ANALYSIS
OF RECOMMENDATIONS FROM THE 2008 JOINT OPINION AND THEIR CONSIDERATION IN THE AMENDMENTS INTRODUCED IN THE ELECTORAL CODE IN THE PERIOD 2008-2010,
AS WELL AS IN THE DRAFT LAW CURENTLY ON THE AGENDA OF THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA[1]

RECOMMENDATIONS FROM THE JOINT OPINION OF THE OSCE/ODIHR AND VENICE COMMISSION FROM 2008[2]	**TEXT PROPOSED IN THE DRAFT / TEXT IN FORCE**	**COMMENTS / NOTES (implementation / non-implementation of recommendations)**
12[3]**.** In their last Joint Opinion, the Venice Commission and OSCE/ODIHR, as well as in other previous opinions, stressed the importance of taking into account sizable national minorities living on the territory of the Republic of Moldova when deciding on an electoral system. It was recommended that "*The electoral system for the Parliament should create possibilities for*	Legislative amendments from the period 2008-2009 and provisions of the draft law do not touch upon the issue of electoral system of the Parliamentary Elections and do not include special regulations aimed at increasing possibilities "from	*Arguments for maintaining the current electoral system:* 1. Political / institutional crisis is not overcome and in such conditions systemic and complex amendments are not considered opportune. 2. National minorities were and continue to be represented in the Parliament of the Republic of

[1] Draft Law no 558 from 02.03.2010, submitted by a group of deputies in the Parliament.
[2] The text in Romanian language is taken from a non-official translation. Upon the necessity, the text of 2006-2007 Joint Opinions will also be used, with its express insertion.
[3] Numbers of order correspond to the text of the Joint Opinion, omitting those already implemented / those having no more objections.

adequate participation in public life of national minorities and mainstream interests at regional level". **13.** The amendments have not introduced any changes to the electoral system of the Parliamentary Elections, thus the authors of this review note that previous recommendations of the Venice Commission and the OSCE/ODIHR vis-à-vis the electoral system remain relevant and should be considered.	office" for participation of national minorities in elections.	Moldova. The Parliament of 18th legislature includes representatives of Gagauz minority, as well as deputies of Ukrainian and Russian minority. 3. Change of the electoral system would diminish the perception of quasi-total representation of the Moldovan population, including the population from the Transnistrian region. Creation of smaller electoral districts, because of the impossibility to organize and conduct elections in the Transnistrian region, would lead to the perception of non-representation of the citizens from the respective territory in the Parliament. Non-conducting elections in the electoral district / districts from the Transnistrian region will have as a consequence lack of a considerable number of deputy mandates. 4. Lack of experience in the field (after 1994).

		Non-implemented recommendations (with argumentation).
Threshold **1**. The threshold for winning seats in the parliament has been changed several times. In 2005, it was lowered from 6% to 4% for parties and from between 9 and 12% to 8% for blocs. The OSCE/ODIHR and the Venice Commission have credited the previous reduction of threshold as an improvement and in their last Joint Opinion have specifically advised that "*The authorities should in no case reverse this welcome reduction and stick to the threshold established for political parties*". It was also noted that "*One would believe that coalitions should be encouraged in order to provide more cooperation and stable government*". **2**. Instead, the April 2008 amendments have raised the	Points 44 (amendment of Article 86) and 45 (amendment of Article 87) from the draft law envisage the following thresholds: - 4 percent for parties (from 5%); - 6 percent for electoral blocks; - 2 percent for independent candidates (from 3%).	The draft law suggests cancellation of the interdiction for electoral alliances (from 2 and more parties) to participate in elections and envisages a unique electoral threshold of 6% for them. Maintaining of electoral threshold is argued by the need to avoid dilution of political spectrum, in order to facilitate formation of post-electoral alliances, on the basis of some strong electoral competitors. The practice of European countries shows existence of electoral threshold in a number of European countries, varying between 1% and 8%, the

threshold for participating in the allocation of seats from 4 to 6% of the valid votes in the country as a whole (Article 86(2)). The new 6% threshold is rather high (even though there are countries with even higher thresholds). Such a high threshold may lead to a high number of wasted votes. It is therefore recommended to keep the threshold lower than this.

16. A number of articles have been changed to remove the possibilities for parties to form a pre-election alliance or a bloc. Such alliances tended to be formed for electoral purposes only and the parties making up the bloc would submit a common list of candidates for the parliament or local council elections. Such possibilities are often given in cases where there are many small parties contesting in constituencies of a small magnitude (few seats) or where the threshold for the first candidate is high. In Moldova, the whole country is one constituency for the parliamentary elections and the whole district, municipality or village is the constituency

threshold chosen for the Republic of Moldova is even under the average.

Recommendations partially implemented.

for local council elections. In addition, the threshold for winning seats used to be higher for blocs than for parties. The need for forming alliances has therefore been less than in countries with smaller constituencies.

17. Yet, combined with the increase of the threshold for parliamentary representation, the removal of the possibility for political parties and socio-political organizations to run in electoral blocs could further increase the amount of lost votes in parliamentary elections.

3. It is therefore recommended to lower the threshold for participating in allocation of seats to its previous level at 4%.

Right to vote of the convicted persons

Point 3 from the draft law proposes the following wording of Article 13

Restrictions of the right to vote of the convicted persons are applied in a number of European countries. *Very serious* crimes are crimes, for which the Moldovan Criminal Code prescribes a punishment of above 12 years in prison, and *exceptionally serious crimes* are considered crimes,

19. In their last Joint Opinion, the OSCE/ODIHR and the Venice Commissions had noted that "*According to the ECHR, restrictions of the right to vote affecting all convicted prisoners in a general, automatic and indiscriminate manner are incompatible with Article 3 of the First Protocol (Right to free elections) to the Convention for the Protection of Human Rights and Fundamental Freedoms*". **20.** An amendment to Article 13(1) c of the Electoral Code narrowing down the restriction to a smaller group of "*persons convicted to deprivation of liberty by a final judgment of the law court for serious, very serious and exceptionally serious crimes.*" The amendment to Article 13(1)c is an improvement, even though it lacks precision. It is also not clear whether the paragraph also includes those whose sentence has been fully served. Should this be the case, it would be unacceptably harsh. The code should further state that only explicit court decisions should remove the voting right and such decisions should	section (1) letter c): „c) individuals sentenced to deprivation of liberty by a final court decision for *very serious or exceptionally serious crimes* and who serve their sentence, as well as *individuals who have been deprived of the right to vote by a final court decision*. The electoral bodies shall be informed about the existence of such restrictions by the Ministry of Interiors, Ministry of Justice, local public administration authorities and other relevant institutions, which hold the respective information.	for which the Criminal Code prescribes a punishment of life imprisonment. Note: In order to ensure that legislation corresponds to the ECHR case-law, Parliament of the Republic of Moldova could review the respective norm for the second reading, so that restriction of the right to vote could be applied only to persons who were deprived of this right through the final court decision, as a complementary measure to the punishment. In the process of reviewing the related legislation, the criminal policy shall be reviewed, so that the Criminal Code is completed with concrete provisions concerning crimes for which a complementary measure of suspending the right to vote for the period of serving the sentence could be applied. *Recommendations partially implemented.*

only happen under sever circumstances.

