



Office for Democratic Institutions and Human Rights

## REPUBLIC OF MOLDOVA

### PARLIAMENTARY ELECTIONS

5 April 2009

OSCE/ODIHR Election Observation Mission Final Report



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## TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>II.</b>	<b>INTRODUCTION AND ACKNOWLEDGEMENTS.....</b>	<b>3</b>
<b>III.</b>	<b>BACKGROUND.....</b>	<b>4</b>
<b>IV.</b>	<b>LEGAL FRAMEWORK.....</b>	<b>5</b>
<b>V.</b>	<b>ELECTION SYSTEM.....</b>	<b>5</b>
<b>VI.</b>	<b>ELECTION ADMINISTRATION .....</b>	<b>6</b>
<b>VII.</b>	<b>VOTER REGISTRATION .....</b>	<b>7</b>
<b>VIII.</b>	<b>CANDIDATE REGISTRATION .....</b>	<b>9</b>
<b>IX.</b>	<b>ELECTION CAMPAIGN.....</b>	<b>10</b>
<b>X.</b>	<b>CAMPAIGN FUNDING .....</b>	<b>11</b>
<b>XI.</b>	<b>MEDIA .....</b>	<b>12</b>
A.	BACKGROUND .....	12
B.	LEGAL AND REGULATORY FRAMEWORK FOR THE MEDIA .....	12
C.	MEDIA MONITORING FINDINGS .....	13
D.	DEBATES AND PAID ADVERTISEMENTS .....	14
<b>XII.</b>	<b>COMPLAINTS AND APPEALS .....</b>	<b>15</b>
A.	COMPLAINT PROCEDURES .....	15
B.	COMPLAINTS ADJUDICATED BY CEC AND DEC'S .....	15
C.	MEDIA-RELATED COMPLAINTS .....	17
D.	SUPREME COURT DECISIONS .....	17
<b>XIII.</b>	<b>PARTICIPATION OF WOMEN.....</b>	<b>17</b>
<b>XIV.</b>	<b>PARTICIPATION OF NATIONAL MINORITIES .....</b>	<b>19</b>
<b>XV.</b>	<b>DOMESTIC AND INTERNATIONAL OBSERVERS.....</b>	<b>20</b>
<b>XVI.</b>	<b>OBSERVATION OF VOTING AND COUNTING.....</b>	<b>20</b>
A.	VOTING.....	20
B.	COUNTING .....	21
C.	TABULATION AND ANNOUNCEMENT OF PRELIMINARY RESULTS.....	22
D.	CEC SYSTEM FOR TRANSMISSION OF ELECTION RESULTS .....	22
<b>XVII.</b>	<b>POST ELECTION PERIOD .....</b>	<b>23</b>
A.	POLITICAL DEVELOPMENTS .....	23
B.	VERIFICATION OF VOTER LISTS AND RECOUNT OF VOTES.....	25
C.	POST-ELECTION COMPLAINTS AND APPEALS .....	26
<b>XVIII.</b>	<b>RECOMMENDATIONS .....</b>	<b>27</b>
A.	LEGAL FRAMEWORK.....	27
B.	ELECTION ADMINISTRATION .....	28
C.	VOTER REGISTRATION.....	28
D.	ELECTION CAMPAIGN .....	29
E.	ELECTION DAY PROCEDURES .....	29
F.	COMPLAINS AND APPEALS.....	30
G.	MEDIA .....	30
H.	PARTICIPATION OF WOMEN .....	31
	<b>ANNEX: OFFICIAL ELECTION RESULTS .....</b>	<b>32</b>
	<b>ABOUT THE OSCE/ODIHR .....</b>	<b>33</b>

**REPUBLIC OF MOLDOVA  
PARLIAMENTARY ELECTIONS  
5 April 2009**

**Final Report of the OSCE/ODIHR Election Observation Mission<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation by the Central Election Commission (CEC) of the Republic of Moldova to observe the 5 April parliamentary elections, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) on 26 February 2009. The OSCE/ODIHR EOM observed the elections in order to assess their compliance with OSCE commitments and other standards for democratic elections, as well as with domestic legislation. For election day, the OSCE/ODIHR joined efforts with delegations from the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), and the European Parliament (EP), to form an International Election Observation Mission (IEOM).

The 5 April 2009 parliamentary elections took place in an overall pluralistic environment and offered voters distinct political alternatives. In its Statement of Preliminary Findings and Conclusions, issued on the day after the election, the IEOM noted that while many of the OSCE and Council of Europe commitments were met, further improvements were required to ensure an electoral process free from undue administrative interference and to increase public confidence.

The post-electoral period was overshadowed by violent demonstrations and a lack of public trust in the electoral process. The observation of post-election day developments revealed further shortcomings that challenged some OSCE commitments, in particular the disregard for due process in adjudicating complaints of alleged irregularities and deficiencies in the compilation of voter lists lodged by opposition political parties.<sup>2</sup>

The election campaign was mostly low-key but gained some momentum closer to election day with campaign events in the capital and some regional centres. The OSCE/ODIHR EOM received numerous reports about the destruction of campaign posters, instances of police interferences with opposition party rallies, and pressure on candidates and supporters of these parties. Some of these reports were verified and confirmed.

Overall, media provided contestants with opportunities to convey their messages to the electorate. Live debates and paid airtime offered voters broad information on parties, candidates and their electoral platforms. However, the public broadcaster *Moldova 1*, in its news programs, covered the authorities and the governing party extensively, blurring the distinction between duties of top State officials and their campaign activities. The Audiovisual Co-ordination Council (CCA) failed to address this problem in a timely manner during the campaign.

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<sup>1</sup> This report is also available in Romanian and Russian. However, the English version remains the only official document.

<sup>2</sup> OSCE/ODIHR EOM Post-Election Interim Report is available at [www.osce.org/odihr-elections/36107.html](http://www.osce.org/odihr-elections/36107.html).

The legal framework for elections provides an overall adequate basis for the conduct of democratic elections, but several amendments to the Election Code introduced in 2008 raised concern and were widely perceived as restricting pluralism.<sup>3</sup>

The CEC generally worked transparently and administered the elections efficiently. Candidates were registered in an overall inclusive manner, offering voters distinct choices. On occasion, the impartiality of the CEC and of lower level election commissions was questioned by election stakeholders, in particular with regard to the adjudication of complaints.

Voter lists are compiled on the basis of voters' registered residence. Information on voters' identity, identification documents and registered residence is maintained by the Ministry of Information Development (MID) and its local offices, through a State population register. Nevertheless, the Election Code tasks local self-government authorities with the compilation of voter lists. This division of responsibility affected the transparency of the process and the accountability of state officials with regard to the accuracy of voter lists.

Procedures for compilation of voter lists, in particular with regard to inclusion of Moldovan citizens residing abroad, varied across the country. Discrepancies were apparent in figures provided by the MID about citizens of voting age, and the number of registered voters as announced by the CEC on the basis of voter lists compiled by local authorities. This raised concerns of electoral stakeholders regarding possible errors, including multiple entries, and led to allegations of voter registration fraud.

Election day was calm and overall orderly. International observers assessed voting very positively, although procedural problems were noted. Counting of ballots in polling stations was assessed somewhat less positively, with the result protocols not posted in polling stations after the completion of the vote count in a large majority of polling stations visited, as prescribed by law.

Tabulation of polling station results at District Election Councils (DEC) was assessed negatively in a quarter of observations, largely due to organizational problems and insufficient transparency. In a positive development, the CEC published provisional preliminary results for almost all polling stations in the morning of 6 April, with reported turnout of some 57 per cent.

In the evening of 6 April, peaceful demonstrations commenced, with participants alleging election fraud and demanding a new election. On 7 April, elements within demonstrators initiated violence vandalizing offices in the President's administration and Parliament. Opposition parties declined accusations of having staged the protests and urged for calm.

The Moldovan authorities alleged that these developments were a cover for an attempted *coup d'état* involving foreign special services. Some 150-200 persons, mostly young people, were reported as having been arrested by the police on 7 and 8 April. There were credible reports about mistreatment of detainees; three fatalities were reported allegedly in connection with the demonstrations and detentions. Moldovan authorities confirmed one such death as connected with the events. On 21 April, President Voronin appointed a commission to investigate these events, in which opposition parties were not invited to participate.

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<sup>3</sup> See Joint Opinion by the OSCE/ODIHR and the Venice Commission of the Council of Europe on the Election Code of Moldova as of 10 April 2008 (CDL-AD(2008)022).

On 8 April, the CEC granted opposition parties access to voter lists, including the possibility of scanning or photocopying the lists. In the course of the review process, political parties compiled cases of alleged election fraud that were based on deficiencies of voter lists. While most cases appeared credible, evidence presented by political parties to the OSCE/ODIHR EOM was limited. A comprehensive analysis and thorough investigation would have been indispensable to reach authoritative conclusions on this issue.

