

Corneliu GURIN

Igor BOȚAN

ANALYTIC STUDY
**„RECOMMENDATIONS OF INTERNATIONAL
INSTITUTIONS REGARDING THE ELECTORAL
LEGISLATION AND PROCEDURES IN THE REPUBLIC
OF MOLDOVA”**



The OSCE Mission to Moldova provided financial support for this publication. This support does not imply endorsement by the Mission of the content, design or presentation of the information and opinions contained therein.



The Study was elaborated by the experts of the Association for Participative Democracy ADEPT, within the project “Promoting compliance with international standards and OSCE commitments for democratic elections”.

CONTENTS

LIST OF ABBREVIATIONS	3
INTRODUCTION	4
SECTION 1. International framework and considerations	6
SECTION 2. Evaluation of the election legislation amendments in the period of 2007- 2010.....	10
SECTION 3. Draft Law for amending and complementing of Electoral Code.....	14
SECTION 4. General statements. Conclusions and recommendations	15
ANNEX. Analysis of recommendations from the Joint Opinion of OSCE/ODIHR and Venice Commission	Error! Bookmark not defined.

LIST OF ABBREVIATIONS

PACE	Parliamentary Assembly of the Council of Europe
ECHR	European Convention for protection of human rights and fundamental liberties
EC	European Commission
CoE	Council of Europe
VENICE COMMISSION	Commission for democracy through law of the CoE
OSCE	Organisation for Security and Cooperation in Europe
OSCE/ODIHR	The OSCE Office for Democratic Institutions and Human Rights
EU	European Union
CC	Criminal Code of the Republic of Moldova, adopted through the Law no 985-XV from 18.04.2002
UN	United Nations
Joint Opinion	Joint Opinions of the Venice Commission and OSCE/ODIHR on the Electoral Code of the Republic of Moldova

INTRODUCTION

Parliamentary elections from 2009 proved to be a new experience and provided new elements for evaluation of feasibility of democratic institutions in the Republic of Moldova. The elections from 5 April 2009 had been influenced by the development of electoral campaign, by the behaviour and actions of authorities, of electoral opponents, law enforcement bodies and politically biased mass-media institutions. Also, the existent and new shortcomings of the electoral legislation have been revealed, thus contributing to upholding of statements regarding electoral fraud, to compounding the doubts regarding the freedom and fairness of elections. Many of these difficulties had been noticed in advance and recommendations and objections regarding the legislation and electoral procedures in force were made, emphasising the necessity of correcting these shortcomings prior to the general elections.

Although a large number of amendments and completions to the Electoral Code have been made, the international assessments continue to note the inadequate legislation implementation practices, deficient legislative norms, the necessity for introduction of new provisions into electoral legislation.

A special role in the process of promotion of democratic standards application, of legislation development and of electoral procedures in Moldova, as well as within the European space, is played by the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE), which delegated representatives and observers to monitor all types of elections, and through its specialized institutions, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), European Commission for democracy through law (Venice Commission) have provided extensive expertise regarding the legal electoral framework of the Republic of Moldova.

OSCE/ODIHR and Venice Commission have provided Joint Recommendations regarding the provisions of Electoral Code of the Republic of Moldova in 2004, 2006, 2007 and 2008 and a large amount of the recommendations included into these documents had been implemented. In the same time, a series of recommendations included into a number of Joint Recommendations were not implemented at all or were partially implemented, a situation that is being pointed to in the reports on election monitoring and in the documents for evaluation of implementation of democratic reforms by the authorities of the Republic of Moldova.

This paper's goal is to evaluate the current situation regarding the implementation of international recommendations on electoral legislation of Moldova, application of these recommendations to the legislative amendments performed during the period of

2008-2010 and to the recent initiative for amendment of the Electoral Code, in order to determine the level of efficiency of the efforts of alignment to the electoral international standards and to emphasise the aspects that continue to require proper attention.

The elaboration of this study was possible due to the assistance offered by the OSCE Mission to Moldova, within the project “Promotion of adherence to the international standards and commitments to the OSCE regarding democratic elections”, implemented by the Association for participatory democracy ADEPT.

The authors have performed the research in good faith, in a realistic and constructive manner, and the recommendations and suggestions are presented with tribute to transparency and cooperation.

Section 1. International framework and considerations

In any democratic state, the process of establishment and exercise of power derives from the will of electorate, expressed through free and periodic elections. Thus, periodically and permanently, the political process generates from electoral process, which becomes a focal point of behaviour patterns of public authorities, of electoral authorities, law enforcement bodies, mass-media and civil society institutions. The assessment of the processes and democratic reforms in the Republic of Moldova largely depended and continues to depend on the quality of the legislative framework, of institutions and electoral procedures. The organization of free and legal elections, in compliance with the European and international standards are a priority in the development of cooperation relations between the Republic of Moldova, the Council of Europe, European Union, OSCE, UN agencies and other international entities.

In the context of the above-mentioned, we shall consider several documents and opinions of communitarian organizations, elaborated in connection with the implementation of the assumed commitments and in the light of the elections that were performed in 2009.