21. It is necessary to note that according to the Criminal Code of the Republic of Moldova, any crimes, for which the Criminal Code prescribes a punishment of above five years in prison, are considered serious. Thus, it may be advisable to further review this article and relevant provisions of the Criminal Code to provide for specific cases in which the court of law makes a decision on deprivation of the right to vote, where it is proportionate to the committed crime and serves the aim of the punishment declared in Article 61(2) of the Criminal Code of "*reinstating social justice, correction of the convicted, as well as prevention of new crimes*".

The right to vote of the conscript military personnel	The draft law does not touch upon the right to vote of the conscript military personnel.	The vote of the conscript military personnel is restricted because these persons (in most cases) *do not have domicile in the respective locality* and *are not free to circulate on the Election Day*. On the other hand, the vote of the military personnel from a large military unit can *critically influence the results of local elections*.
22. As already mentioned in previous joint opinions, according to Article 123(1), conscript military personnel is not allowed to vote in local elections. This issue was not addressed by the amendments.		Note: Such restriction could represent subject for a new review, until the next general local elections take place. For this purpose, it is necessary to conduct an additional assessment of the situation, both from quantitative (the number of conscript military personnel in military units) and qualitative aspect (electoral information, excluding administrative influences, etc.). *Non-implemented recommendations (with argumentation).*

Conditions for disabled persons **22. …** Neither did the amendments introduce the previously recommended general accessibility principle to allow minimum guarantees for elderly voters and voters with disabilities.	The draft law does not include special provisions concerning access to polling stations of elderly persons and voters with disabilities.	Electoral Code in Article 55 section (4) includes provisions concerning the possibility to send members of the bureau with the mobile box to the domicile of voters (their place of whereabouts), who, for health and other grounded reasons, cannot come to the polling station. According to the amendments proposed to the draft law, the requests for voting at the place where the voter is located may be submitted only in written form, until 15.00 of the day before the Election Day. Article 54 section (1) of the Electoral Code envisages possibility of assisting voter who is unable to fill out the ballot him/herself. Note: Polling stations are usually located in accessible places, at the ground floor of the buildings. However, special provisions could be

		introduced in the Electoral Code concerning the obligation to create conditions of access for elderly and disabled persons. *Non-implemented recommendations (with argumentation).*
The right to be elected **4**. Article 13(2) lists the categories of persons who "may not be elected". Such a wording is ambiguous. Should it be understood as listing restrictions to the right to stand as a candidate, or as listing restrictions to the right to take a mandate? In other words, is Article 13(2) dealing with ineligibility or with incompatibility? In the former	Restrictions concerning persons holding multiple (double) citizenships were cancelled through the Law no 127-XVIII from 23.12.2009. The draft law does not include amendments concerning the	Interdiction to be elected, applied to *conscript military personnel*, is determined by their impossibility to hold public positions for the period of carrying out military obligations. Therefore, militaries enrolled in conscript military service are subjected to more restrictions; they do not have the right to run for elections, to be elected in public positions, because they cannot participate in

case, the restrictions of article 13(2) would provide ground to reject a candidacy before the elections; in the latter case, the restrictions would theoretically only apply when taking the mandate.

5. In fact article 13(2) mixes up together the two situations. Some restrictions clearly seem to deal with the right to stand as a candidate, in particular: restrictions applying to persons who do not have the right to vote [13(2)b], to "*persons convicted to deprivation of liberty by a final judgment of the law court and whose criminal record is not extinguished*" [13(2)c], and to "*persons deprived of the right to occupy responsibility functions by a final decision of the law court*" [13(2)d]. It is less clear for the two other restrictions, which could be interpreted as incompatibilities, although it is not clearly specified: "*serving military men*" [13(2)a] and "*persons who have beside the Republic of Moldova nationality and other nationality for the position of deputy in the* conscript military personnel.

electoral campaign, and hold any other public positions. According to the Law no 1245 from 18.07.2002 on preparation of citizens for the defence of their motherland, such restriction of the right to be elected lasts for a short period of time: - for conscript military personnel - 12 months; - for reduced conscript military personnel - 3 months.

Limitations from Article 13 are formulated following the logic and wording of constitutional provisions from Article 38 – The right to vote and the right to be elected. Replacing the phrase "the right to be elected" with the phrase "the right to run for elections" would represent a new wording, which would determine explanations and interpretations. The current wording did not generate conflicts or abusive interpretations, the respective norms were adequately applied.

The need to limit the right of a person with

conditions of Art. 75" [13(2) b¹].		uncovered criminal records to be elected is determined by the fact that legislation concerning public positions (Law no 158/04.07.2008 on public positions, applicable also to elective positions) includes – **lack of criminal record** – as a mandatory condition for running for a public position.
25. For the sake of clarity, it is recommended avoiding the use of the wording "right to be elected", in favour of the legally clearer "right to stand as a candidate". It is also recommended to regulate incompatibilities in a separate and clearer provision.		*Recommendations partially implemented.*
26. Beyond the above mentioned ambiguity, the restrictions established by article 13(2) deserve more substantive attention: **6**. An amendment to Article 13(2)c excludes persons "*convicted to deprivation of liberty by a final judgment of the law court serving their sentence in detention centers or who have uncovered criminal record for*	In the draft law, section (2), letter c) is edited in the following way: "c) individuals who are sentenced to deprivation of liberty by a final court decision and who serve their sentence in places of detention, as well as individuals who have	According to criminal legislation of the Republic of Moldova, criminal records are covered under certain conditions (Article 111 of the Criminal Code of the Republic of Moldova). Therefore, a certain period after serving the sentence in places of detention, the person continues to be limited in certain rights, including the right to be elected (to run for

committing serious, very serious, or exceptionally serious crimes" and a new Article 13(2)d denies passive suffrage to "*persons deprived of the right to occupy responsibility functions by a final decision of the law court*".

28. The restriction brought by amendments to Article 13(2)c may be excessive. Article 13(2)d already provides for denial of passive suffrage to those persons who have been "*persons deprived of the right to occupy responsibility functions by a final decision of the law court*", thus recognizing that denial of a right to hold an official position is something upon which a court may specifically decide as a form of punishment. It is advisable to further review the provision under Article 13(2)c and relevant provisions of the Criminal Code to provide for specific cases in which a court may deprive a person of the right to be elected, where it is proportionate to the committed crime and serves the aim set in Article 61(2) of the Criminal Code of "*reinstating social justice*,

pending criminal records for committing serious, very serious or exceptionally serious crimes. The electoral bodies are informed on the existence of criminal records by the Ministry of Interiors, Ministry of Justice, and other responsible institutions, which hold the respective information".

elections).

Restriction envisaged for „*persons deprived of the right to hold official positions by a final decision of the law court*" is also temporary, applied for the duration established according to the court decision (between 1-5 years).