Following an appeal by the Party of Communists of the Republic of Moldova (PCRM) on 10 April, the Supreme Court cancelled the CEC decision allowing photocopying of voter lists. On the same day, President Voronin asked the Constitutional Court for a full ballot recount. On 12 April, the Constitutional Court ordered the recount, which was conducted on 15 April by Precinct Electoral Bureaus (PEBs). No major changes of results were reported.

On 22 April, the Constitutional Court convened in a session to decide on the validity of election results. Having heard the arguments in favor of and against the annulment of election results, allowing interventions by the CEC and only those parties that qualified for seat allocation, the Court chose not to investigate the allegations of election fraud and not to examine the evidence presented by the opposition. Subsequently, the Court declared the election legal and validated the mandates of the newly elected deputies.

The newly-elected Parliament failed to elect the new President in two attempts on 20 May and 3 June. In line with the Constitution, the President is to dissolve the Parliament and to call early parliamentary elections to take place within 45 days after the issuance of the presidential decree on the dissolution.

## II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation by the Central Election Commission of the Republic of Moldova to observe the 5 April parliamentary elections and the conduct of a Needs Assessment Mission, the OSCE/ODIHR established an EOM on 26 February 2009. The EOM was led by Mr. Nikolai Vulchanov and consisted of a 13-member core team based in Chisinau and 24 long-term observers deployed to 11 regional centres throughout the country.<sup>4</sup>

For observation of election day, the OSCE/ODIHR EOM joined efforts with the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP) to form an International Election Observation Mission (IEOM). Mr. Petros Efthymiou, Head of the OSCE PA Delegation, was appointed by the OSCE Chairperson-in-Office as Special Coordinator to lead the OSCE short-term observers. Mr. David Wilshire led the PACE Delegation, and Mrs. Marianne Mikko led the EP delegation.

On election day, the IEOM deployed some 400 short-term observers from 43 OSCE participating States, including 70 members of the OSCE PA delegation, 19 from PACE and 13 from the EP. The IEOM observed voting in 1,330 polling stations and vote count in 121 out of a total of 1,977 polling stations. The IEOM observed the tabulation of results in all 35 DECs.

The OSCE/ODIHR EOM wishes to thank State and local authorities for their co-operation during the observation. In particular, the support of the Ministry of Foreign Affairs, CEC and

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<sup>4</sup> The OSCE/ODIHR EOM published two interim reports before election day and one post-election interim report. All reports are available at: [www.osce.org/odihr/item\\_12\\_36406.html](http://www.osce.org/odihr/item_12_36406.html).

MID are to be highlighted. The Mission also wishes to express its appreciation to the OSCE Mission to Moldova, the Office of the OSCE High Commissioner on National Minorities, the Special Representative of the Secretary General of the Council of Europe in Chisinau, and other international organizations and embassies accredited in Chisinau for their support throughout the duration of the mission.

### III. BACKGROUND

The 2009 elections were the seventh election observed by the OSCE/ODIHR in the Republic of Moldova.<sup>5</sup> Previously, in 2005, the OSCE/ODIHR concluded that the parliamentary elections “generally complied with most OSCE commitments, Council of Europe and other international standards for democratic elections, nevertheless, they fell short of some that are central to a genuinely competitive election process. In particular, campaign conditions and access to the media were not satisfactorily equitable.”

The 5 April 2009 parliamentary elections were conducted to elect 101 members of the unicameral Parliament of the Republic of Moldova for a four-year term. These elections were seen as particularly significant as the newly elected parliament was to elect a new President of Moldova. Following the completion of two terms, the incumbent President Vladimir Voronin, chairman of the PCRM, could not stand for re-election.<sup>6</sup> President Voronin’s mandate expired on 7 April.<sup>7</sup> The newly-elected Parliament failed to elect the new President in two attempts on 20 May and 3 June due to the abstention of members of opposition political parties from participation in both votes. In line with the Constitution, the President is to dissolve the Parliament and to call early parliamentary elections to take place within 45 days after the issuance of the presidential decree on the dissolution of the Parliament.

While only three political formations were elected to the Parliament in 2005, at the end of the term the outgoing legislature included the PCRM with 55 seats, Alliance “Our Moldova” (AMN) with 14 seats, the Democratic Party of Moldova (PDM) with 11 seats and the Christian Democratic People’s Party (PPCD) with 7 seats. The remaining 14 members of Parliament were not affiliated with any of these factions.<sup>8</sup> The PCRM has enjoyed an absolute majority in the legislature since the 2001 parliamentary elections.<sup>9</sup> Following the 2005 parliamentary elections, the PCRM mustered support of several parties, including PDM and PPCD, for the re-election of Mr. Vladimir Voronin as President on 4 April 2005.

As in previous elections, voting did not take place on the territory that is, since 1992, under the *de facto* control of the Transdniestrian authorities. Voters residing in Transdniestria could vote at ten specially designated polling stations.

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<sup>5</sup> The reports by all previous OSCE/ODIHR election observation missions are available at: [www.osce.org/odihr-elections/14498.html](http://www.osce.org/odihr-elections/14498.html).

<sup>6</sup> According to Article 80, paragraphs 1 and 4 of the Constitution, the President shall not serve more than two consecutive mandates of 4 years each.

<sup>7</sup> The members of Parliament shall elect a new President by secret suffrage, within two months of the expiration of the mandate of the President. If no candidate obtains the majority of three fifths of the elected members of Parliament (61 votes), a second round shall be held between the two first candidates. If none of the candidates obtains a three-fifths majority, a repeat election shall be held within 15 days, following the same rules. In case of failure of the repeat election, the President shall dissolve Parliament and call for new parliamentary elections. Constitution, Articles 78 and 80, and Law regarding the Procedure for the Election of the President, Articles 2, 9 and 10.

<sup>8</sup> Representing the following parties: Social-Political Movement “European Action” (MAE), Social Democratic Party of Moldova (PSDM), Liberal Democratic Party of Moldova (PLDM) and the National Liberal Party (PNL).

<sup>9</sup> Following 2001 elections, the PCRM held 71 seats in the Parliament.

#### IV. LEGAL FRAMEWORK

The 1994 Constitution (last amended in 2006) and the 1997 Election Code (last amended in 2008) represent the most relevant legislation for the conduct of elections and referenda in the Republic of Moldova. The legal framework for elections also includes the 2007 Law on Political Parties, the 2008 Law on Public Assemblies, organic laws on the courts, as well as regulations and decisions issued by the CEC.<sup>10</sup>

The latest Joint Opinion of the OSCE/ODIHR and the Venice Commission of the Council of Europe concluded that while the Election Code continued to provide an adequate basis for the conduct of democratic elections, the 2008 amendments have addressed past recommendations only to a limited extent. Key amendments included the increase of the electoral threshold for party representation in Parliament,<sup>11</sup> the prohibition on forming pre-electoral coalitions and the limitation of rights of persons with multiple citizenships<sup>12</sup> to become members of Parliament. These raised concerns among opposition parties. Combined, these provisions created obstacles for representation of parties, candidates and citizens, including persons belonging to national minorities.

Some important aspects are not sufficiently regulated by the Election Code, leaving a wide margin of discretion to the CEC. The CEC on occasion issued memoranda to address omissions or ambiguities in the legal framework.<sup>13</sup> The legal status of such memoranda remained unclear.

The 2008 amendments to the Election Code introduced a new paragraph to Article 60, which states that in case of disagreement with preliminary results, electoral contenders can submit a request for a recount of votes to the authority responsible for the validation of the results. However, the article does not provide specific procedural requirements and does not stipulate acceptable grounds for requesting a recount.

#### V. ELECTION SYSTEM

Members of Parliament are elected within a single nationwide constituency through proportional representation. Electors vote for closed party lists or for self-nominated independent candidates. The threshold for gaining representation is six per cent of all valid votes cast for political parties and three per cent for independent candidates.<sup>14</sup> Eligible independent candidates receive their mandates first and the remaining mandates are then allocated among eligible party lists proportionally to the votes cast for them using the d'Hondt method.

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<sup>10</sup> The drafts of Laws on Political Parties and on Public Assemblies were subject to legal reviews by the OSCE/ODIHR prior to adoption, available at [www.legislationline.org/documents/id/1953](http://www.legislationline.org/documents/id/1953) and [www.legislationline.org/countries/country/14](http://www.legislationline.org/countries/country/14).

<sup>11</sup> Some 15 per cent of votes cast in this election, slightly less than in previous elections, will not be represented in Parliament due to the six per cent threshold applied.

<sup>12</sup> On 18 November 2008, the European Court of Human Rights (ECHR) ruled against the Republic of Moldova, judging this restriction to violate the right to be elected under Article 3 of Protocol No. 1 to the European Convention on Human Rights. ECHR ruling of 18 November 2008 in the case of Tanase and Chirtoaca vs. Moldova (application no.7/08). The government of the Republic of Moldova has appealed this decision to the Grand Chamber of the ECHR on 6 April 2009.