1.1. Report of the European Commission: “Implementation of the European Policy for Neighbourhood in 2008”, the Report on the progress of the Republic of Moldova¹

In the section “Context and general evaluation” is mentioned that there have been noticed “relapses in the electoral legislation while the general elections were scheduled for the April 2009”. In the subsection “Democracy and the rule of law state” it is mentioned that the authorities of Moldova have been active in the preparation of the general elections from April 2009, and the Parliament has adopted legislation that forbids obtaining of double or multiple citizenship for a large number of civil servants and elected representatives; has amended the Electoral Code in April 2008, by raising the electoral threshold for the political parties to enter the Parliament and placed and interdiction on creation of pre-electoral alliances. The CoE Report mentions that the Venice Commission of the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights declared in a Joint Opinion that these amendments “were a step back and have recommended unanimously abrogation of these provisions prior to the April 2009 elections”, but these recommendations had not been followed.

¹ http://www.delmda.ec.europa.eu/whatsnew/pdf/Progress%20Report_RO.pdf.

1.2. The Resolution of the European Parliament from 7 Mai 2009 regarding the situation of the Republic of Moldova²

The document stipulates expressly that a full conformity with the international democratic standards prior, during and after the development of the electoral process is of the utmost importance for the development of the relationships between the Republic of Moldova and European Union and regrets the fact that the Moldovan government made no effort in facilitating the process of voting for the Moldovan citizens living abroad, in compliance with the recommendations of the Venice Commission of the Council of Europe, requesting the Moldovan authorities to take measures necessary for the implementation of these recommendations within a practical timeframe.

1.3. Conclusions of the UE Council regarding the Republic of Moldova³

The Council solicits from the authorities of Moldova to ensure the freedom and fairness of future Parliamentary elections and to cooperate closely with the OSCE/ODIHR and Venice Commission of the Council of Europe for examining their recommendations.

1.4. Resolutions of the Parliamentary Assembly of the Council of Europe⁴

Resolution 1572 (2007) recommends the authorities of Moldova to assess carefully and take into consideration the conclusions of the international observers at the general local elections from 2007, in order to eliminate the shortcomings and ensure adherence to the European standards, to endure free, fair and democratic parliamentary elections in 2009.

In compliance with the **Resolution 1666 (2009)**, the electoral process (at the 5 April 2009 elections) had more important shortcomings in the procedure and essential improvements are necessary, because the recurrent problems in the electoral practice of Moldova are not in compliance with the obligations of the member states of the Council of Europe that aspire to edification of a pluralistic democratic society, based on the rule of law. The PACE was very concerned with the fact that Moldovan authorities have conformed in part to the previous recommendations regarding the improvement of electoral process and consolidation of democratic institutions of the state prior to legislative elections from 5 April 2009. In order to improve the trust into the democratic institutions of the state, the PACE solicits the new Moldovan authorities to recommence the reform of electoral legislation, in cooperation with the European Commission for the democracy through law (Venice Commission) with the goal to decrease the electoral threshold for political parties; to review immediately the

² Text available on <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0384&language=RO&ring=P6-RC-2009-0262>

³ Published on 15.06.2009, available on www.delmda.ec.europa.eu/whatsnew/press_releases_ro.shtml.

⁴ Available on www.parlament.md/apce/sesiunile/Rezolutiile/

electoral lists to make them final and impose the obligation to review and exclude for the future the additional lists, to implement mechanisms and procedures that would allow a large number of Moldovan citizens living abroad to exercise effectively their right to vote etc.

In **Resolution 1692 (2009)**, PACE solicits the CoE institutions to elaborate a number of cooperation programs, oriented towards rendering of support for consolidation of democratic institutions and continuation of the rule of law state development, the immediate solution of the problems with the electoral framework being necessary.

1.5. Joint Opinions of the Venice Commission and OSCE/ODIHR

Joint Opinion from 2006 states⁵, that on 22 July 2005 the Parliament of Moldova has adopted a series of amendments to the Electoral Code, which take partially in consideration the previous recommendations and are a result of national political debates or of technical suggestions formulated by the CEC. However, a significant number of recommendations were not applied and some newly adopted provisions raise concerns.

In the contents of the **Joint Opinion from 2007** it is mentioned that⁶, following the recommendations from the last Joint Opinion on the Electoral Code, the Parliament of Moldova has adopted several initiatives to improve electoral legislation, but some recommendations are not reflected in the amended text version and this opinion has to be compared with the one from 2006, since a large number of the previous recommendations remain applicable.

Joint Opinion from 2008 mentions⁷, that since it is a priority to amend the Electoral Code of Moldova in compliance with the recommendations contained in this Joint Opinion, the Venice Commission and OSCE/ODIHR draws the attention of authorities of the Republic of Moldova to the necessity to implement all the recommendations prior to the parliamentary elections scheduled for 2009.

1.6. Report of OSCE/ODIHR observers missions

Final Report of the OSCE/ODIHR Mission for observing the local elections in 2007 states the need to review the Electoral Code of Moldova, in order to eliminate the existing shortcomings and inconsistencies, as noted in the report and as mentioned

⁵ Joint Opinion (notification no. 357/2005) regarding the Electoral Code of Moldova from 2006 (Venice Commission and OSCE/ODIHR, CDL-AD(2006)001), Strassbourg/Warsaw, 20 March 2006.

⁶ Joint Opinion (notification No. 455 / 2007) regarding the Electoral Code of Moldova from 2007 (Venice Commission and OSCE/ODIHR, CDL-AD(2007)040), Strassbourg, 17 December 2007.

