political party or other social-political organisation – 4%;
- b) for an election bloc – 5%;
- c) for an independent candidate – 2%.

3. Amendment of Art. 37, Chapter IV, with the aim to entrust strict supervision of the election financing to a single agency – Central Election Committee – in order to improve the mechanism of tracking election contributions, monitor public and private donations received by political parties and independent candidates, with automatic verification by the CEC, in the following form:

Article 37. Public financing for competitors for election campaign

(8) Election candidates shall present weekly operational reports to the financial department of the CEC, which will present, substantiated by correct and effective evidence, data on the total amount of means and donations received during the reporting period, the use of these resources, and the complete list of contributors.

(9) Election candidates shall inform the CEC and the election district councils about the specific financial amounts received in the accounts used by the respective candidates in the election campaign, within 24 hours from reception, with a copy of the payments made by bank transfer or otherwise attached..

(9a) The CEC and the district election councils are the only agencies entitled to track and verify the correct financial reporting of the election candidates during election campaigns. The CEC may resort to other state authorities (Auditing Chamber, Fiscal Inspectorate, Ministry of Finance) in carrying out larger and more complex audits of the resources or donations officially declared by the election contenders, parties, or candidates. This will be for rigorous control of the funds and expenses declared by the election candidates in the campaign, as well as for the correct accounting of the political financing, according to the purposes stated by the election candidates. But the CEC will be the only agency responsible for the exclusive handling of the reported information. The CEC will periodically report to the public, at least once a week, on the financing used by parties and independent candidates in elections.

(9b) The CEC may request an independent audit of various election candidates after the end of election campaigns. Independent auditors will be selected through a special Regulation made by the CEC, through open tender of a private company, registered according to international standards, on a rotational basis, and using objective and transparent criteria.

(9c) Election candidates will make public information that is requested by the Election Code, and that is presented to the CEC, posting this information on their websites, ensuring on-line access to these reports by the ordinary citizens, on a regular basis (weekly), and in PDF format. Independent candidates and parties that do not have their own websites will make the above-mentioned data accessible on-line on the CEC website. This information will be managed on a specific page of the official CEC website.

4. Amendment of Art. 37, Chapter IV, on the resources for the implementation of elections with the aim of increased effective use of public resources, as follows:

Article 37. Material support provided by the State for election campaigns

(1) The State offers election candidates loans without interest, providing advantageous conditions to the political parties to ensure a more balanced and adequate participation of women and citizens belonging to ethnic minorities.

(1a) The CEC will adopt correspondingly its Regulation on Financing Election Campaigns, in order to ensure equal conditions for election candidates and to provide adequate incentives to the political parties that will decide to follow the policy recommendations and documents on the elimination of gender-based discrimination. These documents were adopted by the Parliament and Government of Moldova and in strict conformity with the Millennium Development Goals. They include the Concept on the elimination of all forms of gender discrimination; the Convention on elimination of all forms of discrimination against women, 1979, ratified by Moldova in 1994; the Declaration and Platform of Actions adopted in Beijing, 1995; the Millennium Declaration of the UN, Resolution 55/2 of the General Assembly of UN of September 8, 2000; Recommendation 2003/3 of the Committee of Ministers – members of the Council of Europe regarding balanced participation of women and men in the process of decision-making and public life; and Recommendation 2007 of the Committee of Ministers of state members.

(1b). The CEC will use a mechanism of coefficients to determine the range of financial means that can be provided to election candidates, detailed extensively in the Regulation on financing election candidates.

- 5. Amendment of Art. 69–71 regarding the legal, criminal, and administrative penalties in order to strengthen the enforcement of the legislation and imposition of sanctions in all cases in which legal norms and regulations are violated by individual candidates or by public authorities, as follows:**

Article 71. Administrative and other types of penalties

(1a) All situations in which governmental officials, or high-ranking servants or municipal officials undertake election activities without being registered as candidates or trusted persons, on behalf of political parties or independent candidates, shall be considered administrative violations and shall be sanctioned in accordance with the Code on administrative sanctions

(1b) Those leaders of political parties whose candidates continue to exercise public activities on behalf of their authorities, using resources, means and other public facilities, with the aim of infringing the principles provided by provisions of Art. 3–7 of the current Code shall be punished for administrative violations

- 6. Amendment of system of penalties and sanctions for serious violations by political parties.**