<sup>13</sup> One such memorandum was issued to the attention of DEC's and local authorities clarifying that Moldovan citizens living abroad had to remain registered on the regular voter list. Memorandum No. 4, CEC 8/414, dated 23 March 2009.

<sup>14</sup> No independent candidate has ever succeeded in passing the threshold.

The threshold for parliamentary representation changed several times over the past years. After the 2005 elections, the threshold for parties was lowered from six to four per cent. While this was credited as an improvement by the OSCE/ODIHR and the Council of Europe's Venice Commission in the 2007 Joint Opinion,<sup>15</sup> the 2008 amendments to the Election Code raised the threshold back to six per cent.

Elections are considered valid if at least 50 per cent of registered voters participate. The total number of registered voters includes voters registered both on the regular and the supplementary voter lists. In case this turnout requirement is not met, a second round of voting is conducted in 14 days on the basis of the same candidate and voter lists, requiring a lower turnout of at least one-third of the electorate. If the repeat election fails to meet the lowered turnout requirement, new elections are to be called. The OSCE/ODIHR and the Venice Commission of the Council of Europe repeatedly recommended the removal of the turnout requirement as it allows for cycles of failed elections.<sup>16</sup>

## VI. ELECTION ADMINISTRATION

The 2009 parliamentary elections were administered by a three-tiered election administration comprising the CEC, 35 District Electoral Councils<sup>17</sup> and 1,977 Precinct Electoral Bureaus. Election administration bodies may not include members of political parties or of local councils. Election contenders were entitled to appoint one non-voting representative to each election administration body.

The CEC is a permanent nine-member body appointed for a five-year term. The law provides for one of its members to be appointed by the President and one by the government. The remaining seven commissioners are nominated by parliamentary factions in proportion to the number of seats they hold.<sup>18</sup>

All 35 DEC members established for these elections had 11 members<sup>19</sup> - two appointed by district courts<sup>20</sup> and the remaining nine nominated by political parties proportional to their representation in Parliament. The PCRM, AMN, PDM and PPCD had the right to appoint 5, 2, 1 and 1 DEC members, respectively. PEBs were appointed by DEC members and had either seven, nine or eleven members<sup>21</sup>; three members were appointed by local councils and the remaining ones nominated by parliamentary parties. The process of appointment of PEB members in some instances led to tensions between the governing and opposition parties, the latter being dissatisfied with the level of representation. The OSCE/ODIHR EOM observers reported that decisions on the number of PEB members were not consistently taken on the basis of uniform criteria. In some DEC members, the number of PEB members seemingly followed

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<sup>15</sup> The OSCE/ODIHR and Venice Commission Joint Opinion on the Election Code of Moldova of 27 March 2007 (CDL-AD(2007)040), p.5.

<sup>16</sup> The OSCE/ODIHR and Venice Commission Joint Opinion on the Election Code of Moldova as of 10 April 2008 (CDL-AD(2008)022), p.15.

<sup>17</sup> With 37 territorial-administrative units, Moldova is subdivided into 37 electoral districts. However, two DEC members in Bender and Tiraspol, located in the Transdniestrian region, were not established.

<sup>18</sup> In its current composition, the CEC was appointed in 2005 and includes the nominees by the PCRM, AMN, PDM and PPCD.

<sup>19</sup> The deadline for the creation of DEC members is 50 days before elections. The Election Code provides for DEC members to have 7 to 11 members.

<sup>20</sup> Among 70 court appointees, 16 were acting judges.

<sup>21</sup> The deadline for the creation of PEBs is 20 days before elections. The Election Code provides for PEBs to comprise 5 to 11 members.

compromises between political parties; in others, the DEC's decided on the number of PEB members on the basis of the number of voters per precinct.

The CEC functioned in an overall transparent and professional manner, although on occasion, election stakeholders expressed concerns with regard to its impartiality. The CEC meetings and agenda were regularly announced on the CEC website. Meetings were well-organized and open to the public, domestic media and observers. Decisions were announced by press releases and published on the website, mostly within 24 hours. Decisions perceived as politically important were generally passed with six to three votes.<sup>22</sup>

The CEC passed a number of important decisions including on (a) enfranchisement of voters without registered residence or with expired national identity documents, (b) stamping of voter IDs to prevent possible multiple voting, and (c) the establishment of polling stations abroad.<sup>23</sup>

Some provisions of the Election Code were not implemented at all or treated by the election administration as "optional". Occasional omissions of electoral deadlines occurred and the accountability in the process of printing of ballots and distribution of Absentee Vote Certificates (AVC) from DEC's to PEB's was not adequately ensured. Despite legal requirements, the majority of polling stations visited by the OSCE/ODIHR EOM observers during the pre-election period failed to open 20 days before the election, and in half of polling stations visited, the voter list was not displayed.

The CEC had provided training to political parties and their potential nominees as members of election commissions in a "training of trainers" format starting in late 2008. Additional training was provided to PEB chairpersons in the run-up to the election. The CEC had also produced manuals, training video materials for election commissions, as well as voter education spots in co-operation with international organizations.

After printing of ballots had commenced in two printing facilities in Chisinau, a total of four candidates and parties withdrew from the contest and the CEC decided to instruct PEB's to apply a special stamp "RETRAS" for the withdrawn contenders on every ballot received. On several occasions, the PEB's had applied the "RETRAS" stamp wrongly, spoiling their supply of ballots and requiring the reprinting of ballots on the eve of elections.

In a decision of 20 March, the CEC granted voters residing in the Transdnistrian region an opportunity to vote in ten specially designated polling stations. Voters from Transdnistria were not included in the regular voter lists. Their names were added in supplementary lists and ballots were cast in separate ballot boxes. These ballots were counted and reported separately. Eight of these ten polling stations served both regular registered voters and Transdnistrian voters.

## VII. VOTER REGISTRATION

Citizens of the Republic of Moldova who by election day have reached 18 years of age have the right to vote, except if declared incapacitated or sentenced to imprisonment for serious

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<sup>22</sup> The dissenting votes generally came from two AMN and one PDM members of the CEC.

<sup>23</sup> Some 33 polling stations abroad were created at embassies and consular offices abroad, and all assigned to the Chisinau DEC. A controversy which reached the courts developed over the request by some political parties and individuals to open additional polling stations for out-of-country voting to enfranchise a large number of Moldovan citizens abroad.

criminal offences by a final decision of a court of law. A voter may be included in a voter list of a polling station at the location of his or her permanent or temporary residence, which is confirmed by a corresponding stamp on a slip of the voter's domestic identification document. A voter with both permanent and temporary residences was registered to vote at the polling station of his or her temporary residence.

Responsibility for the compilation of voter lists is vested with local self-government authorities.<sup>24</sup> Local authorities are obliged to update voter lists on an annual basis and to submit the updated lists to the CEC by the 1 March of each year. This year, the CEC extended the process of data collection until 15 March, which in line with election calendar was the date for the publication of voter lists. The CEC co-operated with the Ministry of Information Development to ensure appropriate voter record keeping. On 19 January, the CEC received from the MID the list of the voting age population and transferred the data to local authorities to assist them in voter list compilation.<sup>25</sup>

The MID maintains the permanent State population register, and is also the body in charge of issuance of identity documents. Furthermore, as the MID is responsible for the registration of residence, it is also in possession of information on citizens' permanent and/or temporary residence. It thus appears that the MID has all the information necessary for the compilation of voter lists. This data is potentially the most reliable source of voter information that is kept centrally in an easily manageable electronic format. It is therefore unclear why the legal responsibility for the compilation of voter list should be vested with local self-government authorities, which do not appear to possess reliable voter information.

The current arrangement, whereby the MID provides voter data to the CEC, which then transmits this information to local government, although, without requiring that this information be used as a primary basis for the compilation of lists, makes the process non-transparent and blurs the responsibility line. On 17 March 2009, based on the voter lists compiled by local authorities, the CEC announced the number of registered voters to be 2,549,804, an increase of some 10 per cent compared to the last parliamentary elections.<sup>26</sup>

The OSCE/ODIHR observers noted that the methods of compilation of voter lists varied considerably among local government units, which led to controversies between the CEC and some local authorities, particularly with regard to the inclusion of voters abroad. On 23 March, the CEC issued a clarification that voters residing abroad were to be included into the regular voter lists. This was contested in some localities, e.g. in Hincesti and Gagauzia. According to the CEC, the clarification resulted in an increased number of registered voters, which was announced to be 2,598,875 on 1 April, some 50,000 more compared to the figure announced on 17 March.

Another figure was reported following election day, when the CEC announced that the number of registered voters on the regular voter lists on 5 April was 2,564,710 (some 34,810 less than the previous figure). Voter lists for PEBs abroad are compiled on the basis of data provided by heads of diplomatic missions and consular offices of the Republic of Moldova. According to the CEC, as of 1 April, 22,064 voters had been registered abroad; however, the number in the final protocol was 18,419 voters.

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<sup>24</sup> Article 22(g) and Article 39(1) of the Election Code.