⁷ Joint Opinion (notification No. 484 / 2008) on the Electoral Code of Moldova from 2008 (Venice Commission and OSCE/ODIHR, CDL-AD(2008)022), Strassbourg, 23 October 2008.

in the Joint Opinions of the Venice Commission and OSCE/ODIHR regarding the Electoral Code of Moldova⁸.

Final Report of the OSCE/ODIHR Mission for observing the parliamentary elections from 5 April 2009 encourages the authorities of Moldova to apply the recommendations included in the Joint Opinions on the Electoral Code of Moldova (2007 and 2008), at the same time pointing to some issues that raise serious concerns (prohibition of pre-electoral alliances; restrictions for the holders of multiple citizenship; the threshold for validation of elections; electoral threshold etc.)⁹.

Also, the **Final Report of the OSCE/ODIHR Mission for monitoring the parliamentary elections from 29 July 2009** recommends the authorities of the Republic of Moldova to take into consideration the need to perform a comprehensive analysis of the Electoral code and to adopt relevant amendments in order to eliminate the inconsistencies, ambiguities and shortcomings of legal provisions, including those stipulated by the Joint Opinions of the OSCE/BIDD and the Venice Commission regarding the Electoral Code of Moldova¹⁰.

Thus, we conclude that the problem of improvement of the legal and institutional framework, as well as of electoral procedures remains a priority in the relations of the Republic of Moldova with the European institutions. At the same time, the recommendations presented by the communitarian and specialized bodies refer mainly to the Joint Opinions of the OSCE/ODIHR and Commission for democracy through law of the CoE (Venice Commission), and given that reason the implementation of these recommendations and their adequate application is of indisputable priority. This is made more important by the fact that in 2011 in Moldova should be organised general local elections and the problem of pending anticipated elections is not solved, due to failing of elections of the President of the Republic of Moldova.

⁸ Report from 21 September 2007, Warsaw.

⁹ Report from 16 June 2009, Warsaw.

¹⁰ Report from 14 October 2009, Warsaw.

Section 2. Evaluation of the election legislation amendments in the period of 2007- 2010

Electoral Code of the Republic of Moldova has been adopted by the Law No. 1381-XIII from 21.11.1997 and by 30 April 2010 has been amended through 29 organic laws, with another 5 Parliamentary Decisions adopted to ensure the unity of application of some provisions of the Electoral Code. Some provisions of the electoral legislation were subjected to constitutionality control, resulting in 7 decisions adopted by the Constitutional Court.

A significant number of amendments, completions and objections to electoral legal provisions is generated not only by the imperfection of legal norms in this field, but also by major political interest regarding these issues, which is expressed in two forms: prior to elections and after elections.

After general local elections from 2007 the Electoral Code has been modified by 6 laws, their content being further subjected to analysis.

2.1. Law No.273-XVI from 07.12.2007

Amendments have introduced interdictions for the persons holding also an additional citizenship to the Moldovan one. Thus, the holders of multiple (double) citizenship could not hold also the function of a member of Central Election Committee (CEC) and of the member of the Parliament. At the moment of registration as a candidate to the member of the Parliament position, the person holding also the citizenship of another state should declare, on her own liability, the fact of holding the citizenship of another state or that the documents for obtaining the citizenship of another state have been filed. At the moment of validation of the mandate of the member of the Parliament, this person had the obligation to confirm documentary renunciation of or initiation of the procedure to renounce to the citizenship of another state or withdrawal of the request for obtaining the citizenship of another state. The failure to declare the fact of holding a citizenship of another state at the moment of registration as a candidate for the member of the Parliament function or obtaining it during the exercise of the mandate was considered as ground for invalidation of deputy mandate by the Constitutional Court based on the CEC request.

In the Joint Opinion from 2008 regarding the Electoral Code of Moldova these limitations have been considered as non-compliant with the international standards and possibly in conflict with the provisions of the European Convention for protection of human rights and fundamental freedoms (ECHR), of the European Convention on citizenship¹¹.

¹¹ Joint Opinion from 2008, (Venice Commission and OSCE/ODIHR, CDL-AD(2008)022) pct.30-32, 38.

These amendments (including also other interdictions introduced into legislation for the holders of multiple citizenships) have been challenged in the Constitutional Court, which stated, by Decision No. 9 from 26.05.2009, that the adopted interdictions are constitutional and compliant with the European Convention on citizenship, as well as with the provisions of the ECHR (Additional Protocol No. 1).

To date, the Decision of the Constitutional Court of Moldova has been adopted in contradiction to European Court of Human Rights (ECHR) issuing prior a decision on 18.11.2008 regarding the case of *Tănase and Chirtoacă v. Moldova*, by which it has stated, unanimously, the infringement of the art. 3 of the Protocol No. 1 to the ECHR (regarding Mr. Tănase). The Decision of the ECHR has also stated that the Republic of Moldova is the only European state which allows its citizens the right to hold multiple citizenship, but interdicts their election in Parliament, this interdiction being adopted shortly prior to ordinary parliamentary elections, a practice in contradiction with the recommendation of the Venice Commission regarding the stability of electoral legislation. Further, also the Grand Chamber of the ECHR has confirmed the violation of the provisions of the Convention¹², has found that the respective Law and other measures of the electoral reform had a negative effect on the opposition parties. ECHR has also mentioned that the international reports, especially those of the ECRI and Venice Commission, were unanimous in critiquing these measures expressing their concern regarding discriminatory character of the law.