Note: Because „deprivation of the right to hold certain positions or to exercise certain activity" bears a criminal punishment, the person will be considered without criminal record only after serving it. Therefore, it is recommended to exclude the text of letter d) section (2) from Article 13.

At the same time, in the process of reviewing the related legislation, the criminal policy shall be reviewed, in order to complete the Criminal Code with concrete provisions, referring to crimes for which a complementary measure of cancellation of the right to vote for the period of serving the sentence might be applied.

Recommendations partially implemented.

correction of the convicted, as well as prevention of new crimes". **29**. In general, any limitations to the right to be elected going beyond those ensuing from restrictions to active suffrage appear contrary to the provision of Article 38(3) of the Moldovan Constitution, which says that "*The right to stand for election shall be guaranteed, under the law, to all citizens of the Republic of Moldova enjoying the right to vote*".		
30. A new paragraph to article 13(2) denies 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 citizenships provided he/she upon election denounces other	Limitations concerning holders of multiple (double) citizenship were cancelled through the Law no 127-XVIII from 23.12.2009.	*Recommendations implemented.*

citizenships than the Moldovan. This must be considered as an incompatibility.

31. Beyond the mere question of the wording, restrictions of citizens' rights should not be based on multiple citizenship. The Code of Good Practice in Electoral Matters quotes the European Convention on Nationality, ratified by Moldova in November 1999, which unequivocally provides 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*

32. Moreover, this restriction could be a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, articles 3 of the first Protocol and 14 of the Convention.

38. The amendments made in Articles 19(1) and 20(2)b

introduced additional requirements for CEC membership, namely a 10-year experience record in the legal or public administration, and the possession of the Moldovan citizenship exclusively. It is not easy to see the justification of the latter requirement. If Moldova accepts multiple citizenships in general, one should not make such citizens second rank citizens by limiting their rights		
35. Concerns expressed in the last Joint Opinion over the absence of provisions clarifying rights and responsibilities of contestants' representatives nominated to electoral bodies with consultative vote remained unaddressed by the amendments	The rights and responsibilities of contestants' representatives with the right to consultative vote in electoral bodies are regulated through the Regulation on the activity of the members-representatives of the electoral competitors, approved through the	Note: The Electoral Code could be completed by a general norm concerning the rights of the representatives with the right to consultative vote, their specification being under the competence of the CEC. *Non-implemented recommendations (with*

	Decision of the CEC no 383 from 12.12.2006.	*argumentation).*
40. The amendments did not address the previously raised concern over the possibility to recall a member of an electoral council or bureau by the institution which nominated or appointed him/her according to Article 33.	Draft law proposes editing Article 33, section (2) in the following wording: „(2) The member of the electoral bureau or of the electoral council is recalled by the body (authority) or by the electoral competitor who appointed him/her, for the violation of the interdictions set forth in Article 32, section (7) of the present Code, for the infringement of voters' electoral rights, for the groundless absence at two consecutive sessions of the electoral body or for the refusal to execute decisions of the electoral body they are party to; ascertained through a decision of the electoral body he/she is a party to, and in case it was challenged – after its confirmation by the hierarchically superior electoral body."	New regulations are proposed aimed at limiting the possibilities of recalling members of the electoral bodies and describing in more details the recalling procedure, the fact that could ensure stability of electoral officials, as well as their independence. *Recommendations implemented.*
41. The recommendation in the last Joint Opinion to include "*adequate provisions*" to "*guarantee that all*	Creation of electoral bodies is regulated by Articles 16, 27 and 29	Electoral Code does not **envisage** that members with the right to deliberative vote in electoral bodies

parliamentary parties will have at least minimal representation on commissions" and the OSCE/ODIHR's recommendation "*to consider as part of the formula for forming commissions enabling the participation of parties that in some regions of the country have a stronger presence than national parties represented in the parliament*" have not been addressed by the amendments."	of the Electoral Code. Such modality of creation of the respective electoral bodies has been the result of political consensus reached after parliamentary elections from 6 March 2005. Amendments proposed in the draft law do not change principles of appointing members of the electoral bodies.	would be **„representatives"** of parliamentary political parties; they are nominated by these political parties; however have restrictions in representing them. Therefore, Article 19 includes restrictions for members of the CEC; Article 29 section (11) and Article 32 section (7) includes restrictions for members of other electoral bodies (councils and bureaus). In many cases, CEC is the one that ensures completion of electoral bodies from the reserve of electoral officials and, in such cases; the principles of parliamentary political representation are also not applied. It should be noted that some of the members of the electoral bodies are nominated by the local councils (Article 27 and Article 29 of the Election Code), the fact that offers possibilities to political parties represented by majority at the local level to

		nominate members of electoral bodies with the right to deliberative vote. Note: The issue at stake might constitute subject of further discussions, part of a more complex reform. *Non-implemented recommendations (with argumentation).*
The list of voters **42.** On 15 May 2008, the Moldovan Parliament adopted a Law on the Concept of State Automatic Information System "Elections", which tasked the Central Electoral Commission to develop and introduce an electronic system facilitating the preparation, conduct and tabulation of election results. The Concept envisages *inter alia* creation of a centralised electronic voter	The draft law proposes amendment and completion of Electoral Code with special provisions concerning the State Register of Voters (Article 38/1) and the voters' lists (Article 39). It is proposed to amend Article 40, so that section 1 has the following	The draft law includes express provisions concerning the creation of the Register of Voters on the basis of the State Population Register, the responsibility of the CEC to maintain the register, and its general responsibility to draw up the voters' lists. Note: During finalization of the draft law and in the process of reviewing the related legislation, the need

register to eliminate the need for paper voters' lists and to exclude the possibility of multiple voting **43.** The implementation of this new Law could potentially address a number of concerns raised in the last Joint Opinion (from the year 2007): **„***31. The quality of the voters register has been an issue ever since multi party elections started in Moldova. The main rule is that people shall register where they live and vote where they have registered. Those who move after the registration is closed may be assigned to a new* *voting location by receiving a voting right certificate confirming the removal from the previous register (Article 39(9)). The registers are kept at mayoral level and the possibilities for checking across the whole country for duplicates are limited. 32. The law still permits election day registration of voters upon presentation of proof of residence within a precinct. Such voters are added to a so-called supplementary register.*	content: „(1) Voters' lists shall be made available in the premises of the polling stations, and shall be posted on the official web site of the Central Electoral Commission twenty days before elections. A copy of the list shall be kept at the mayoralty. Voters shall be notified, not later than twenty days prior to elections, about the location of the polling station where they shall vote." Article 40 is proposed to be completed with section 3, which shall have the following content: „(3) The Central Electoral Commission elaborates and adopts the Regulation on the procedure of drawing up, verification and updating the voters' lists, clearly regulating the issues on: sending voters' lists to electoral bureaus; including/excluding voters by the members of the precinct electoral bureaus; further presentation of the	to additionally address some of the following aspects might be examined: - collaboration between the CEC (holder of the State Register of Voters) and the authority that is holding the State Population Register; - ensuring transparency of data from the State Register of Voters and the possibility of voters to verify it; - protection of personal data of voters; - collaboration with the local authorities; - verification and correction of voters' lists. *Recommendations partially implemented.*