<sup>25</sup> According to MID data, as of 19 January, 2009, the number of registered citizens of voting age was 2,761,256.

<sup>26</sup> The number of registered voters on the regular voter list for the 2005 Parliamentary Elections was 2,270,668.

Such fluctuations in the number of registered voters over a short period of time raise doubts about the accuracy of voter lists and the quality of data processing. Electoral stakeholders expressed concern about these discrepancies and about possible errors, double and/or missing entries in the voter lists as compiled by local authorities, but also in the MID data. Limited case-by-case verification of MID data in the post-electoral period by the OSCE/ODIHR EOM revealed that the Ministry on occasion lacked latest information on the changes of civil status and residency of citizens of the voting age.

Related to the inaccuracies in voter lists, the practice of using supplementary voter lists was an issue of contention after these elections. Supplementary voter lists were compiled by PEBs on election day for a range of categories of voters. They included voters residing on the territory of a precinct, but not included in the regular voter list, voters presenting AVCs, voters casting their ballots using a mobile ballot box, voters from Transnistria voting at ten specially designated polling stations, non-registered voters voting at the place of their last registration, as well as voters abroad not included in the regular voter list a respective PEB abroad.<sup>27</sup> The total number of voters on the supplementary voter list was 117,563, constituting 4.4 per cent of all voters on the regular and supplementary list. After the election day, the CEC announced that the final number of registered voters was 2,700,692.

## VIII. CANDIDATE REGISTRATION

The CEC registered 1,183 candidates on 12 party lists, as well as five independent candidates.<sup>28</sup> They were registered in an overall inclusive process and within legal deadlines.<sup>29</sup> Two applications by independent candidates were rejected by the CEC due to an insufficient number of valid signatures submitted. Both candidates challenged the CEC decisions, which were upheld by the Supreme Court.

Political parties registered with the Ministry of Justice were allowed to submit their candidate lists for registration with the CEC. Independent candidates were required to submit a minimum of 2,000 and not more than 2,500 signatures in support of their registration requests.<sup>30</sup> Party lists and independent candidates running in the elections appeared on the ballot paper in the order of their registration with the CEC. In case several applications for registration were submitted at the same time, the CEC organized the drawing of lots.<sup>31</sup>

Following the prohibition to form pre-electoral alliances, lists of many political parties included candidates that were formerly prominent members of other parties. Whilst candidates do not need to be members of the nominating party, they also cannot be members of any other party.

According to the new Law on Political Parties,<sup>32</sup> all registered parties were required to bring their registration documents in line with the provisions of the new law by 1 October 2008.<sup>33</sup>

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<sup>27</sup> 16,657 voters abroad were added on supplementary voter lists.

<sup>28</sup> Initially, 15 party lists and 6 independent candidates were registered. Subsequently, three political parties, including "Pentru Neam si Tara", the "Green Alliance of Moldova" and Labour Union "Patria-Rodina", and one independent candidate, Mrs. Valentina Cusnir, withdrew from the race.

<sup>29</sup> The CEC was receiving registration requests between 5 February and 5 March. Decisions on the registration had to be taken within seven days of the application. The last contestants were registered on 10 March.

<sup>30</sup> Article 78 (2) of the Electoral Code.

<sup>31</sup> Article 44 (2) of the Electoral Code.

<sup>32</sup> Law on Political Parties, adopted in 21 December 2007.

<sup>33</sup> Art. 34 (2) Law on Political Parties

While some of the 28 registered parties reportedly experienced problems with this process,<sup>34</sup> these did not directly impact on their ability to register their candidate lists with the CEC or their electoral campaign activities.

Of 101 elected members of Parliament, 21 had to initiate proceedings to renounce their other citizenship(s) in order to comply with the Election Code provisions prohibiting holders of multiple citizenships from taking up a mandate as a deputy. According to the CEC, all elected candidates concerned have submitted relevant confirmations to the Constitutional Court when their mandates were validated. One candidate with dual citizenship on the PL list, the Mayor of Chisinau, Mr. Dorin Chirtoaca, decided not to take up the parliamentary seat and to remain in his mayor post.

## **IX. ELECTION CAMPAIGN**

Following a low-key start, a generally pluralistic campaign gained momentum after the completion of candidate registration on 10 March. Outside Chisinau, the campaign mainly included door-to-door canvassing, and display of election billboards and posters. Major campaign events took place primarily in Chisinau and, in the last two weeks of the campaign, in a few regional centres of the country.

The governing PCRM highlighted the economic achievements of the past eight years, the need for stability and the international standing of the President, who engaged in increased foreign policy activities throughout the campaign. Most opposition parties criticized the PCRM for widespread corruption and mismanagement, and campaigned on an anti-communist rhetoric. Negative campaigning, in particular against key opposition figures, became more frequent in the run-up to election day.

The OSCE/ODIHR EOM received numerous reports from election contestants relating to the removal, destruction and staining of electoral posters and billboards, and verified such instances in Chisinau, Vulcanesti and Balti. In Orhei, offices of some opposition parties were vandalized during the night of 16 to 17 March.

The OSCE/ODIHR EOM observed instances of interference with opposition party meetings and rallies. On 13 March in Chisinau, at a protest youth rally of the AMN in front of the Ministry of Interior, unidentified persons threw bottles with paint into the group of participants. Some rallies of opposition parties were disturbed by seemingly organized groups shouting insults at participants and candidates, as observed in Orhei region and the city of Balti.

During the pre-electoral period, the OSCE/ODIHR EOM received reports from opposition parties alleging various forms of police involvement in the campaign. There were frequent allegations of candidate and voter intimidation by the police, some of which were verified. Parties alleged obstruction by police and intimidation of voters willing to attend their rallies. Opposition parties complained that in some cities the police stopped busses with party

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<sup>34</sup> In case of MAE, the Ministry of Justice disagreed with the submitted registration of amendments relating to a name change. On 29 January 2009, the Supreme Court decided to return the case to the Court of Appeal for further consideration. In the case of UCM, the Ministry challenged the election of former Prime Minister Vasile Tarlev as chair of UCM claiming procedural errors in the election process. The party challenged this decision in court, however, in the final instance the Supreme Court supported the Ministry's refusal to register Mr. Tarlev's chairmanship.

supporters planning to attend rallies, such as the PLDM rally in Chisinau on 22 March. The OSCE/ODIHR EOM confirmed these reports in Orhei and Balti.

Months prior to the elections, criminal and tax investigations were launched against a number of opposition leaders and party activists. The OSCE/ODIHR EOM was also informed of an arrest, court case and an eventual expulsion of two foreign consultants of the PLDM. In another instance, the OSCE/ODIHR EOM confirmed a case of a senior police official in Briceni having been removed from office due to his refusal to contribute to the work allegedly carried out by the police in favour of the PCRM. In another case, on 25 February, the Nisporeni-based *Albasat* TV was subject to a police search and a subsequent criminal case against the channel for alleged violation of an employment contract that took place in 2006.

The OSCE/ODIHR EOM received credible reports from candidates, party activists or their families, including from the cities of Edinet and Briceni, about pressure by employers to cease candidacy or participation in the campaign, or otherwise face job dismissal. Opposition parties also informed the OSCE/ODIHR EOM about pressure on public employees and students to attend meetings of the PCRM and to abstain from attending opposition rallies. Such reports were received from a number of locations and were verified by the OSCE/ODIHR EOM observers in Briceni and Ialoveni.

Overall, the shortcomings observed during the campaign are not in line with Paragraph 7.7 of the 1990 OSCE Copenhagen Document requiring that campaign atmosphere be free from administrative interference and intimidation. The OSCE/ODIHR EOM also noted that the uneven way in which local authorities applied the new Law on Public Assemblies, adopted in 2008, created some confusion during the electoral campaign. Some election contenders, as well as some local authorities, appeared to believe that an authorization continues to be required to hold public outdoor meetings, while the current Law requires only a notification of public authorities by the organizers.

## **X. CAMPAIGN FUNDING**

The Election Code contains detailed regulations on the financing of the pre-electoral campaign. Electoral contenders are obliged to set up special “Electoral Accounts” and to ensure that all campaign-related donations and payments are channelled through and are duly registered in these accounts. The law provides a possibility of receiving interest-free loans from the State for the conduct of the campaign. The campaign fund ceiling is determined by the CEC for every election. By a decision adopted on 6 February 2009, the CEC has established the ceiling at 12,000,000 lei for a political party and 500,000 lei for an independent candidate. Donations from foreign and anonymous sources, as well as from charity or religious organizations, are prohibited. The registered competitors were to present financial statements to the CEC every two weeks. The reports on the campaign expenditures of candidates are considered to be public information and were therefore posted on the CEC website.<sup>35</sup>

The CEC, upon receipt of the second financial report on 17 April, officially reprimanded the PCRM for the late payment for election advertisements in their party newspaper, which in addition were not explicitly marked “paid by electoral funds” as legally required.<sup>36</sup> The

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<sup>35</sup> The parties submitted their interim financial reports to the CEC during the campaign on 3 March and 17 March. The CEC provided this information to the press and published it on its website.