An Analysis of the penalties as provided by the Election code reveals four basic flaws: major penalties are almost completely missing in case of significant and serious irregularities committed deliberately by political parties in financing their campaigns, sanctions do not follow an intensity matrix reflecting the gravity of violation, while the level of an administrative fine is to a large extent insignificant, or largely irrelevant if compared with the damage caused. Provisions of Art. 69–71 can only be applied to a limited number of persons that violate the law, including officials or contributors. Therefore sanctioning a political party by dissolution can be a rather difficult action to justify according to existing international standards protecting the right of association and political freedoms (European Convention for the protection of human rights)²⁸³. Going from the above, we recommend extending the existing categories of penalties or sanctions applied to political parties and independent candidates who have committed serious violations, thus extending the range of available instruments against the actions which deliberately affected the application of the law, or have violated some regulations, as follows:

²⁸³ At its 41st plenary session on 10–11 December, 1999, the Council of Europe Venice Commission adopted Guidelines on the Prohibition and Dissolution of Political Parties and Analogous measures.

Art. 69 Penalties for serious infractions

(2) For the violations of the present Election Code provisions, the CEC will apply or may request the application against the election candidates of the following penalties:

- a) warning issued by the CEC to political parties for the non-presentation of financial reports, according to the existing framework rules and regulations, approved by the CEC, as well as for contempt of the CEC, or for repeatedly ignoring precise instructions received from the CEC;
- b) fines imposed on election candidates, who have submitted deliberately false reports to the CEC, or falsified signatures if this has been confirmed by additional verification;
- c) fines applied to election candidates for systematic and repeated cases of undeclared financial contributions which, according to the existing regulations, should have been immediately reported to the respective specialized bodies (CEC);
- d) fines applied to election candidates in all cases in which the respective entities will not respond to the specific requests addressed by the CEC with the aim of obtaining complete information on some budgetary issues related to the financial campaign of the election candidates, or about the list of candidates submitted by the contending parties or election blocs,
- e) administrative penalties on the official representatives of the election candidates, whose actions may prove, after additional verification by the CEC, that they used undeclared/unauthorised financial resources, or through third persons, not registered as election candidates.
- g) Administrative penalties on the official representatives of political parties, or on persons found guilty of sabotaging the investigation of the CEC or of external audits exercised on behalf of the CEC, authorised to verify actions or suspected actions committed by registered election candidates.
- h) Fines applied according to the administrative penalties code to the officials of the CEC responsible for the non-publication of evaluation reports or reports on the financing of the election candidates in the election campaign.

Art. 70 Penalties for criminal offenses

...

- h) Criminal penalties applied to governmental officials, who have committed various actions related to the use of administrative resources by the CEC for the benefit of one or more election candidates in a campaign.

- g) Administrative penalties, including the request to consider suspending the functioning of a political party for serious violations of the law which have affected the integrity of the election process;
- f) penalties applied to official representatives of political parties who have not reported appropriately to the CEC expenses during the election campaign from the public resources allocated to them from the state budget according to the legislation, simultaneously with the possible lifting of the right of the respective election candidates to receive financial assistance in upcoming elections;
- i) sanctions imposed on election candidates (political parties or independent candidates), as a result of serious violations of the financial orders in campaigns: excluding the respective parties from the election campaign or imposing severe interdictions on occupying important public positions as a result of committing these violations;
- k) sanctions on electronic publications or printed mass media for requesting the payment of discriminatory fees from the election candidates during campaign, at a rate that exceeds significantly rates requested for other election candidates for the same space or broadcasting time, procured in the same conditions and period of time;
- l) sanctions for election candidates exceeding the authorised limits of election spending, with fines reaching 10% of the total amount spent in elections;
- m) sanctions on candidates for accepting contributions for elections exceeding the maximum amount authorised from one single source, failure to declare contributions, and non-restitution of the above mentioned contributions within the period of time stipulated by the election regulations, including the one regarding the transparent declaration of identities of contributors (donors) in the absence of justificatory documents.