The continued use of supplementary lists and the absence of sufficient safeguards against multiple voting raise concerns with regard to possible manipulations. Furthermore, the practice is contrary to the Code of Good Practice in Electoral Matters. 33. More precisely, the Code of Good Practice in Electoral Matters emphasises how strictly important it is that the voters register be permanent,9 as well as regularly up-dated10. At the same time, the requirements for the voters lists to ” be checked with voters who are on the list,

at their domicile”,11 and to be updated every year ”on the basis of the specification made at the voters’ domicile”,12 may result in practice that was previously criticised by the Election Observation Mission (EOM) of the Congress of Local and Regional Authorities of the Council of Europe. During the last local elections in Moldova, the EOM stated that the voters’ lists were checked via a “door-to-door” system just before the beginning of the electoral campaign, and found that this

final voters’ lists, etc.”

method of checking and updating voters' register opens the possibility of creating lists of different formats, including handwritten lists, and thus affect their accuracy.13 As noted also in the Final Report of the OSCE/ODIHR EOM to the 2007 local elections, efforts should be undertaken to ensure that voters lists are prepared in a uniform format all across the country and contain all the data required by the law. 34. It is therefore urgent that Moldova increases the reliability of the voters' lists and introduces a voter registration system in line with previous recommendations of OSCE/ODIHR, Council of Europe and the Code of Good Practice in Electoral Matters."

43. ... Recommendations made in March 2006 Joint Opinion pertaining to ensuring publicity of the voter register, access of voters to the data on the register, allowing for a sufficient scrutiny period, as well as existence of revision mechanisms remain valid.

Candidature **44.** ... An addition to Article 41 specifies that parties contesting the elections "*may nominate for the electoral candidate their members and also persons without any political affiliation*". This provision must be read in conjunction with the prohibition on forming pre-electoral blocs and coalitions introduced by the amendments, since its rationale appears to be to avoid different political parties building *de facto* pre-electoral coalitions. While this is clearly consistent with the prohibition of pre-electoral blocs, such restrictions to political parties' freedom to choose candidates on their lists is better avoided, even if it concerns other parties' members. This would allow a party not running for a certain election to support another list, a move which should be permitted in particular when pre-electoral blocks are not allowed. If	The draft law proposes amendment of Article 41, section (2): - in letter a), the text "Political parties may nominate as candidates both their party members, as well as persons who are not politically affiliated;" is excluded. - a new letter b) is introduced with the following content: „b) electoral blocs, formed based on the decisions adopted according to the Statutes (regulations) of political parties and other social-political organizations which formed them, which are registered: by the Central Electoral Commission – in	Through amendments, prohibition to nominate as candidates only members of political parties or persons who are not politically affiliated shall be excluded and the right of electoral blocks to nominate candidates is restored. In Article 44, the possibility to run for several eligible positions on behalf of the same electoral competitor is preserved. *Recommendations implemented.*

a person runs against his/her own party's list, then it should be left to the discretion of the party to take action. As a matter of principle, parties running in an election should be able to compose their lists as they see fit.	parliamentary elections and in local general elections or, respectively, by the precinct electoral councils – in case of new elections. The candidates shall be nominated within 15 days since the date of setting up the electoral blocs, and in case the electoral blocs were formed before the start of electoral period – within 15 days as of the start of this period.".	
45. Article 44 has been supplemented by provision 3^1, which states that "*A person may aspire to more electoral position but only from one party*". It is taken for granted that the limitation applies to elections held at the same time. This could be specified, and one could specify that running as an independent candidate is permitted even if a person runs as a party candidate in another race.	Article 44, section 3/1 is proposed in a new wording: „(3^1) Within the same elections, a person can run for several eligible positions only on the behalf of one political party or one electoral bloc."	

46. The last Joint Opinion (from the year 2007) has pointed out on shortcomings in Articles 42 and 43, however they were not addressed in the amendments. According to Joint Opinion from 2007 (points 35-42): „*35. According to Article 42(6), the person who collects signatures of electors signs every paper of subscription lists in the presence of the head of the local public administration authority of the territory where the signatures are collected. However, this procedure does not guarantee the independence and impartiality of registration of candidates. Furthermore, it appears cumbersome and redundant since lists with support signatures will eventually be verified by the respective election commissions, which have legal authority to handle candidate registration – an authority which local public administration is not vested with. 36. These are only independent candidates that are requested to present signatures in support of their candidacies.*	According to Article 43, section (4) of the Electoral Code, the following shall be considered null and void: - the subscription lists drawn up before the beginning of the period of candidates' nomination; - the signatures from the subscription lists which are considered false; - the subscription lists which were not filled in according to the requirements stipulated by Article 42 section (6).	Note: The Electoral Code could be completed with additional, more detailed provisions, concerning: - grounds for rejecting registration of certain candidates because of inaccuracies in the subscription lists (provisions of Article 78 could be transferred to Article 43 or taken over also in Article 127); - express provision of the need to observe Article 69 in order to exclude repeat voting of electoral competitors guilty of frauds (repetition of cases that could determine exclusion). *Recommendations partially implemented.*

Registered parties and blocks of parties do not need to collect such signatures during an election. However, according to the Law on Political Parties, the initial registration of a political party by the authorities is conditional on the submission of a list of support signatures. 37. Article 43 (4) provides for nullification of subscription lists drawn up before the beginning date of the period of nomination of candidates. However, it is unclear whether the presence of some signatures collected before the beginning of the period of nomination of candidates, regardless of their number, would serve as the basis for nullifying the rest of the signatures on the same list, even if those were collected within the legal period. The Code should clearly indicate that only the signatures collected outside the legal period should be disqualified. 38. The Code should clearly state the procedures for the verification of documents submitted by candidates for registration (if any), as well as what happens if any of the information is found	Additional provisions concerning the subscription lists and the modalities of their verification, completion or their exclusion during the parliamentary elections are included in Article 78 of the Electoral Code. The detailed aspects concerning the subscription lists are regulated through the Decision of the CEC nr. 385 from 12.12.2006 concerning approval of the Instruction on the modality of drawing up, legalization, submission and verification of the subscription lists. Aspects concerning cancellation of	

inaccurate. 39. In addition, previous Joint Recommendations raised concerns over three articles of the Code that sanction some violations contained therein with the cancellation of the candidate registration. Candidacy can be cancelled in cases when: Article 36: "a contestant in an election receives on his/her account undeclared funds from abroad or has knowingly used such funds […]"; in such a case, the CEC will ask the Supreme Court to nullify the registration of the contestant. 40. In case of repeat elections following nullification of elections by the Constitutional Court (Article 93) or the CEC (in Article 138), both articles stipulate that "electoral candidates who committed fraud shall be excluded from the voting ballots". 41. The Joint Recommendations stressed the need that any proceedings that should lead to such a sanction should abide by the principle of presumption of innocence. The Code should also specify that such decisions should not lead to the cancellation of the mandate of an elected	the candidates' registration are regulated by Article 69 (point 39 from the draft Law). De-registration from ballot papers of certain electoral competitors is allowed only on the basis of a final court ruling (Article 93 and 138).	