2.2. Law No.76-XVI from 10.04.2008

The amendments were directed to a larger number of provisions and procedure, most important of which are as follows:

- Prohibition (exclusion) for the electoral alliances to participate as electoral opponents;
- Increasing the electoral threshold for the parties, from 4% to 6% etc.
- Additional regulation of the limitations to the right to elect (detainees convicted for serious, especially serious and heinous crimes) and to be elected (holders of multiple citizenship; persons deprived of liberty by a final judicial decision and those that are serving their sentence in detention facilities or that have an active criminal record for committing serious, especially serious and heinous crimes; persons deprived of the right to hold responsible functions by a final judicial decision);
- Regulation of the issues regarding suspension from office of the persons that are not eligible to hold the membership to a party or which could abuse administrative resources due to their position (leaders of central and local public authorities);

¹² Decision of the Grand Chamber of the ECHR on the case of *Tănase v. Moldova*, issued on 27.04.2010.

- Additional conditions for the CEC members (holding the position for at least 10 years in the legal field) or public administration; holding only the citizenship of the Republic of Moldova);
- Possibility to annul the registration of electoral candidates only through a judicial decision, for serious violations of Election Code;
- The right of the parties to appoint as candidates only its members and persons without political affiliation;
- Establishing of a certain term (at least 24 hours) between the moment of adoption of the decision to establish the place and time for receiving the documents for registering as an electoral opponent and the established hour for receiving the documents;
- Right of each person to candidate to several election functions only on behalf of one party;
- Equalling of electoral publicity through internet and mobile telephone networks to electoral publicity in the written press;
- Registering electoral opponents in voting ballots in the order according to the drawing of lots performed daily by respective election body;
- Attribution to each voting ballot of numbers, which correspond to the number of order of the jurisdiction and number of order of respective voting section;
- Possibility to suspend the voting process for the local elections, for 2 weeks the most;
- Listing of identity papers that serve as basis for voting (identity card with the accompanying sheet; soviet type passport; provisional identity card of F-9 type; passport for entrance-leaving of the country; marine record, at parliamentary elections or at national referendum, in voting sections established abroad; military record);
- Possibility to request the recounting of votes;
- Challenging of the actions (inactions) and the decisions in higher election bodies or in the court;

2.3. Law No.25-XVII from 15.06.2009

The amendments adopted in close proximity of anticipated parliamentary elections from 29 July 2009 were regarding:

- Reducing the electoral threshold for the parties, from 6% to 5%;
- Reducing the threshold for participation for validation of elections, from $\frac{1}{2}$ to $\frac{1}{3}$ from the number of the persons enlisted in the electoral lists;
- Annuling of the participation threshold for validation of repeated elections.

2.4. Law no.127-XVIII from 23.12.2009

Initial amendments made to Electoral Code by the new parliamentary majority were regarding exclusion of the restrictions for multiple citizenship holders. Thus, from the

Code were eliminated the interdictions to hold the positions of a member of CEC and conditions imposed for the candidates to parliamentary elections.

2.5. Law No.131-XVIII from 23.12.2009

By this amendment, from the Electoral Code were excluded the elements of offences, by introducing a provision requesting to make reference to the articles 47-53 of Code on administrative offences. The amendments were explained by the non-compliances between the Electoral Code text and the corresponding text from the Code on administrative offences, but it was decided to adopt a simplified version (reference note) in place of essential reviewing of the administrative offences elements.

2.6. Law No.16-XVIII from 26.02.2010

Law has amended the art.139 of the Electoral Code regarding the organisation of new local elections (resignation or dissolving of the local council; resignation, revoking or the impossibility to exert the functions by a mayor; performing administrative-territorial restructuring). In compliance with the performed amendments, shall one of the conditions that generate new elections appear; the local public administration authority has the obligation to inform about it the Central Election Committee within 10 days latest since the circumstance has appeared. The date of new elections shall be established by CEC within 30 days the latest from the date of discovering the aforementioned circumstances, at least 60 days prior to the day of elections.

2.7. The compliance of amendments to the international recommendations

Examining the amendments and completions performed during 2007-2010 to the Electoral Code of the Republic of Moldova, we state that some of these are in conflict with the international standards and recommendations regarding democratic elections and only some of provisions could be considered to be in compliance with the recommendations and objections expressed in the Joint Opinions of the Venice Commission in years 2006, 2007 and 2008. Thus, the amendments performed by the Law No.25-XVII from 15.06.2009 and the law No. 127-XVIII from 23.12.2009 could be considered as positive. Some amendments adopted through the Law No.76-XVI from 10.04.2008 have tried to solve the problems stated in the Joint Opinions, but the provisions adopted were not sufficiently clear and did not bring complex solutions, thus the Joint Opinion from 2008 reiterates mainly the recommendations that were partially implemented or not implemented entirely¹³.

¹³ Joint Opinion from 2008, (Venice Commission and OSCE/ODIHR, CDL-AD(2008)022), pt.8 and 9.