<sup>36</sup> CEC Decision No. 2343 of 17 March.

PCRM successfully challenged the decision in the Court of Appeal. The CEC appealed to the Supreme Court, which upheld the ruling of the lower level court.<sup>37</sup> From the Centrist Union of Moldova and the Party of Spiritual Development "United Moldova", the CEC requested and received clarifications on their income and expenditures, as the initially submitted reports were deemed incomplete. The tax authorities, however, blocked the UCM's account on 2 April for alleged failure to pay taxes. Upon an appeal by the UCM to the tax authorities claiming a violation of the Electoral Code, the account was unblocked after 24 hours.

## **XI. MEDIA**

### **A. BACKGROUND**

While radio reaches a significant audience in rural areas, television is the most influential source of information. According to the Audio-Visual Co-ordinating Council, the regulatory body for broadcast media, some 84 outlets are currently licensed in the country. Two channels, the public service broadcaster *Moldova 1* and private *NIT*, have nationwide coverage. Other television stations cover much more limited ranges, mostly only the larger cities. Newspapers have a limited impact due to relatively low circulation.

In general, media in Moldova remain vulnerable to political influence, in part due to financial weakness of the media and due to the fact that the advertising market is still developing. Broadcast media continue to fall short of facilitating genuine public debate and exchange of opinions, and mostly fail to provide investigative or critical analytical reporting that would offer to the public a diversity of views. The public broadcaster, which in many parts of the country is the main source of information, remains to be transformed into a genuinely independent public service.<sup>38</sup>

Private *Pro TV*, perceived as one of the few sources offering diverse political viewpoints, faced problems in December 2008 with the extension of its license. Following concerns expressed by the diplomatic community and the OSCE Representative on Freedom of the Media,<sup>39</sup> *Pro TV* was able to continue broadcasting and a tender on new licences was postponed until after the 2009 elections. The tender was announced on 29 May, allowing other organizations to bid to take over *PRO TV*'s frequencies.

### **B. LEGAL AND REGULATORY FRAMEWORK FOR THE MEDIA**

The Constitution guarantees freedom of expression and prohibits censorship. The Election Code, the Broadcasting Code, as well as the Regulation on the Coverage of the Electoral Campaign by Mass Media (hereinafter Media Regulation) form the legal framework for media coverage of the campaign.

The Media Regulation was adopted by the CEC on 2 February, based on a concept prepared by the CCA. The final approved version of the Media Regulation contained a welcome provision that explicitly allowed for the coverage of campaign activities in news programmes.<sup>40</sup> This was an important clarification of a contentious Article 47(4)<sup>41</sup> of the

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<sup>37</sup> Supreme Court decision of 30 March 2009 upholding the Chisinau Court of Appeal decision No. 3-1626/09 of 24 March 2009.

<sup>38</sup> See report by the OSCE Representative on Freedom of Media, Mr. Miklos Haraszti, to the OSCE Permanent Council in July 2008, available at [www.osce.org/documents/pc/2008/07/32052\\_en.pdf](http://www.osce.org/documents/pc/2008/07/32052_en.pdf).

<sup>39</sup> [www.osce.org/fom/item\\_1\\_35720.html](http://www.osce.org/fom/item_1_35720.html).

<sup>40</sup> According to Article 20 of the Media Regulation, "events carried out during the election campaign will be covered by news programmes, but they will not be commented".

Election Code, which in the previous elections was interpreted as limiting media coverage of the campaign exclusively to free and paid airtime, and was criticized both in the OSCE/ODIHR reports and legal reviews.

The Media Regulation provided *inter alia* for debates and paid airtime to be offered to all contestants based on the principle of 'equal conditions'. Each registered contestant was entitled to receive a maximum of 120 minutes of paid airtime during the campaign on public television and radio, respectively. In addition, contestants were entitled to participate in debates organized by public media free of charge. Private broadcasters were entitled to offer the same formats. As for the news programmes, the Media Regulation in its Article 4 obliged broadcasters to ensure fair, balanced and unbiased coverage of election campaign. Also, the Broadcasting Code in its Article 7 stipulates that both, public and private media must adhere to principles of balance, impartiality, objectivity, accuracy and pluralism within their news.

One of the provisions of the Media Regulation prohibited to "use video and audio materials containing historical personalities of Moldova or of other countries, as well as the symbols of foreign states, international bodies and the images of foreign officials" in campaign spots.<sup>42</sup> These restrictions appeared to be at odds with the principle of freedom of expression and access to information guaranteed by Articles 32 and 34 of the Constitution. Regrettably, these restrictions were extensively used as grounds for complaints by electoral contestants against their opponents.

While the Media Regulation stipulated that the observation of compliance with media-related legal requirements is carried out by the CEC, as well as the CCA, it also stated that it was up to the CEC and/or courts to settle disputes between election contestants and media outlets. Apart from being ambiguous in itself on this matter, the Media Regulation also appeared to contradict the Broadcasting Code, according to which the CCA is the sole body with a competence to impose sanction on the media.

### C. MEDIA MONITORING FINDINGS

On 27 February, the OSCE/ODIHR EOM commenced its media monitoring activities. The Mission assessed, in qualitative and quantitative terms, the campaign coverage by seven TV channels, including one based in Gagauzia, two radio stations and nine newspapers.<sup>43</sup> In general, media made an effort to offer voters adequate election-related and political information, primarily through debates and paid advertisements. At the same time, public media and some private broadcasters devoted a significant portion of their news coverage to the activities of the President, as well as other officials, rather than to election contenders.

In its prime-time news, the publicly-funded *Moldova 1* and *Radio Moldova* provided some coverage to a broad range of electoral contestants; however this was limited in time<sup>44</sup> and

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<sup>41</sup> "In the period of holding electoral debates, apart from the air time granted free of charge, it is prohibited to air advertising materials about the activity of the electoral contestants or with their participation, or with participation of their trustees, TV or radio reports from the meetings of electoral contestants with the voters, on working visits of the electoral contestants who hold offices at republican or rayon level".

<sup>42</sup> Media Regulation, Article 12.

<sup>43</sup> The media outlets are as follows: *Moldova 1* (public service broadcaster), *NIT TV* (nationwide TV channel), *EU TV*, *N4*, *Pro TV Chisinau*, *TV 7* (TV channels with limited coverage outside Chisinau), *Gagauzia TV* (regional public service broadcaster), *Radio Moldova* (public service broadcaster), *Vocea Basarabiei* (radio station); *Flux*, *Jurnal de Chisinau*, *Moldova Suverana*, *Saptamina*, *Timpul*, *Ziarul de Garda*, *Komsomolskaya Pravda*, *Moldovskie Vedomosti*, *Nezavisimaya Moldova* (newspapers).

<sup>44</sup> All electoral contestants together received 38 per cent (some 165 minutes) of subject-related news coverage on *Moldova 1* and 29 per cent (some 87 minutes) on *Radio Moldova*.

different in tone. The PCRМ received the most positive coverage, while AMN and PLDM were predominantly presented in a neutral or negative tone. At the same time, public media in its newscasts displayed clear preferential treatment of the authorities,<sup>45</sup> presenting them mostly overly positively or neutrally and avoiding critical remarks on their performance and policies. Public television offered its viewers reports on President Voronin's activities, both on international and domestic occasions, almost on daily basis. As the President and the majority of ministers were candidates at the top of the PCRМ list,<sup>46</sup> the public broadcaster blurred the distinction between the coverage of official constitutional duties of top State officials<sup>47</sup> and their campaign activities.<sup>48</sup> This was not consistent with paragraph 5.4 of the 1990 OSCE Copenhagen Document.

Among private broadcasters, *NIT* and *N4* in their politics-related news coverage failed to provide impartial reporting, and provided extensive and favourable coverage of State authorities and PCRМ. At the same time, both channels covered AMN, PL, PLDM and UCM in a negative or neutral tone. Another private broadcaster *EU TV* also generally provided positive news reporting on State authorities, but it was heavily biased in favour of the PPCD, including in its host talk-shows. *Pro TV*, *TV7* and *Vocea Basarabiei* were the only broadcasters that provided a more balanced coverage of the campaign, including critical reporting on the activities of authorities. However, their potential audience was limited compared to that of *Moldova 1* and *NIT*.

Newspapers offered its readers more diverse views, with coverage of activities of a broad range of parties, as well as analytical reports and features. Due to low circulation, their impact remained limited. While the former State-funded newspapers *Moldova Suverana* and *Nezavisimaya Moldova* showed clear bias in favour of the authorities and the PCRМ, *Timpul* and *Journal de Chisinau* presented readers with a variety of views, with a preference given to PLDM and AMN. The newspaper *Flux* clearly promoted the PPCD, often using aggressive language against its electoral rivals.