candidate. No amendment has been entered to the mentioned norms. It can be assumed that the existing norms can, and indeed have to be, interpreted in a way that is consistent with the intended principles. 42. The observation of the 2007 local elections by the OSCE/ODIHR EOM revealed a need to further clarify the legal grounds for deregistration of candidates. Under Article 126(1) of the Electoral Code, a party taking part in local elections is obliged to submit a certain minimum number of candidates on a party list which corresponds to 1/2 of the number of mandates in a given district council. Similar provision exists for parliamentary elections, as stated in Article 79. During the 2007 local elections, the above requirement was used by some election commissions as grounds for annulment of entire candidate lists following withdrawal of some candidates, when the number of remaining candidates fell below the required number.14 The Law should clarify that the withdrawal or exclusion of some candidates from a list of

a party, that was already registered and thus has fulfilled all legal registration requirements, should not result in automatic deregistration of the entire list – a measure that should be generally regarded as a last resort in a democratic society.		
47. … However the code remains unclear on the issue of procedures for the verification of documents submitted by candidates for registration, as well as what happens if any of the information is found inaccurate.	The draft law proposes a number of amendments in Article 44, section (1): - the words "starting with the day following the day when elections were announced and" are excluded; - in section (1), the end of letter d) is completed with the text "including also the statement, on his/her own responsibility, on the absence of legal and judicial interdictions to run for the office". Certain aspects concerning cancellation of candidates' registration are regulated by Article	Note: Electoral Code does not include clear provisions concerning verification of income and property declarations of the candidates, as well as eventual consequences. At the same time, it is difficult to apply regulations in this field and they could generate abuses, and for this reason, any amendment in the field would need a complex, proportional approach, and a tolerant manner for the insignificant and unintentional violations. *Recommendations partially implemented.*

	69 (point 39 from the draft law).	
48. An amendment to article 48(3) slightly changes the process for deciding the sequence of electoral contestants on the ballot. It seems that the sequence is still according to the time the nomination is filed, but for nominations received on the same day it is stated that the sequence within that group is decided by lots. The addition to article 44(2) specifies that there needs to be at least 24 hours between the announcement of time and place for receiving the nominations and the start of receiving such documents. This, together with the lots, seems to provide for fair arrangements for the placement on the ballot where parties are provided for the same possibilities for getting a good placement on the ballot.	The draft law proposes amendment of Article 48, so that the order of registering candidates in ballot papers to be determined by the relevant electoral body within maximum 24 hours after expiration of the period of electoral competitor's registration, by drawing the lots, according to a specially approved Regulation.	The proposed amendments ensure adequate implementation of the recommendations in the field. *Recommendations implemented.*
49. It is recommended to determine the order of appearance of contestants on the ballot by drawing of lots carried out openly and transparently, only after the		

registration of all electoral competitors, and preferably in the presence of representatives of all electoral competitors and the media.		
De-registration of candidacies.		
51. A new provision 6^1 in Article 46 states "*The withdrawal demand of the candidate from the list presented during the term established by paragraph (6) will be examined by the respective competent organs of the party during 3 days.*" The reading of this provision is uneasy. In particular, while it is assumed that it is to the competent organ of the party that a withdrawal demand is submitted by the candidate, it would be useful to specify it. In addition, the next steps of the procedure, after the party's organs examine the request for withdrawal, are not specified, in particular modalities for notifying the body of registration.	Article 46 section (6) establishes: „(6) Candidates in an election may, no latter than 7 days prior to election, withdraw their candidacy by addressing in writing a declaration to this effect to the electoral body which registered their candidacy. Parties and socio-political organizations may modify their registered lists, within the same term and in conformity with Articles 79 and 126 thereof. *After expiry of the announced term, the registration of the electoral*	Provisions of section 6/1, Article 46, referred to in point 51 of the Joint Opinion, shall be interpreted in terms of the final sentence of section (6), which refers to the request to withdraw the candidacy that *follows under incidence of Article 13, section (2) of the Electoral Code* (cannot be elected). „The competent body of the party" means the body entitled to nominate candidates in elections, this body can differ from party to party, in accordance to their statutory regulations. Note: In order to bring clarity, Article 46 section (6/1) could be amended in order to include an express reference to Article 13 section (2) from the Election Code.

	competitor can be cancelled exclusively by the electoral body which performed the registration, on basis of the decision of the court of law, as well as in the event of death or emergence of conditions set out in Article 13 section (2) of the present Code."	*Non-implemented recommendations (with argumentation).*
55. The joint recommendations stressed the need that any proceedings that should lead to such a sanction should abide by the principle of presumption of innocence. The code should also specify that such decisions should not lead to the cancellation of the mandate of an elected candidate. These recommendations are reiterated. **56.** In addition, the current wording of the code implies that any "violation of the code" may constitute possible grounds for de-registration, without consideration of its	According to Article 43 section (4) of the Electoral Code, the following shall be considered null and void: "a) the subscription lists drawn up before the beginning of the period of candidates' nomination; b) the signatures from the subscription lists which are	Note: The Electoral Code could be completed with additional, more detailed provisions, concerning: - grounds for rejecting registration of certain candidates because of inaccuracies in the subscription lists (provisions of Article 78 could be transferred to Article 43 or taken over also in Article 127); - de-registration from repeat elections of electoral competitors guilty of committing frauds

gravity. The provisions of the code should be reviewed in order to guarantee that minor offences do not result in such drastic sanctions as de-registration of a candidate. A September 2007 decision of the Chisinau Court of Appeal excluding candidates for repeat mayoral elections in the villages of Buteni and Chirca in implementation of article 138, illustrates the need to introduce a principle of proportionality

57. Finally, recommendations related to the cases of deregistration of entire lists resulting from withdrawal of candidates have not been acted upon. Under Article 126(1) of the Election Code, a party taking part in local elections is obliged to submit a certain minimum number of candidates on a party list which corresponds to 1/2 of the number of mandates in a given district council. Similar provision exists for parliamentary elections, as stated in Article 79. During the 2007 local elections, the above requirement was used by some election commissions as grounds for annulment of entire

considered false;

c) the subscription lists which were not filled in according to the requirements stipulated by Article 42 section (6).

Additional provisions concerning the subscription lists and modalities of their verification, completion or exclusion during the parliamentary elections are included in Article 78 of the Election Code.

The detailed aspects concerning the subscription lists are regulated through the Decision of the CEC nr. 385 from 12.12.2006 concerning approval of the Instruction on the modality of

(specification of reasons that lead to exclusion);

- provisions concerning the possibility of de-registration for “violation of the provisions of the Code” shall be corroborated and correlated with Article 69, in the wording proposed for amendment in the draft law.