Section 3. Draft Law for amending and complementing of Electoral Code

On 15 October 2009 the Parliament has adopted the Decision No.39-XVIII regarding the creation of the Special Parliamentary Commission for improvement of the electoral legal framework, which was going to elaborate and propose for adoption to the Parliament the amendments to Electoral Code and, upon necessity, to other connected legal acts, to ensure the organising in the Republic of Moldova of fair, free and democratic elections. The Special Parliamentary Commission has performed a comprehensive analysis of the situation in this area, taking into account the recommendations and objections of the Joint Opinions of Venice Commission and OSCE/ODIHR (2007-2008); international reports for monitoring of the parliamentary elections from 2009; independent local reports for monitoring the parliamentary elections from 2009; studies and researches regarding previous elections in Moldova and needs existing in this area (pre-electoral and electoral contexts) etc.

Draft law for amending and completion of Electoral Code elaborated by the Special Parliamentary Commission has been registered as a legislative initiative with the No. 558 from 02.03.2010, being proposed for public debates and consultations, to all interested persons. Simultaneously, the opinion of the OSCE/ODIHR and Venice Commission experts regarding this draft law has been requested.

In the Annex of this Study the analysis of the recommendations from the Joint Opinion of the OSCE/ODIHR and Venice Commission from 2008¹⁴ are presented, regarding their insertion into the amendments to the Electoral Code in 2008-2010, as well as into the draft law on amending and complementing the Election Code, on the roll of the Parliament of Moldova.

¹⁴ Upon necessity, in the contents of the analysis the recommendations from the Joint Opinions from 2006-2007 are taken into consideration, to the degree references are made to those documents.

Section 4. General statements. Conclusions and recommendations

4.1. Adopting and implementation of recommendations

Within the period of 2008-2010 there have been made amendments and completions to the Electoral Code, ensuring the implementation of some recommendations presented in Joint Opinions:

a) Law No. 25-XVII from 15.06.2009 has decreased the threshold of participation for validation of elections, from 1/2 to 1/3 from the number of persons included into electoral lists and removed the threshold for validation of repeated elections.

b) Law No. 127-XVIII from 23.12.2009 annulled the limitations for multiple citizenship holders.

c) Law No. 131-XVIII from 23.12.2009 tried to ensure certain compliance of the provisions on sanctions for administrative offences during elections.

b) Law No.16-XVIII from 26.02.2010 stipulated the issues regarding organization of repeated elections, regulating the procedures that previously created obstacles in implementation of the law.

Draft law on amending and complementing of Electoral Code, registered as a legislative initiative of a group of members of the Parliament and adopted in the first reading on 7 May 2010, takes into consideration several recommendations from the official Joint Opinion (from 2008) and ensures implementation of the recommendations regarding the following:

- Preventing raising of the electoral threshold;
- Reviewing the limitations to participate at elections of the electoral alliances;
- Limiting possibilities to dismiss members of electoral bodies;
- Limiting possibilities of annulling the registration of competitors (candidates);
- Implementation of the electronic register for voters;
- Creation of additional possibilities for voting abroad;
- Reducing the limitations for detainees of the right to vote;
- The possibility to appoint as candidates on behalf of parties and electoral alliances of the persons with a different political affiliation;
- Reducing the possibility of a multiple vote (provisions regarding the registry of voters, electoral lists, mobile ballot box);
- Periodical publication of the results of elections by CEC;
- Regulation of the activity of written and electronic mass-media;
- Procedure for filing and examining the requests and contestations;
- Limiting the possibilities for denying the registration of election monitors;
- Regulation of the rights of national and international observers;
- Ensuring the right to the freedom of expression etc.

Basic conclusions drawn by the authors of this study are that the proportion of complete or partial implementation of the recommendations of the international specialized institutions could be described as considerable, covering almost 2/3 of expressed concerns. However, a part of recommendations remain unimplemented or partially implemented, a fact that could lead to problems also at the following elections. These recommendations and problems could be divided as follows:

a) conceptual (systematic) which cannot be implemented presently due to certain objective circumstances and reasons, which are substantiated;

b) technical (usual) which could be examined and implemented within the current process of electoral legislation improvement.

4.2. Recommendations regarding conceptual problems

1. Electoral system. Amendment of electoral system applicable at parliamentary elections is a problem that has always been in the attention of the public, of political forces and other interested persons. There are multiple arguments in favour of reviewing the applicable system¹⁵, but there are also reasons that make difficult the reviewing of the current electoral system¹⁶. In the electoral campaign from 2009 the problem of amendment of electoral system was on the electoral agenda of several opponents, two of which were: Democratic Liberal Party (DLPM) and “Our Moldova Alliance” Party (OMA)¹⁷, which are currently included into the governing alliance. Still, the goal to reform the electoral system was not included into the Governmental Program of 2009- 2013, which contains only provisions regarding ensuring of the right to vote for the citizens of the Republic of Moldova outside embassies and consular offices, by opening additional voting sections, implementation of the distance voting system and electronic vote.

Recommendations: International recommendations, sociologic evaluations, independent expertises, certain political forces insist on the need to amend the electoral system. The power to amend the electoral system is given to the Parliament of the Republic of Moldova, and this decision could be taken when there is a larger consensus regarding the new system.

2. Minority rights. The problem of national minorities, of those living as compact communities on the territory of the Republic Moldova, has been raised

¹⁵ Ensuring a closer connection between the electorate and the elected, enhancing internal competition within the political parties, a more adequate regional representation etc.

¹⁶ Perpetuating the constitutional crisis after the elections from 29 July 2009; failure to solve the transnistrian problem; lack of experience in this area (after adoption of Constitution all parliamentary elections took place within the current electoral system).