The silence period was not observed on the eve of the election by private *EU TV* that repeated its current-affairs programme 'Media Express', originally aired on 3 April, in which some electoral contestants (AMN, PLDM, PDM, PSDM) were presented in a discrediting way.

#### **D. DEBATES AND PAID ADVERTISEMENTS**

Beyond the news, the media adhered to the legal requirement to provide equitable access of electoral contestants to the media. Regular televised debates organized by a number of national and local media generally provided opportunities for contestants to inform voters of their platforms.<sup>49</sup> The PCRМ did not participate in the debates on public *Moldova 1* in the

<sup>45</sup> 42 per cent (some 180 minutes) and 50 per cent (some 150 minutes) of almost exclusively positive and neutral information on *Moldova 1* and *Radio Moldova*, respectively. Also, local public broadcaster *Gagauzia TV* allocated 39 per cent of its news to the activities of authorities covered in a favourable tone. All percentages were calculated as a share of the total time given to all monitored subjects, which include all electoral contestants, President, Government, including ministers, Speaker of Parliament, and all levels of election commissions.

<sup>46</sup> Mr. Voronin received 90 per cent of coverage as President, amounting to some 90 minutes.

<sup>47</sup> Duties and responsibilities of the President are listed in Articles 85-88 of the Constitution.

<sup>48</sup> Article 47(4) of the Election Code stipulates that "no electoral contestant shall be entitled to privileges due to the offices they hold".

<sup>49</sup> According to Article 64 (5) of the Election Code broadcaster was obliged to grant 90 minutes for debates per day. Some TV channels, for example *TV7* and *EU TV*, organized separate debates for political parties and independent candidates. Most of the broadcasters, except public media, decided to hold debates with participation of at least 3 contestants.

last week of the campaign, as well as in any of the debates organised by private broadcasters. While it is the right of a party to refuse to take part in debates, the non-participation of the PCRM may have reduced the informational value of these debates for viewers.

Paid advertising was used by eleven contestants, with some portion of negative campaigning used mostly by PCRM against electoral opponents. Some contestants complained about high costs set by *Moldova 1* for paid campaign spots – 450 euro per minute – the highest among operating broadcasters.

## **XII. COMPLAINTS AND APPEALS**

### **A. COMPLAINT PROCEDURES**

The Republic of Moldova has a three-tier judicial system consisting of territorial courts, Courts of Appeal<sup>50</sup> and the Supreme Court of Justice in Chisinau. Any voter or election contestant may complain about actions, inactions or decisions of PEBs and DECs, as well as actions or inactions of electoral competitors, at the respective higher level of the election administration and/or in courts within three days of the action/inaction or of the date of a contested decision. Complaints against actions, inactions or decisions of CEC must be filed with the Court of Appeal of Chisinau.<sup>51</sup>

Appeals related to the activities of PEBs and DECs must be acted upon by the superior electoral bodies or courts within three days of their filing, but no later than election day. Appeals against the CEC filed during the election period must be acted upon within five days. Appeals submitted to courts on election day must be considered on the same day. Court decisions may be appealed to a higher-level court within three days of their adoption and such appeals must be examined within three days.

The Election Code allows complainants to choose the forum (electoral body or court) to which to submit a complaint, and does not prohibit simultaneous submissions to both venues. This creates a potential for conflicts of jurisdiction.<sup>52</sup>

### **B. COMPLAINTS ADJUDICATED BY CEC AND DECS**

Overall, during the pre-electoral period, the CEC and DECs have met their responsibilities related to the adjudication of complaints, and ensured that they were generally considered in a timely manner with respect for the principle of due process. However, some political parties expressed concerns with regard to the impartiality of the CEC and DECs in the adjudication of complaints.

The CEC established a regularly updated register of complaints and posted its decisions on the website within 24 hours of their issuance. However, the absence of written procedural rules and guidelines concerning the processing of complaints and appeals raised concern. In some cases, the CEC decided to respond to complainants by means of a letter not passing an official decision, thus leaving the complainant without possibilities for an appeal.

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<sup>50</sup> In Chisinau, Balti, Bender, Cahul and Comrat.

<sup>51</sup> The OSCE/ODIHR EOM encountered some difficulties in accessing the Court of Appeal's hearings' schedule and its judgments, mainly due to the Court's limited resources.

<sup>52</sup> The Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe states that "neither the appellants nor the authorities should be able to choose the appeal body"; Guidelines and Explanatory Report, CDL-AD(2002)23, p. 30.

In total, the CEC registered some 186 complaints and appeals regarding the activities of DEC members and issued 107 decisions. The remaining complaints were either transferred to the relevant authorities or answered by letter. The vast majority of complaints were related to electoral campaigning in the media, including unethical campaigning, extensive coverage of the President in the media, use of images of national, foreign or historical personalities or symbols in spots, and failures to indicate that a printed or broadcast material was paid from an electoral fund.<sup>53</sup>

According to the newly introduced amendment to Article 13 of the Election Code, high-ranking officials running in elections are obliged to leave their offices for the duration of the campaign. However, the President, Speaker of Parliament and Prime Minister are not required to step down. In absence of such requirement, all complaints lodged by some electoral contestants with regard to television appearances of the President in relation to events they deemed not requiring attendance by the head of State were rejected. In such instances the provision of Article 47, para. 4 of the Election Code stating that “no electoral competitor shall be entitled to privileges due to the office he holds” was not taken into consideration.

The CEC received 19 election-day related complaints and requests, and issued a decision for 10 of them. Most of the decisions were related to allegations of illegal campaigning during the two days of electoral silence. All such complaints were rejected, some on grounds of a lack of evidence, and some because the CEC decided it was not a competent body to be addressed.<sup>54</sup>

In the regions, some 125 complaints were filed, most of them with the DEC members. Destruction of posters and their display in unauthorized locations were by far the most frequent subjects of these complaints. Other complaints included allegations of obstruction of campaigning by mayors, police or party activists,<sup>55</sup> use of public resources for campaign purposes<sup>56</sup> and illegal campaigning by local authorities or members of electoral bodies.<sup>57</sup> In Chisinau, most complaints filed with the DEC related to media coverage of the campaign.

Following the 2008 amendments to the Election Code, the CEC is entitled to issue warnings to election contestants that infringe any of the provisions of the Code or to request a court to cancel their registration.<sup>58</sup> The implementation of this new provision raised questions of competence and resulted in inconsistent practices and decisions. At the beginning of the electoral period, both DEC members and CEC issued warnings to parties or to media for infringements of the Election Code or of the Media Regulation. On 10 March, the CEC stated that DEC members had no competence to issue any warnings, and on 13 March, the CEC stated that it itself had no competence to issue warnings to media.

According to the Election Code,<sup>59</sup> during the election period, candidates may not be arrested, detained, sanctioned or brought a criminal case against without the consent of the CEC, except in cases of flagrant offences. The Prosecutor’s Office submitted to the CEC five requests for arrest of registered candidates or for instituting criminal procedures against them, all of

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<sup>53</sup> Articles 38 and 47 of the Election Code.

<sup>54</sup> For instance, in cases involving print media, alleged attacks on honor and dignity and requests for dismissal of DEC members.

<sup>55</sup> In Cahul, Comrat and Orhei.

<sup>56</sup> In Balti, Cahul, Ialoveni and Orhei.

<sup>57</sup> In Comrat, Orhei and Straseni.

<sup>58</sup> Article 69 of the Election Code.

<sup>59</sup> Article 46, para 5 of the Election Code.

which were rejected by the CEC. In the sixth case, the Prosecutor made a request to institute proceedings against a candidate taken in *flagrante delicto*. The CEC answered by letter that no authorization was necessary in such a case. The candidate unsuccessfully challenged this “decision” of the CEC to the Court of Appeal and the Supreme Court. The courts stated that the letter of the CEC could not have been considered a legal decision, thus was not subject to an appeal.

### C. MEDIA-RELATED COMPLAINTS

The CEC and CCA received and considered a large number of media-related complaints. The CCA failed to act on the observed imbalance in media coverage in a timely manner. While it conducted its own media monitoring since mid-February, it examined the results of the monitoring only on 24 March. Subsequently, the CCA adopted a formalistic decision to warn all seven monitored broadcasters, including *Moldova 1*, for not respecting the principle of pluralism, disregarding differences in their broadcasting. This decision was officially published only after the election campaign and therefore had no preventive impact.

### D. SUPREME COURT DECISIONS

During the pre-electoral period, the Supreme Court considered some 29 election-related appeals. These were related to CEC decisions on the establishment of polling stations abroad<sup>60</sup>, stamping of voters’ IDs to prevent multiple voting, postponement of broadcasting of debates until the completion of candidate registration process, denial of registration to two independent candidates for lack of valid signatures, registration of Mr. Tarlev as leader of the UCM, and the way parties were listed on the ballot. All these appeals were rejected by the Supreme Court. Other appeals were related to election campaigning either in the media or by means of public rallies.