Non-implemented recommendations (with argumentation).

candidate lists following withdrawal of some candidates, when the number of remaining candidates fell below the required number	drawing up, legalization, submission and verification of the subscription lists.	
58. The Law should clarify that the withdrawal or exclusion of some candidates from a list of a party, that was already registered and thus has fulfilled all legal registration requirements, should not result in automatic deregistration of the entire list – a measure that should be generally regarded as a last resort in a democratic society.	Aspects concerning cancellation of the candidates' registration are regulated by Article 69 (point 39 from the draft Law). De-registration from ballot papers of certain electoral competitors is allowed only on the basis of a final court ruling (Article 93 and 138).	
Electoral campaign. **59.** Concerns over potential limitations of the right of free expression and speech in paragraphs (1) and (12) of	It is proposed to formulate the whole Article 47 in a new wording. According to Article 47 section (2), the exercise of this right may be subject to a series of formalities,	Note: Moldovan authorities must observe international human rights documents, and regulations in the field follow to be interpreted and applied in accordance with these regulations and

Article 47 of the code also remain unaddressed. These paragraphs should be reviewed.	conditions, restrictions or sanctions „regulated by the law, which represent necessary measures in a democratic society, for national security, territorial integrity or public safety, protection of order and prevention of crimes, protection of health or morals, protection of reputation, protection of the rights of others, tin order to hinder the disclosure of confidential information or to guarantee the authority and impartiality of the judicial power.”.	case-law of the European Court for Human Rights. *Recommendations partially implemented.*
60. The concern over Article 36(1), which can be interpreted as limiting legitimate efforts by international organisations promoting democracy and pluralism,	Draft law does not touch upon amendment of Article 36.	No cases of application of sanctions for the violation of the respective provisions were registered in the electoral practice of the Republic of Moldova.

which was noted in paragraph 47 of the last Joint Opinion (from 2007), remains unaddressed. According to Joint Opinion from 2007: „*47. According to Article 36 (1), "Direct or indirect funding or material support of any kind for the electoral campaign of candidates in an election and electoral contestants by foreign countries, foreign, international or joint enterprises, institutions, organisations, as well as by natural persons who are not citizens of the Republic of Moldova is prohibited." This Article as it stands now is too broad and limits also legitimate efforts by international organisations promoting democracy and pluralism.*".		Note: Regulations concerning financial/material assistance provided by international organizations for legitimate support of efforts aimed at promoting democracy and pluralism might need to be additionally regulated, together with re-evaluation of provisions concerning financing of political parties (in the process of improving the related or separate legislation). *Non-implemented recommendations.*
61. Article 47(13) has been amended to state that local public authorities are obliged to establish "*a minimum number of places specially designed for electoral purposes*". This could limit possible misinterpretation of this provision, which in the past led to restrict meetings	In the wording of the draft law, Article 47 section (6) provides that local public administration authorities are obliged, within 3 days after the registration date of	The respective norm is interpreted not in order to limit, but in order to provide some minimum guarantees (according to the principle „less cannot be offered").

with voters.	the electoral competitor "to establish and guarantee the minimum of special places for electoral advertising, as well as to establish a minimum of premises for organizing meetings with the voters", as well as make them public to the interested subjects via all available means of communication.	*Implemented recommendations.*
The Electoral Campaign and the Media **63.** Shortcomings identified in the previous joint opinions have remained unaddressed, in particular the fact that "*news and current affairs programmes of some channels have reported on incumbents' activities or offered them airtime immediately prior to the elections in*	Regulations concerning the reflection of elections in mass-media were re-examined and concentrated in Article 64 (*General principles concerning reflection of elections by mass-media*) and Article 64/1 *(Peculiarities of*	Note: Regulations in the field shall have special attention, taking into consideration: - legitimate rights and interests of mass-media and of the electoral competitors; - differences existing between obligations of the public and private mass-media; - the need to guarantee and promote the public

such a way that one would perceive it as campaigning. On the other hand, Article 47(4) is rather extreme in not allowing any editorial reporting on the meetings of electoral competitors with the voters and similar events, apparently for fear of giving an advantage to some competitors. Leaving all campaign reports to paid or free advertisements may not provide the public with the best information on political differences". According to the Joint Opinion from 2007: „*59. One problem in Moldova has been that news and current affairs programmes of some channels have reported on incumbents' activities or offered them airtime immediately prior to the elections in such a way that one would perceive it as campaigning. On the other hand, Article 47(4) is rather extreme in not allowing any editorial reporting on the meetings of electoral competitors with the voters and similar events, apparently for fear of giving an advantage to some competitors. Leaving all campaign reports to paid or*	*reflecting elections by mass-media).*	interest. *Implemented recommendations.*

free advertisements may not provide the public with the best information on political differences.".

64. This regulation creates a disproportionate advantage to the incumbents in the media, confirmed by election observation reports. These recommendations are reiterated and should be seriously considered.

Suspension of voting

66. Article 51 of the code has been supplemented by a paragraph (1^1) that reads "*On the local elections, in case when the procedure of ballot was suspended according to par. 1 did not restart during 2 hours, the ballot is considered suspended for a period which did not get by 2 weeks and Central Electoral Commission in 3 days will adopt a decision about the day when will restart the suspended ballot. The procedure of ballot will restart in the same legal conditions*".

67. The reason for including such a special provision for local elections is not readily apparent. The code does not provide specific conditions, under which the voting should be suspended for a longer time, rather than be re-located as prescribed by Article 51(1). This may lead to arbitrary interpretation of circumstances and decisions that may affect the voting process.

The draft law does not foresee amendment of Article 51.

Note: The respective provisions were introduced in the Electoral Code as a result of blocked elections from 2007 in some localities from the left bank of Dniester river (particularly, commune Corjova), where separatist authorities disrupted the access into the polling station and the voting process itself.

Following the respective situation, which repeated also in 2009, CEC has adopted several decisions: no 733 from 08.06.2007; no 753 from 17.06.2007; no 1226 from 02.10.2007; no 1323 from 06.11.2007; no 2871 from 29.07.2009. In the same context, petitions were addressed to the OSCE Mission, Government of the Republic of Moldova, Moldovan Prosecutor's Office; however legislation did not regulate certain measures which could have been taken by the election bodies.

Other such serious cases were not registered on the

68. It is understandable that there may be special circumstances under which voting may not continue, or even be re-located to another venue, however any such circumstances should be clearly listed in the code, and closing of voting after 2 hours of suspension should not be foreseen. The relevant election commission (or in specific circumstance another relevant authority) should make a justified decision on such a prolonged suspension of voting before such suspension takes place and such a decision should be subject to appeal to a court. In addition, circumstances that may lead to such a long period of suspension of voting are possible under any election, and not only local elections.		territory of Republic of Moldova. *Non-implemented recommendations (with argumentation).*
Security of the mobile voting process **70**. Article 55(4) has been supplemented with a sentence	It is proposed to amend Article 55 from the draft law, establishing that: - the requests for voting at the place of residence (with mobile box) are recorded only in written form and only until 15:00 hour in the day	*Implemented recommendations.*

that reads: "*The requests are made prior 2 weeks of the beginning of the elections until the 15:00 hour in the day of election*". This refers to requests for voting at the place of residence for people who can not come to the polling station on election day due to health reasons "*or based on other justified grounds*". **71**. The deadline and modalities introduced in article 55(4) for a *„mobile voting team"* are positive and should make the process easier to monitor. To complete this security measure, it is however recommended that all requests for mobile voting are recorded in written form before the actual voting. Further, all written requests should be reconciled with the number of ballots in the mobile ballot box after the opening of the mobile ballot box.	prior to election day"; - arrested and detained individuals shall vote in detention places through mobile boxes; - national and international observers can participate during all procedures with the mobile box.	
Closing of polling stations	The draft law proposes completing	Note: The requirement to receive a prior permission