¹⁷ DLPM pleads for introduction of a mixed electoral system, with half of deputies elected based on regional uninominal circumscriptions, and the other half – based on the preferential vote list with the application of preferential vote. OMA proposes the implementation of mixed electoral system, which would allow election of candidates both from uninominal circumscriptions and from the party lists (without mentioning the number).

repeatedly, especially regarding ensuring the representation of these minorities in the Parliament and the possibilities to create regional political parties. Regarding these issues, maintaining of current situation has been reasoned by the following: - national minorities are represented in the Parliament and in the Government of Moldova; - ensuring a certain quota of representation is not provided by the Constitution of the country; - creation of regional parties is not a problem exclusively of the electoral legislation domain.

Recommendations: Solutions regarding these problems could be adopted by the Parliament of the country and amending the electoral system could be an essential step, without contradicting constitutional provisions.

3. Representation in electoral bodies. The procedure of creation of electoral bodies has been subjected to periodical revisions, current legal provisions stipulating the possibility to appoint members of electoral bodies are based on the principle of parliamentary representation. Among the arguments in favour of maintaining this procedure are the interdictions imposed on electoral civil servants (their „professionalization”), a situation that allows the members of electoral bodies holding the right of deliberative vote not to be considered officially as “representatives” of political parties. To note, a number of the members of electoral bodies are appointed by local councils, which allow political parties representing the majority at the local level to appoint members of electoral bodies with the right to cast a deliberative vote.

Recommendations: the problem of appointment of members of electoral bodies by the extra-parliamentary parties that are representative on local level is not an essential one, however it needs attention since there had been a number of cases when the parliamentary parties do not have sufficient capacities and do not appoint a required number of members who are eligible civil servants, these being appointed later by the CEC.

4. Electoral rights of persons in temporary military service. Interdictions applied to this category of voters are explained by the special status of the persons that exercise the respective military service, with a shortened term (3 months) or with a regular term (12 months). The interdiction to *be elected*, applied regarding the persons in temporary military service is for a limited term (maximum 12 months) and is determined by the impossibility to exercise public functions within the military duty term, when these persons are subjected to a number of limitations, are in an impossibility to participate in electoral campaign, to hold any public position. This interdiction *to vote* within local elections is also linked to the fact that, due to certain objective reasons (information possibilities, limitation of movement, voters registration), but also due to certain subjective criteria (influence from superiors, possibility to influence the decision to vote in certain regions).

Recommendations: These prohibitions could be revised, but an additional examining of the real situation in this area shall be performed.

5. Detainees rights. Necessity of limiting the *right to be voted* of persons with an active criminal record is determined by the fact that the legislation regarding holding of public positions (Law No.158/04.07.2008 regarding public office, other legislative and normative regulations in this area) stipulates as mandatory the absence of a criminal record for deliberate crimes as condition for participating at the contest for a public office function.

Recommendations: Problem of further limitation of the *right to vote* of detainees sentenced for especially serious crimes could be an issue for reviewing; the Parliament could decide to adopt an amendment on this issue to the art. 13 of the Election Code.

6. Interdiction of external financing. Limitations regarding external financing of electoral opponents became a target for internal and external critiques. International bodies request that these interdictions are not applicable to the financing that have as goal promoting of democratic values, and local subjects (political parties, NGOs, experts community) have certain objections regarding the interdictions for financing applied on the citizens from Moldova living abroad or on the legal entities created by them (foreign enterprises, mixed enterprises), as well as regarding the amount of the accepted donations.

Recommendations: This situation needs further examination and expert solutions, for which reason the provisions in this field should be reviewed during the process of reviewing of related legislation.

7. Checking of documents presented for registration. Presently art. 44 of Electoral Code contains only the list of documents necessary for registration but does not contain complex provisions regarding the procedure for checking some documents and also regarding the procedure to call to accountability, should any inconsistencies be revealed. The responsibilities of electoral bodies are expressly stipulated and human, material, technical and financial resources are needed for ensuring the possibility to check on certain data, these not being provided by the electoral budget. One of the most complex aspects is the declaration of assets and incomes, which has to be filed by the candidates, but for which contents there is no pattern established by the law and no legal consequences or procedural liabilities follow (in case of non-consistency)¹⁸.

¹⁸ To note, the problem of inconsistency of the incomes and assets declaration of some candidates to the parliamentary elections has been raised by the representatives of civil society, within the „Clean Parliament” campaign (www.moldovacurata.md) and the mere public mentioning of the inconsistency of the declarations lead to filing of cases in court, under the claim that the honour and reputation of deputies has been affected.

Recommendations: although the regulations in this domain contribute to furthering of transparency, public control and have the goal to prove the probity of candidates, such provisions are difficult to implement and could lead to abuses, for which reason any change in this field would need a complex consideration, proportional and tolerant for insignificant, unintentional mistakes, with an opportunity for correction.

8. Filing and examining complaints. Although repeatedly amended, the provisions regarding the procedure to file and examine the complaints remain far from perfect and could generate misinterpretations or abuses. The draft law contains a new formula for filing and examining of complaints, the applicable principles being as follows:

- Complex substantiation of the complaint (describing the facts invoked as possible violations, evidence, legal ground, requests of the complainant, signature and identity data of the complainant);
- Transfer of the burden of proof of legality to the electoral authorities, in case the decisions of these bodies are the ground for complaint;
- Mandatory compliance with the complaints filing procedure in front of electoral bodies (hierarchically) and only after following this procedure – possibility to file the complaint in court;
- Examination by the Coordination Audiovisual Council of the complaints regarding covering of electoral campaign by radio stations under the jurisdiction of the Republic of Moldova.