In all but one case, the Supreme Court upheld the initial decision of the CEC. On 19 March, the Supreme Court overruled all earlier decisions by the Chisinau DEC, the CEC and the Court of Appeal with regard to an analytical material by the Association of Independent Press about the PCRM’s performance in government. This material, which was disseminated as a newspaper supplement in February 2009, was initially ruled as having constituted campaigning on the part of API against the PCRM.

On two occasions, the Supreme Court ruled to prohibit two electoral events, which were planned by the PLDM and already cleared in compliance with the Law on Public Assemblies by the Chisinau Mayor’s Office. Acting on appeals by the Prosecutor, the Supreme Court decided the two events had the potential to disturb public order.<sup>61</sup>

Delays in delivering written detailed judgments did not allow the OSCE/ODIHR EOM to analyze the vast majority of Supreme Court rulings. Out of the 29 delivered decisions, only six judgments were published on the Court’s website as of the closure of the OSCE/ODIHR EOM.

## XIII. PARTICIPATION OF WOMEN

Under the Constitution of the Republic of Moldova, women and men enjoy equal rights. Moldova is also a State party to the UN Convention on the Political Rights of Women, as

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<sup>60</sup> Appeals with regard to that decision were filed both by PLDM and AMN with the ECHR.

<sup>61</sup> Decisions of the Supreme Court of Justice, dated 27 March and 2 April 2009.

well as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, since 1994), and acceded to the Optional Protocol to the CEDAW in 2006. Despite sound international and national legal frameworks providing basis for equal participation of women and men, women remain under-represented in political life, especially at higher levels of decision-making bodies. Of 101 deputies in the outgoing Parliament, 22 were women (21,8 per cent) and six of 20 ministers in outgoing government were women.

There are no legally established electoral quotas for women in Moldova and, as such, political parties are free to decide on the number of women they nominate. The Law on Ensuring Equal Opportunities for Women and Men (henceforth Equal Opportunities Law),<sup>62</sup> adopted in February 2006, contains a specific provision on equal opportunities in the electoral sphere and obliges the election administration and political parties to observe the principle of gender equality. The Department for Equal Opportunity and Prevention of Violence of the Ministry for Social Protection, Family and Child is responsible for the oversight of the implementation of the Equal Opportunities Law.

A number of organizations engaged in promotion of women's rights complained that female candidates were relegated to lower positions on the lists and effectively had little chance of being elected. Apart from efforts by the ProGen Alliance 2009<sup>63</sup> advocating the inclusion of more women on top positions in party lists, no specific measures were in place to encourage female candidates or to increase the participation of women in the elections. The ProGen Alliance 2009 also launched an awareness raising campaign to encourage women to vote and to put forward questions related to gender equality in meetings and events with politicians and candidates.

Overall, women were less present as candidates on top positions in party lists. Only one party, MAE, had included five women among their top ten candidates. Two political parties are led by women, and they also topped their respective party lists.<sup>64</sup> Two parties, AMN and UCM, did not have any woman among the first ten candidates on their lists. The PLDM, which has an internal 30 per cent quota requirement in its statute, had the lowest proportion of women on the list and only one among the top ten candidates. Out of 1,188 candidates that ran in these elections, 328 were women, including one independent candidate.

Although most competitors included social and family issues in their platforms, specific topics related to women or gender equality were not evident during the campaign and there was little effort by parties to specifically target female voters. Nonetheless, 24 women were elected<sup>65</sup> to the new parliament, slightly more than to the previous one.

The current members of the CEC were appointed in 2005, prior to adoption of the Equal Opportunities Law. Of the nine members, only the deputy chairperson is a woman. Women are generally represented in greater numbers in the lower levels of the election administration. Out of 35 DEC's, nine were headed by women. Women were deputy chairpersons in 11 DEC's and secretaries in 22. In 64 per cent of polling stations visited by

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<sup>62</sup> Law on Ensuring Equal Opportunities for Women and Men, No. 5-XVI of 9 February 2006. Prior to adoption, the draft law included a 30 per cent quota requirement for women on lists; however, the requirement was eventually dropped as many considered quotas to be discriminatory.

<sup>63</sup> The ProGen Alliance 2009, created in October 2008 and consisting of 22 NGOs, works on issues related to the under-representation of women in politics and the gender dimension in the electoral platforms of political parties.

<sup>64</sup> The Party of Spiritual Development "United Moldova", Chairperson Ana Tcaci, and the Conservative Party's Chairperson Natalia Nirca.

<sup>65</sup> 21 were elected from the PCRM list, two from PL and 1 from PLDM.

the IEOM observers on election day, the PEB chairperson was a woman, and women constituted an overwhelming majority of PEB members (78 per cent).

#### XIV. PARTICIPATION OF NATIONAL MINORITIES

According to the 2004 census, which did not include Transdnistria, national minorities constitute over 20 per cent of Moldova's population, with Ukrainians (8,4 per cent), Russians (5,9 per cent), Gagauz (4,4 per cent) and Bulgarians (1,9 per cent) making up the four largest communities.<sup>66</sup> The right to political participation of minorities is enshrined in Moldova's domestic legislation, including the Constitution and the 2001 Law on National Minorities. In addition, Moldova has ratified the Council of Europe Framework Convention for the Protection of National Minorities in 1996.

Issues related to national minorities did not play a prominent role in the election campaign. Although no data on ethnicity of candidates was made public, several parties appear to have included persons belonging to national minorities on their candidate lists; minority representatives did not raise concerns in this regard. The PCRM, which underlined its achievement of 'multi-ethnic harmony in Moldova' in a large conference on 28 March, claims to have included over 30 persons belonging to national minorities in its list.

There were no significant concerns regarding access of national minorities to election-related information. Official information, campaign materials and ballots were provided both in the State language and in Russian, the 'language of inter-ethnic communication' spoken by most persons belonging to national minorities. In addition, the PPCD produced Bulgarian, Ukrainian and Romani language campaign materials. No data was available on the ethnic composition of electoral bodies.

Several provisions of the legislative framework, including the six per cent threshold for parliamentary representation and the newly introduced restriction to the rights of persons with multiple citizenship(s) to take up seats in Parliament, had an adverse impact on the participation of national minorities. The 2008 Joint OSCE/ODIHR and Venice Commission of the Council of Europe Opinion on the Election Code reiterated a previous recommendation to "create possibilities for adequate participation in elected bodies of national minorities and mainstream interests at regional level".<sup>67</sup>

While parties did not specifically appeal to the Roma community in their campaign, one candidate on the PPCD list campaigned as Roma activist. Due to their generally disadvantaged socio-economic situation and relatively low level of political involvement, the Roma remain vulnerable to exclusion and susceptible to vote buying. Some isolated instances were reported of Roma being refused entry to polling stations on election day.

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<sup>66</sup> According to the National Bureau of Statistics, 2004 Census, available at [www.statistica.md/public/files/Recensamint/Recensamintul\\_populatiei/vol\\_1/7\\_Populatia\\_pe\\_nation\\_1ocalit\\_ro.xls](http://www.statistica.md/public/files/Recensamint/Recensamintul_populatiei/vol_1/7_Populatia_pe_nation_1ocalit_ro.xls).

<sup>67</sup> Joint Opinion by the OSCE/ODIHR and the Venice Commission of the Council of Europe on the Election Code of Moldova as of 10 April 2008 (CDL-AD(2008)022), p.5.

## **XV. DOMESTIC AND INTERNATIONAL OBSERVERS**

The Election Code provides for the observation of the election process by international and non-governmental organizations, representatives of foreign governments, domestic civic associations, and agents of electoral contestants.

The “Civic Coalition for Free and Fair Elections – Coalition 2009” comprising 70 organizations conducted long-term election observation with 44 long-term observers, and deployed 2,102 short-term observers on election day. Several other domestic NGOs were accredited as observers by the CEC, including the “First Club of the Council of Europe” Association, the Association of the National Centre of Roma, the Business Women’s Association “FEMIDA”, and Promo-LEX.

According to the CEC, 602 international observers had been registered to observe the 5 April elections, the ones seconded to the OSCE/ODIHR EOM comprising the largest group.

## **XVI. OBSERVATION OF VOTING AND COUNTING**

### **A. VOTING**

On election day some 400 IEOM observers from 43 OSCE participating States were deployed to observe the opening of polling stations (PS), voting, counting and tabulation of results at DECs. The IEOM observers visited 1,330 of the 1,977 polling stations, completing 2,024 observation forms and some 400 additional comment forms.

The IEOM observers assessed the voting process positively at 97 per cent of PS visited, however 21 per cent of PS observed did not open on time, and in 10 per cent of cases, the PEB chairperson did not deposit a copy of the PS opening form in the ballot box. Campaign materials were visible in the vicinity or inside 7 and 8 per cent, respectively, of PS observed, and the candidate lists were not posted inside the PS in 72 per cent of observations. Observers assessed 42 polling stations as “bad” or “very bad”.<sup>68</sup> There was no clear pattern of difference in assessment for PS in Chisinau or outside the capital.