72. The Electoral Code determines the voting time from 7 a.m. to 9 p.m. However, despite previous recommendations, the amendments to the code did not clearly provide that voters waiting in line outside polling stations at the time of polling station closing will be allowed to vote.	Article 53 with section (6), with the following content: „(6) The electoral bureau decides to prolong with no more than 2 hours the period of voting, in order to allow the voters, who queue up in the respective precinct, to exercise their rights, providing that the district electoral council issued a permission to prolong the voting, and that the Central Electoral Commission has been preliminary notified about this.”	from the district council needs to be re-examined; the respective council could be just informed by the respective precinct bureau, in order to also inform CEC about the prolongation. *Recommendations partially implemented.*

Counting and "recounting" of ballots

73. A new paragraph (2^1) has been added to Article 60 that reads: "*In case of disagreement with preliminary results, before validation the results by the courts electoral candidates may address to this courts to restart the number of votes*".

74. The paragraph does not include on what terms such a request has to be granted. Does that mean that any request will lead to a recounting or does the request have to be justified?

75. This amendment only partially addresses the concerns raised in paragraph 71 of the last Joint Opinion, in so far as it still does not "*provide for a clear division of responsibilities between the DECs and courts with regard to recounts*", neither does it specify which body should carry out the recount.

76. Besides, it was recommended to give consideration to making it compulsory for the relevant DEC to review

The draft law proposes completing Article 60, section 2^1) with the following sentence: „The recounting may be ordered by the body entitled to validate the election results based on justified reasons and shall take place in maximum 10 days since the election date."

The problem of recounting of ballots was officially invoked after parliamentary elections from 5 April 2009, Constitutional Court adopted a decision on recounting of ballots, on the basis of which, CEC has adopted a special decision (Decision no 2512 from 13.04.2009) and guidelines concerning recounting of ballots (Decision no 2514 from 13.04.2009.

Note: Grounds for ordering recounting of ballots follow to be expressly specified in the Election Code. There is a need to also adopt norms that would establish the modality of recounting the ballots: - by the same electoral bureaus, except those that committed frauds; - ensuring transparency and security of the process.

Recommendations partially implemented.

the count and to take action in cases of discrepancies in the reconciliation, i.e. conducting a recount without having to wait for a specific request to do so.		
77. A number of recommendations offered in the 2006 Joint Opinion with regard to counting and vote tabulation procedures also remain to be addressed. According to 2006 Joint Opinion: „*51. The reconciliation of ballots in polling stations has been assessed as raising problems during the last 2005 parliamentary elections. It was observed that polling station members had sometimes difficulties filling in protocol forms, and that there were uncertainties as to what modalities should apply when figures did not add up. It is important that the rules for recording figures are clear and that actions are taken if there are unacceptable discrepancies.* 2007 Joint Opinion ascertains: "*71. Besides, the Code remains unclear as to what happens if the figures on the*	The draft law does not include amendments and completions on this chapter.	Note: Recommendations from the 2006-2008 Joint Opinions concerning vote counting and tabulation need to be additionally addressed. *Non-implemented recommendations.*

results protocols show a difference between the number of ballots in the ballot box and the number of voters that cast ballots, in particular, if the first figure is higher than the second. As it was recommended, consideration should be given to making it compulsory for the relevant DEC to review the count and to take action in cases of discrepancies in the reconciliation. Furthermore, as recommended in the Final Report of the OSCE/ODIHR EOM to 2007 local elections, "the Electoral Code should provide for a clear division of responsibilities between the DECs and courts with regard to recounts, specifying on what grounds a recount can be requested, by whom and from which body, as well as which body should carry it out.".

Publication of results **79**. A long standing recommendation that "*The CEC should provide detailed election results, by polling stations, available on its website as soon as they have been processed in the District election commissions*" has not been addressed. **80.** Additionally, a concern remains regarding the indication in Article 61(2) of the code that a commission should not publish the preliminary results if an appeal related to the conduct of voting was filed with a court. Nevertheless, the code should provide provisions to ensure the rapid publication of preliminary results, by polling station, so as to ensure optimal transparency. **81**. The last Joint Opinion made the point that "*the need for transparency is just as high, and possibly higher, in such cases. Furthermore, the outcomes of any possible court case can find reflection in the final results*".	Draft law proposes that Article 61, section (1) is completed with the provisions, according to which, in case of parliamentary and general local elections, preliminary results, which are divided per precinct, shall be posted on the official web site of the CEC, as soon as they are processed.	Note: Provisions of the Code could be amended in order to establish that dispositions concerning limitation of publicity follow to be applied only in exceptional cases, possibly on the basis of a court decision and only if the right to public information is not affected. *Recommendations partially implemented.*

Observers **82**. As noted in the last Joint Opinion "*According to Article 63(1), the district electoral council may deny an accreditation to an observer and is obliged to inform the nominating party of grounds for the denial. However, the Code does not provide a clear list of reasons that may serve as basis for refusal to accredit an observer*". This issue has not been addressed in the amendments. **83**. Furthermore, the amendments did not clarify as to what would be the basis for the CEC to decide whether the organisation is "*able to exercise civic functions during the elections*" as provided in Article 63(4), in order to decide on the accreditation of observers' groups. The Joint Opinion repeats that this requirement appears redundant and may create unnecessary restrictions for domestic observers. Moreover, the code does not provide	Draft law proposes a number of amendments to Article 63: - the refusal to register observers must be justified and can be appealed according to hierarchical competence, and later – in the court of law; - observers have access to all electoral information, to voters' lists, to the minutes drawn up by the electoral bodies, they may take photos and video, the local observers may submit notifications on the revealed irregularities, which are to be examined by the chairperson of the electoral body, by informing the author of the notification on the decision taken; - the Central Electoral Commission follows to create the Protocol Office of Accredited International Observers.	Note: Objections have been previously raised concerning the expression „*organization capable of exercising civic functions in elections*". No considerable abuses have been ascertained in the process of registration of observers on behalf of local organizations, however, in certain cases, the norms in question could be interpretable. *Recommendations partially implemented.*

any concrete and objective criteria, as well as the procedure for the CEC to make a decision about the capability of the organisation.

Voter participation threshold necessary for validation of elections

7. Despite the recommendation given in the last Joint Opinion and in the 2006 Joint Opinion underlining that *the turnout requirement* can lead to ”endless cycles of failed elections”, the Electoral Code of Moldova maintained the provision that elections shall be declared invalid “*if they were attended by less then 1/2 of the persons registered in the electoral lists*”.