New regulations clarify the procedure to file and examine the complaints, but their implementation could have as a result the extension of the term for taking a final decision in contradicting cases, each body being afforded 3 days (CEC – 5 days) for examining the complaint.

Recommendations: The situation calls for a balanced decision, taking into consideration all the aspects and the necessity to ensure a speedy final decision in electoral cases.

9. Legal liability. Art.69 contains general provisions regarding legal liability for violating electoral legislation. These provisions shall be applied and interpreted together with the art. 70 and 71 of the Code, and criminal and administrative offence elements are provided in detail in the Criminal Code and Code on administrative offences.

Recommendations: Aspects regarding criminal and administrative liability for electoral violations should be subjected to a thorough examination, including assessing the necessity to amend this legislation, which could be performed during the process of improvement of related legislation.

10. Nullifying the elections. Current legislation provisions (art. 92) are formulated in such a manner that the parliamentary elections should be declared as nullified on the entire territory of the country, even though the frauds have been committed in certain jurisdictions. The draft law proposes the amendment of the art. 92, with a view to ensure the possibility to perform elections in the regions where these were declared as nullified, and the established condition is that declaration of the nullity shall not trigger non-election of more than 1/3 of deputies.

Recommendations: In the conditions of the current electoral system, the problems of redistribution of mandates and that of offering some mandates prior to repeated elections are not stipulated and could result in further revisions and conflicts.

11. Participation threshold for validation of elections. Although decreased, the minimum threshold for participation of voters to an election is still preserved, for all types of elections and referenda. The reasoning for maintaining the validation threshold is found in the electoral practice of Moldova and in the desire to keep the desideratum of a greater “legitimacy” of the elected/decisions. In the same time, the existence of the participation threshold has generated problems in partial local elections in 2005 (the elections for the General Mayor of the capital city position have not been validated due to non-participation of required number of voters). The international institutions also insist in their recommendations on renouncing to maintaining validation threshold, for excluding institutional and political blockages.

Recommendations: In order to avoid possible political or institutional blockages and to avoid wasting finances for repeated elections, the threshold of participation at elections/referenda should be re-examined, but this decision has to be taken by the legislators.

4.3. Recommendations regarding technical problems

1. Electoral threshold. In the draft law a raised electoral threshold is proposed for electoral blocks. There have not been expressed major objections to this, but the content of previous recommendations leads to the conclusion that the electoral threshold should be unified.

Recommendations: the Parliament could adopt a decision to unify the electoral threshold, by issuing an amendment to the draft law.

2. Facilitation of the access of elder persons and disabled persons. The Electoral Code does not contain special provisions regarding ensuring of access within the venue of electoral sections for elder persons and disabled persons. In the same time, electoral legislation provisions allow these persons to vote at the place of their residency, the mobile ballot boxes being transported. In previous elections there

have not been registered cases when these persons were not able to exercise their right to vote at the voting sections, since they were given all the assistance necessary.

Recommendations: Electoral Code could be complemented with express provisions in this field, obliging the responsible authorities to ensure the access of these persons to voting sections venues.

3. Rights of representatives with a consultative right to vote within the election bodies. These rights and obligations are established by a Regulation adopted by CEC (CEC Decision No. 383 from 12.12.2006), this legislative provision being mandatory for all envisaged entities. In such case one could not insist on the principle that the rights and obligations should be regulated through general applicability norms, since temporary rights and obligations are envisaged. It also has its dynamics specifics, which will not be always accessible for review through an organic law.

Recommendations: the amendment of the Electoral Code with some general provisions regarding the right of the representatives with a consultation vote could be suggested, detailed explanation of which shall remain in the responsibility of CEC.

4. Registry of voters and electoral lists. Joint Opinions contain several recommendations regarding the electoral registries and a part of them have been implemented or introduced into the envisaged draft law. At this moment, the elaboration of the state registry of voters is at an advanced stage and subjected to technical and practical tests, but complete application depends on solving the problems of telecommunications infrastructure, due to which it probably will not be performed earlier than 2011.

Recommendations: When defining the draft law and during the process of reviewing the connected legislation the necessity to additionally address the following issues could be examined: - cooperation between CEC (holder of the State Registry of Voters) and the authority keeping the State Registry of Population; - ensuring the transparency of data from the State Registry of Voters and the possibility to check it by voters; - protection of personal data of voters ; - cooperation with local authorities; - checking and correction of electoral lists.