6. Abolish the ban on financing election campaigns by citizens of Moldova temporarily working abroad, setting up a simple and effective mechanism for reporting contributions received by political parties, independent candidates and other social-political organisations for the period of an election campaign, as follows:

Article 36. Prohibition of financing from abroad

- (1) It is prohibited for contending political parties or independent candidates to accept direct or indirect financing or material support in election campaigns from other states, as well as enterprises, institutions, foreign organisations, joint ventures, persons, or international business companies that are not citizens of Moldova. The above-mentioned contributions will be declared by the election candidates, accord-

ing to the existing laws, and will be transferred to the state budget immediately, on the request of the CEC;

(2a) Citizens of Moldova temporarily residing abroad may finance election candidates in Moldova for the campaign, but in amounts that will not exceed 750 Euros. It is prohibited to finance more than one party simultaneously or to transfer more contributions to the same political party or candidate from one and the same person. Contributions received by election candidates from the citizens of Moldova temporarily residing abroad shall be reported to the competent authorities (CEC); with the declarations of the respective persons, original signatories of the contributors, and personal data of the above mentioned persons, for possible verification

(2b) In case the election candidates have received in their account financial resources from abroad or have used in a deliberate way such resources, the CEC will be requested to conduct a supplementary audit of the election competitor in the four weeks from the moment of the alleged action and take the necessary steps in this regard.

Annex No. 4

Draft Proposals to amend the Law on Political Parties

1. REGISTRATION AND DISSOLUTION OF POLITICAL PARTIES

- 1.1. **Amend art. 3.1. of the law, which allows an excessively wide space to restrict the functioning of political parties, contradicting Guideline No. 3 of the Venice Commission on the prohibition of political parties and analogous remedies (1999).** The proposed amendments should be further discussed in order to improve the existing framework, in accordance with democratic norms. Thus, the Venice Commission outlines that the prohibition of political parties can be justified only in the case that parties support the use of violence or use violence as a political means to overturn the existing constitutional democratic order, subverting thus the main rights and freedoms protected by the Constitution.²⁸⁴ A separate Opinion of the Venice Commission has been already transmitted to the Moldovan authorities, while the ECHR has decided that, as long as a political party pursues its aims through peaceful means, a claim in advocating for a larger autonomy for a specific region cannot be a ground for banning a political party. The Law on Political Parties does not correspond entirely to the existing recommendations in the field of prohibition or dissolution of political parties and analogous measures, as indicated in the individual reports of the Venice Commission. Some of the latest Joint Opinions were expressed by the Experts of the Council of Europe on the basis of the draft law, prepared by the Parliament of Moldova during 2003–2004. In particular, these recommendations refer to the issue of the ‘proportionality’ of actions undertaken by the competent authorities in relation with political parties, which were suspected of various irregu-

²⁸⁴ [http://www.venice.coe.int/docs/2000/CDL-INF\(2000\)001-e.asp](http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp)

larities. In its Opinion of March 14–15, 2003, the Venice Commission stipulated that, ‘every limitation of the exercise of fundamental human rights, expressed through the functioning of political parties, should be consistent with the relevant provisions of the European Convention on human rights protection, and other international treaties, for the period of natural calamities and normal conditions.

- 1.2. **Lifting the provisions which permit the dissolution of political parties (art. 22) which do not run in elections for two consecutive elections or win a number of votes below the minimum number of voters it is required by law to have as registered members.** Currently, in such cases, the party receives an official notification, and the party is then removed from the State Registry of parties. This category of sanctions has been criticized repeatedly by civil society, but also by European organisations, which see the application of this penalty as being an example of an overt infringement of the art. 11 of the European Convention for Human Rights and Fundamental Freedoms, which stipulates *inter alia* that every person can exercise the right to peaceful assembly and the freedom of association, i.e. the right to join with others in order to defend their rights. Article 11 further states that this right cannot be the object of restraints other than those stipulated by law, and which could be absolutely necessary in a democratic society, to ensure national security, public safety, public order and prevention of illegalities, protection of health or morals and protection of the rights and freedoms of others. A political party registered according to the legislation may decide not to participate voluntarily in an election campaign, and could justify this decision as an expression of the free will of its members, and their territorial branches. As a voluntary form of association, political parties may register themselves or not as electoral competitors, similar to the will of every individual citizen, who may decide to participate or not in elections. The full application of exaggerated penalties, including a possible banning of political parties absent from elections in elections, may directly affect the legal meaning of political pluralism, which is substantially protected by the Constitution of Moldova, and the fundamental right to free association.
- 1.3. **Simplification of the exaggerated requirements for the registration of political parties, and elimination of the ‘territorial representation principle’** by bringing it into conformity with the art. 11 provisions of the European Convention for human rights and fundamental freedoms (1950), protecting the right to political association. Experts of the Venice Commission assessed this requirement as excessive, which is almost impossible to be met by any group of citizens, united to promote their common interests in a certain part of the country. They concluded that this provision imposes a tough burden on those citizens, who intend to exercise their legitimate rights, having a “fairly large restrictive force” and accordingly, “it seems to be disproportionate and useless in a democratic society”.