8. Participation is important for representative democracy, but imposed turnout requirements do not necessarily improve participation in an effective manner. Moreover, turnout requirements proved to be ineffective

The draft law:

- does not touch upon the threshold of voters’ participation during parliamentary elections (1/3 of voters or without threshold during repeat elections) or local elections (1/4 of voters or without threshold during repeat elections);

- for republican referenda, it is proposed to reduce threshold until 1/2 of the number of voters (currently, the threshold is of 3/5 of voters);

- for local referenda, it is proposed

Note: Currently, argumentation for keeping a certain threshold is generated by declared desire to ensure „legitimacy” of the elected power/decision taken, and results from the practice of participation of voters from the Republic of Moldova during general elections, as well as dynamics of such participation.

YEAR	**ELECTIONS**	**PERCENTAGE OF PARTICIPATION**
1994	Parliamentary	**79.31**
1995	Local	**60.02**

and troublesome in some recent cases in post-communist countries. In fact, it may potentially contribute to electoral malfeasance committed in an effort to have a successful election. Moldova itself was faced with turnout requirement problems and failed elections in the case of the 2005 Election of the Mayor of Chisinau. Furthermore, the turnout requirements also bear the potential for abuse by political forces, by providing them an opportunity to influence the process by calling for a boycott.

86. As was already recommended in the previous joint opinions, turnout requirements should be removed from Articles 91 and 93. The same comment is valid for Articles 136 on local elections and 171 and 199 on referenda, even though the turnout requirements here are lower and absent for repeat local elections. Bearing in mind the problems that might be generated by turnout requirements, many countries do not consider them even as a precondition for the validity of the referenda.

to reduce threshold until 1/3 of the number of voters (currently, threshold is of 1/2 of the number of voters).

1996	Presidential, round I	**68.13**
1996	Presidential, round II	**71.61**
1998	Parliamentary	**69.12**
1999	Local	**58.45**
2001	Parliamentary	**67.52**
2003	Local	**58.66**
2005	Parliamentary	**64.84**
2007	Local	**52.34**
2009	Parliamentary	**57.55**
2009	Early parliamentary	**58.77**

In order to avoid certain possible political-institutional blockades and in order to avoid wasting resources for repeat elections, threshold for

Complaints and appeals procedures **87**. The previous joint opinions have repeatedly recommended that the powers and responsibilities of the various bodies responsible for the review of complaints and appeals should be clearly defined in order to avoid conflicts of jurisdiction, and that the code should not grant the appellants or the authorities the right to choose the appeal body, which is not in line with the Code of Good Practice in Electoral Matters. These recommendations have not been adequately addressed. **9**. Article 65(1) was amended to read "*Voters and*	The draft law proposes: - new wording of Articles regulating *complaints* (Article 65) and *submission of appeals* (Article 66), which establish that complaints shall be filed in court only after having being first appealed to the electoral body; - specification concerning calculation of timeframes in calendar days (Article 67); - the court should give priority to complaints on registration of candidates and accuracy of voters' lists; - introduction of new components of crimes (Article 70) and offences (Article 71) concerning the procedure of examination of offences.	participating in elections / referenda shall be re-examined. *Recommendations partially implemented.* Note: The procedure of hierarchical examination of complaints by electoral bodies first and only afterwards in courts of law might considerably tergiversate adoption of a final decision on electoral matters. In the process of reviewing related legislation, components of crimes and offences follow to be re-examined and adjusted, by establishing the corresponding sanctions. *Recommendations partially implemented*

electoral competitors may contest the actions (inaction) and decisions taken by the electoral committees and councils, actions (inactions) of electoral candidates in electoral bodies respecting the system of electoral hierarchic authorities and courts".		
10. This amendment fails to fully address the above recommendations, since a mere reference in this provision to "*the system of electoral hierarchic authorities and courts*" does not resolve the issue of potential conflicts of jurisdiction between courts and election commissions. Also, it is not clear whether the reference to hierarchy in the judicial system resolves issues arising out of Articles 68, 89 and 92, which permit both ordinary courts and the Constitutional Court to declare the results null.		
11. In addition, as noted in the last Joint Opinion, Article 68(3) of the code appears to vest courts with authority to	The draft law does not envisage amendment of Article 68.	Note: Article 68 follows to be re-examined, possibly after carrying out some additional analysis of the

introduce changes to final result protocols in case any mistakes are revealed. The amendments failed to clarify what is meant by the sentence *"…shall exclude the electoral competitor which got less validly expressed votes, replacing him with another electoral competitor, which got a bigger validly expressed votes, in a decreasing order."* This seems to be an overly generalised way of correcting possible faults in a protocol.		method of examination of complaints and adopted decisions. *Non-implemented recommendations.*
12. Article 92 states that "*If the Constitutional Court finds that during the elections and/or during the counting of votes violations of this Code had occurred, which impacted the outcome of elections and attribution of mandates, the elections shall be declared null*". This might be interpreted as giving the Court authority to declare an election in the whole country null even if the	The draft law proposes amendment of Article 92, in order to ensure conducting elections in electoral precincts where election results were declared null. According to the established condition, declaration of elections null should not determine the situation where more than 1/3 of the deputies are not elected.	Note: The respective amendment is proposed in order to avoid organization of elections on the whole territory of the country and is generated also by the provisions of Article 62 of the Constitution, according to which, Constitutional Court, at the proposal of the CEC, validates mandates of deputies or refuses validation of mandates in case of violation

violation was isolated to certain precincts or districts. In line with the Code of Good Practice in Electoral Matters, repeat elections should be held in areas where the facts of violations were established. In addition, if the vote in the whole country has to be repeated, the criteria for declaring an election invalid may be regarded as overly stringent.		of electoral legislation. *Recommendations partially implemented.*
Penalties **13**. According to Article 69, individuals who commit any action against the honour and dignity of candidates shall be held legally accountable. The 2006 Joint Opinion pointed out[4] that the article "*is too broad and could be applied in a manner that would violate a person's right*	The draft law proposes replacement of words „actions against the honour and dignity of candidates" by the words "do not affect the reputation or the rights of others, the authority and impartiality of the judicial power".	The given norm shall not apply independently, provisions of Article 69 follow to be interpreted and applied together with Articles 70 and 71, with express provisions from the Criminal Code and Contravention Code, because only in this way they can produce legal effects. Note: Even though the words „do not affect the reputation or the rights of others, the authority and impartiality of the judicial power" are known in the

[4] CDL-AD(2006)001, par. 103.
[5] See par. 9.1 of the OSCE 1990 Copenhagen Document; par. 26 of the OSCE 1991 Moscow Document; Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and Articles 32 and 41 of the Constitution of Moldova.

to free speech and expression. This broad prohibition could lead to a violation of Article 10 ECHR, OSCE commitments, and domestic constitutional principles.[5] *It should be recommended that Article 69 be reformulated in a manner that is consistent with the right to free speech and expression.*"

14. Although the Article does not stipulate what sanction is applicable, the recommendation to reconsider the formulation of the given provision is reiterated.

legislation and international case law, they might generate abusive interpretations and would need additional examination.

Recommendations partially implemented.