5. Registration erasing. Previous Joint Opinions contained proposals for revision of provisions regarding subscription lists, which should be presented for the registration of independent candidates. Art. 43 p. (4) of the Electoral Code stipulates that shall be considered as null and void the following: - subscription lists performed prior to the date of candidates appointment; signatures from subscription lists qualified as counterfeited and subscription lists which have been completed without respecting authorisation requirements of the local public authorities (which are not in compliance with the art. 42 p. (6) of Election Code). Additional provisions regarding the subscription lists and possibilities for checking, completing and excluding them from the parliamentary elections are stipulated by the art. 78 of Election Code, in

compliance to which: - in case when, at the checking performed by CEC, in subscription lists are revealed counterfeited signatures or repeated signatures in several lists, such signatures are excluded; - if, after a check, it is established that a necessary number of signatures is not presented or, in the process of exclusion of invalid signatures, the number has fallen under the envisaged minimum threshold (2000 signatures), the independent candidate is not registered, being informed of this decision within 24 hours from adoption of this decision; - additional filing of additional subscription lists after the Central Election Committee has received and included into the registry the list of documents required, is not allowed. Detailed procedure regarding the subscription lists is contained in the CEC Decision No. 385 from 12.12.2006 regarding approval of the procedure to fill, certify, file and check subscription lists.

Recommendations: In order to avoid the possibility for extensive and abusive interpretations, the provisions of the Electoral Code could be amended by transferring the provisions of art. 78 into the contents of the art. 43 or by reiterating the same provisions in art.127.

6. Elimination of candidates for frauds. The issues regarding the erasing of the registration of candidates are stipulated in art.69, and the draft law proposes exhaustive listing of causes that could determine elimination of a candidate from the list: - intentional use by electoral candidate of financial and material undeclared means or exceeding the threshold established for electoral finances, in all cases in significant proportions (with more than 10% from the maximum amount); - intentional use by electoral candidate of undeclared financial means or from abroad, in significant amounts (more than 10 % of the maximum amount); - non-resignation from office of the candidate having this obligation results in annulling of the registration of independent candidate or exclusion from the list of respective candidate. Article 69 is a general provision of Election Code, applicable to all types of elections and to excluding of the candidates from voting ballots and within a repeated election it will be possible to act only for the reasons expressly stated.

Recommendation: in order to avoid abusive interpretation, the Code could be amended by establishing in the law expressly the obligation to respect art.69 for excluding from repeated election of electoral opponents who committed fraud (or repeating the conditions that shall lead to excluding).

7. Revoking of nominations. In compliance with the Joint Opinion from 2008 (p. 51), provisions from p. 6/1 of art.46, in the section referring to determining the need for revoking of some candidates by the candidate who has appointed them are not clear enough. It seems that there is an interpretation confusion due to ambiguous wording of the provision and due to a referral made to the provisions from p.(6) which also contains a referral to another provision, namely to art.13 par. (2).

Recommendations: these provisions could be complemented by express referrals to the provisions from art. 13 par. (2) of Election Code.

8. Right to vote at the closing of voting sections. Regulations regarding the right to vote of the persons that stay in a queue at the voting station at the moment of expiry of the time allotted for this procedure are subjected to some additional requirements insufficiently substantiated (the authorisation of the jurisdiction council, notification of CEC).

Recommendation: the necessity to obtain the permission of the jurisdiction authority needs to be reviewed, so that this council is notified by the electoral bureau of respective voting section, and on its turn – shall inform also CEC about the respective prolongation.

9. Recounting of votes. The problem of recounting of votes has been invoked after parliamentary elections from 5 April 2009, with the Constitutional Court adopting a decision regarding recounting of votes, based on which, the CEC has adopted a special decision (Decision No. 2512 from 13.04.2009) and a decision regarding recounting of voting ballots (decision No. 2514 from 13.04.2009). However, the Electoral Code does not contain clear provisions regarding the reasons for recounting of votes, nor applicable procedures.

Recommendations: Reasons for which the recounting of votes shall be ordered has to be expressly stipulated in Election Code, although these are difficult to put in wording in complete manner and avoiding ambiguity. There are also necessary norms that would establish the procedure of recounting: by the same election bureaus, except for those that have committed frauds; - ensuring the transparency and security of the process.

10. Limiting the publicity of the results of elections. The draft law targets completion of the art. 61 par. (1) with the provisions which stipulate that, in case of parliamentary and general local elections, the preliminary results, presented for each voting section, shall be posted on the official CEC website, immediately after the processing of data. At the same time, the provisions of or art.61 par.(2), remain applicable, in compliance to which the electoral body, responsible for summing up of the election results informs the public as soon as possible about the general results of elections in case the complaints filed to it or in court do not influence the results of elections. Thus, the publicity of data could be conditioned by the existence of judicial procedures.

Recommendations: Amending the provisions of art. 61 par. (2) in such a way that the provisions regarding limiting the public character shall be applied only in exceptional cases (perhaps based on a prior judicial decision) and only if the right to public information is not suppressed.

11. Provisions regarding mass-media. It is recognised internationally that during the electoral campaign the mass-media has an important impact on the public opinion, and in case the electoral process is not reflected in a balanced and impartial manner, the voters are not given the possibility of an informed, purposeful vote and the elections cannot be considered entirely free and fair. Previously there have been presented objections and recommendations regarding the provisions of Electoral Code regarding mass-media and certain problems remain regarding balancing of the interests, the analysed draft law contains essential amendments in this area. However, certain problems related to the balancing of interests, ensuring the right to information and ensuring the rights of electoral opponents persist.

Recommendations: provisions regarding mass-media shall require more attention, taking into consideration legitimate interests of mass-media and electoral opponents, but also the differences existing between the obligations of public and private mass-media. Provisions that ensure the guaranteeing and promoting of public interest, impartial information of voter during the electoral campaign shall prevail.

ANNEX. Analysis of recommendations from the Joint Opinion of OSCE/ODIHR and Venice Commission