- 1.4. Lifting the existing restrictions of the Law on Political Parties regarding the creation of parties on ethnic or racial criteria – art. 3 (6).** The restrictions would be applicable as long as a party or group does not act in a way which justifies the use of the exceptions outlined in art. 11.2 of the ECHR. Thus, expressions of violence which are contrary to the constitutional spirit and norms on the freedom of association could still be pursued by the competent authorities. This could take the form of such steps as a warning letter from the Ministry of Justice, a notification to the Court of Appeal on then norms violated, and respectively, a judgment on the gravity of the facts, which would be addressed towards the correction of the activities of the party in question, leading even to the dissolution of the party, in accordance with the decisions on limitations or dissolutions of political party, following the jurisdiction of ECHR²⁸⁵. However, the specific provisions of the Law on parties show that the creation and functioning of political parties, based on criteria of racial, ethnic, language, faith, gender, social or income-based discrimination are to be prohibited. Considering the conclusions of the Venice Commission, as provided by the Code of Good Practice in the Field of Political Parties²⁸⁶, which states that “State bodies...should not limit the right to establish political parties on a national, regional and local level”, Moldova should consider this issue in a broader and long term approach. It is obvious that the current legislation on parties could be seen as being too restrictive, as concerns the creation of necessary conditions for the creation and functioning of regional parties. First of all, because the creation of a political party, even on the basis of ethnic or racial criteria cannot be prohibited according to the European Convention (art. 3–7), as long as any group of citizens, associated to the above mentioned party, will refrain from activities that would justify the application of the restrictive measures, stipulated in art. 11.2 of the Convention, and will not violently act against the statehood and sovereignty of the state.
- 1.5. Upgrading the control and oversight institutional capacities of the Ministry of Justice.** This would take place through the digitalization of data entry for the registration of parties, using online tools, as well as verification and reporting of data, as stipulated by law, shortening and rationalizing the way of presenting data on parties to the competent authorities of the state. This would certainly reduce the time for the decision-making process, but will also require a significant improvement of the current capacity of the Ministry, which should increase the security levels for access and use of information received from political parties, concordant with the

²⁸⁵ See: ECHR decision in relation with prohibition of Ozdep in Turkey, cithttp://www.icnl.org/KNOWLEDGE/IJNL/vol2iss2/cn_2.htm.

²⁸⁶ Code of good practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12–13 December 2008), <http://www.venice.coe.int/docs/2009/CDL-AD%282009%29021-e.asp>

Joint Opinion expressed in 2007 by the Venice Commission²⁸⁷, considering that some party supporters could become easily victims of personal data abuse, if fraudulent intrusion to the confidential data were to be allowed by the authorities.

- 1.6. **Recognition of the effective rights to participate in the political life for citizens with multiple citizenships**, residing in Moldova, on the basis of the widespread practices of the Council of Europe member states. It is the intention of this proposal to advocate for direct participation of the foreign citizens residing in Moldova to participate in political parties. Following the recommendation expressed by the Venice Commission, one should see the existing restrictions as being outside of the existing updated standards of the Council of Europe. The Law on parties stipulates that only citizens of Moldova, who have the right to vote, according to the law, can be members of parties, excluding thus, with almost no exceptions, all other citizens – aliens and foreign citizens. This kind of rigid restriction is not anymore acceptable by the standards of the Council of Europe.²⁸⁸

2. FINANCING OF POLITICAL PARTIES

- 2.1. **Recognition of the right to financial contribution for Moldovan citizens working abroad.** The Law on Political Parties includes a clear prohibition of donations received from citizens of Moldova, provisionally working abroad. This restriction is also applied to foreign citizens, who are not citizens of Moldova, anonymous persons or third parties such as private companies or state owned firms. In the case that the total value of donations received from political parties exceeds the official limits, or if controlling bodies confirm the receipt of donations which violate the provisions of art. 5, political parties are required to transfer these contested donations to the state budget, on the basis of a final judicial decision. The law requires political parties to keep a Registry of donations, which should include also the name, residence of donations and amounts received so far (art. 27). As a novelty compared with the old regulations, the Law on Political Parties incorporates a special chapter on public financing of parties (art. 28), but its application was suspended through a special decision of the Parliament of Moldova, because of the budgetary crisis in 2010²⁸⁹. The Law would essentially reduce the limits of private donations (individual

²⁸⁷ Comments on the draft law on political parties of Moldova by Mr Hans-Heinrich Vogel, Endorsed by the Venice Commission at its 71st plenary session (Venice, 1–2 June 2007), <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29025-e.asp>.

²⁸⁸ Comments on the Draft Law On Political Parties of Moldova by Mr Hans-Heinrich Vogel, endorsed by the Venice Commission at its 71st Plenary Session; Venice, 1–2 June 2007).

²⁸⁹ In November 6, 2009, the Parliament of the Republic of Moldova decided to postpone public financing for political parties until July 1, 2013, using the excuse of the deep and growing economic crisis. New

and corporate) with the aim of reflecting the socio-economic level of the population, effective standards of life, and preventing political parties from an extensive influence of oligarchies. Equally important, it is necessary to avoid the discrimination of parties inherent in a system of public financing that advantages the incumbent government.

- 2.2. **Acceptance of the ‘2% law’, which aims to increase ordinary citizens’ ability to contribute to the viability of non-commercial organisations** (including political parties), by selecting the recipients they would prefer to be financed from their own taxes. This would require better regulation of the way in which political parties conduct their declaration of incomes and properties, providing transparent and accountable reports at the request of the public (ordinary citizens) or of the regulatory authorities and ministries.
- 2.3. **Precise and comprehensive regulation of the fields where parties conduct various commercial activities** – such as running properties and businesses, receiving various incomes from the provision of services, other categories of revenues- generating activities – so that the commercial part of party activities will not create irregularities, when incomes collected from these fields will be applied according to the charter aims. These amendments are aimed also at revising the mechanism of collecting private contributions (donations), thus ensuring equal and accessible conditions to all members, as well as to the public at large, building up the trust of the public on the integrity of parties. Although art. 24 of the Law allows parties to run editorial or printing activities, to manage properties and undertake other economic activities, the Law does not stipulate with clarity under which conditions parties can establish or manage different forms of entrepreneurship, receive loans or develop their patrimonial basis, indeed activities which are not banned by legislation. This should be consistently correlated with the insolvency provisions²⁹⁰. However, the Law does not define specifically how to proceed in the case of political parties, which cannot go through conventional insolvency procedures, such as dissolution and reorganisation, as commercial entities.
- 2.4. **Establishing clear responsibilities for a single state agency to be in charge of the verification of the financing and reporting activities of political parties.** Sharing this task amongst various state bodies (Fiscal Inspectorate, Auditing Chamber, Ministry of Finance) not only creates divergent views on the interpre-

amendments to the law stipulate that 0.2% of the state revenues will be spent for party financing, while proportional financing to the number of accumulated seats during local elections will begin immediately after the local elections, scheduled for July 1, 2011.

²⁹⁰ Law on bankruptcy, No. 632-XV of November 14, 2001

tation of the law, but also unnecessarily complicates the institutional landscape, having a negative impact on the effective resolution of possible frauds or financial irregularities.

- 2.5. **Expanding the range of possible penalties and sanctions against irregularities of parties regarding** the use of public finances received from the state budget, use of administrative resources, and so forth. A clearer stipulation of individual sanctions for party leadership, which authorised or tolerated a violation of the legal provisions, would allow for the application of various analogous measures to remedy the irregularities of parties, without having to resort to the extreme penalty or suspension or even dissolution.

The reform of political parties legislation and regulation can act as a platform from which to consider a wide array of crucial issues in the development of a stable and lasting democratic party system. These include, *inter alia*, political party financing, internal party democracy, the participation of women, registration and monitoring of political parties.

In partnership with the OSCE's Office for Democratic Institutions and Human Rights (OSCE-ODIHR) and with the financial support of the European Union, Igor Munteanu, Executive Director of IDIS *Viitorul*, led an in-depth consultative process with key stakeholders in Moldova on the issue of political party reform, raising problems and proposing possible solutions.

The result is *Political Parties Legislation in Moldova: Review and Recommendations for Reform*, a comprehensive report which thoroughly analyses the particular problems and issues in Moldova's legislative and regulatory framework for political parties. Looking forward, and based on the results of the consultations, Munteanu proposes an agenda for reform based on international and European standards and best practice.

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