Party observers or representatives were present in 96 per cent of PS visited. Domestic non-party observers were present in 78 per cent of the stations visited, mostly from “Coalition 2009”. Unauthorized persons were present in 4 per cent of PS visited, and in 10 cases unauthorized persons were directing the work of PEBs. In 3 per cent of polling stations observed, the ballot boxes were not properly sealed, and in 48 stations some election material was missing.

Most voting procedures were adhered to, but IEOM observers noted that absentee vote certificates were not retained in 20 per cent of observed PS. Observers noted that in 8 per cent of observations voters were not given a ballot in the language of their choice. In some PEBs, ballots were stamped on the reverse side before voters deposited them in the ballot box, as has been previously required by law, and 2 per cent of observed PEBs did not stamp voter IDs with the “ALEGERI 5 April 2009” stamp, as required by the relevant CEC decision.

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<sup>68</sup> PEB 24/19 in Ocnita, PEB 27/11 in Riscani and PEB 33/19 in Taraclia were assessed as “very bad”.

The secrecy of the vote was not always ensured, with group or family voting noted in 6 per cent of PS and polling booths in some PS having transparent or no curtains. Overcrowding was reported in 5 per cent of polling stations visited and in 62 per cent of observations, polling stations were not accessible for disabled persons.

Mobile voting is not sufficiently regulated by law, and sometimes discussions arose as to which members of a PEB were to accompany the mobile ballot box. In some cases, PEB chairperson refused to accept requests for mobile voting on election day, in other cases voters who had not formally requested mobile voting were allowed to vote. In addition, some PEBs did not seal the mobile ballot box in the morning or before leaving premises.

In Corjova, a disputed commune on the eastern bank of the Nistru/Dniestr, voting was effectively prevented during the day. Transdnistrian forces confiscated the ballot box in the morning and blocked voters' access to the polling station. The CEC decided to suspend the voting process in Corjova and announced that voters from Corjova could cast their votes in the neighboring villages Cocieri and Ustia.

According to the CEC, some 4,350 voters from Transdnistria voted in ten specially designated polling stations. The IEOM observers generally reported a smooth operation in these polling stations. In the left-bank town of Grigoriopol, Transdnistrian militia stopped a shuttle bus hired to bring voters from Grigoriopol to the polling station in the Moldovan controlled village of Dorotcaia and confiscated the license plates. However, voters were able to travel to Dorotcaia by regular transport.

## **B. COUNTING**

Vote count procedures were observed in 121 PS. Counting was assessed positively in 91 per cent of PS and negatively in 9 per cent.<sup>69</sup> Domestic non-partisan and party observers were present during the majority of counts followed. However, the lack of transparency was noted during 5 per cent of counts observed. Observer teams have reported that they were obstructed in their observations or did not have full view of the closing and counting process in 7 per cent of counts observed.

In addition, contrary to the provisions of the Election Code and the CEC manual for election commissions, some PEBs did not follow the closing and counting procedures properly. Namely, in 6 per cent of counts observed, the "VOTAT" stamps were not collected and securely stored before counting started and in 16 per cent of counts observed, the unused ballots were not counted, cancelled and sealed before the ballot boxes were opened. Unauthorized persons were present in 8 per cent of counts observed.<sup>70</sup> In 2 per cent of cases the seals of ballot boxes were not intact and in 9 per cent of cases the PEBs did not reconcile the number of ballots found in the mobile ballot box with the number of mobile voters on the special supplementary voter list for mobile voting. In disregard of procedures, in 18 per cent of observations, the PEBs did not establish the number of ballots found in the regular ballot box before counting commenced.

In 20 per cent of counts observed, controversies arose over the validity of ballots. In 27 per cent of stations observed, the PEBs had problems reconciling the results and in 10 per cent, there were disagreements regarding the result protocol. In 6 per cent of observations no ink/ball pen was used for filling the protocol or the protocol was not completed in the

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<sup>69</sup> Polling stations 33/19 in Taraclia, 07/57 in Cahul and 01/26 in Chisinau were assessed as "very bad".

<sup>70</sup> In two stations (21/04 in Ialoveni and 01/64 in Chisinau) an unauthorized person was directing or interfering in the process.

presence of all PEB members. A copy of the protocol was not posted at polling stations without delay as required by law in 61 per cent of observations, thus limiting the transparency of counting process.

The mathematical formulas, which were printed at the back of protocol forms and were meant to facilitate the verification of the accuracy of the data entered into protocols, were not used consistently. As a result, some protocols had to be corrected at DEC level or returned to respective PEBs for further reconciliation. Some PEBs appeared to have dealt with potential discrepancies in protocols by preparing pre-signed blank copies of protocols before arrival to DEC, what constitutes a violation of the Election Code.

### **C. TABULATION AND ANNOUNCEMENT OF PRELIMINARY RESULTS**

The 18-hour deadline for reporting results from PEBs to DEC was generally respected. However, three PS in Moldova<sup>71</sup> and 33 PS abroad reported late,<sup>72</sup> delaying the tabulation at DEC. Tabulation at DEC level was assessed negatively in 12 out of 35 DEC. The Election Code does not provide exact procedures related to the tabulation of results, hence practices varied. In some cases the data was tabulated manually, in other cases electronically. Authorized representatives of election contenders were present in 78 per cent and domestic observers in 58 per cent of DEC monitored. Observers were obstructed from observing the tabulation in 14 per cent of cases and were not able to follow computer tabulation of results in 30 per cent of cases.

Processing of result protocols in 41 per cent of DEC observed was not well organized. Bad to very bad DEC performance was seen in 18 per cent of observations, with PEB members in some instances having been forced to wait for over three hours to hand over the protocols and election materials.<sup>73</sup> Due to long working hours, some DEC closed at about 07:00 on 6 April, to resume work by mid-day. DEC had difficulties in completing result protocols in 13 per cent of observations.

DEC had 48 hours to report their tabulation results and to deliver DEC and respective PEB result protocols to the CEC.<sup>74</sup> Ballots and voter lists were to be transferred to the territorial courts. At the CEC level the data was accrued in a spreadsheet per DEC and then provided for release online. Some preliminary results were first made available to the media at 23:00 on election night when the first PEBs were processed. In a welcome effort of ensuring transparency of result tabulation, the CEC was updating the results on its website regularly as the information was coming in. Complete preliminary results for all 1,978 precincts in a DEC and PEB breakdown were posted on the CEC website on 9 April. The CEC web site operated well on the election night, but, regrettably, was often inaccessible in the subsequent days.

### **D. CEC SYSTEM FOR TRANSMISSION OF ELECTION RESULTS**

A special data transmission system for the transfer of results from DEC to the CEC has been used during the 5 April elections. In the run-up to elections, the CEC had outsourced the development of this system to a private company. The contract included software

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<sup>71</sup> PEB 01/94 in Chisinau reported by late Monday, 6 April, PEBs 04/40 and 04/41 in Varnița (Dubasari) reported on Tuesday, 7 April.

<sup>72</sup> 33 polling stations abroad reported by late Wednesday 8 April.

<sup>73</sup> In some cases it resulted in PEB officials going home after spending hours at DEC, to come back in the early afternoon of 6 April. It is unclear how security of results protocols and election material was ensured during that time.

<sup>74</sup> This deadline was respected with the exception of the biggest DEC Chisinau, which received and tabulated results from polling stations from abroad until Wednesday, 8 April.

development, supply of data entry computers to the DEC's, connection of computers in DEC's with the CEC server, personnel training and full operation on election day. The network operated via a secure broadband virtual private network channel. The system was dismantled after election day.

Data from PEB result protocols was entered by computer operators in DEC's. The system worked well, however, in some places operators experienced problems entering data incompatible with the system.<sup>75</sup> Overall, this data transmission system proved to be a financially affordable solution that facilitated faster transmission of provisional results. The system was later modified to process results during vote recount.<sup>76</sup>

## **XVII. POST ELECTION PERIOD**

### **A. POLITICAL DEVELOPMENTS**

Following a calm election day, peaceful demonstrations by students and young people commenced in the evening of 6 April and lasted until 12 April. On 7 April, some 10,000 protesters shouted anti-Communist slogans, alleged election fraud by the governing PCRM and demanded a new election. In the afternoon of 7 April, elements within the demonstrators initiated violence. Later, some of them entered the buildings of the President's administration and the Parliament, and vandalized a number of offices. Opposition politicians participating in the demonstrations urged for calm. During the night, the police dispersed the crowd of remaining demonstrators.

Some 150-200 persons, mostly young people, were reportedly arrested by police on 7 and 8 April, with further arrests carried out in the subsequent days, including detentions in universities and arrests of minors.<sup>77</sup> There have been credible reports by NGOs about mistreatment of detainees, and three fatalities were reported allegedly in connection with the demonstrations and detentions. Moldovan authorities confirmed one such death as connected with the riots.

The Moldovan authorities alleged that the dispute over the election results that led to demonstrations was a cover for an attempted *coup d'état* organized with the involvement of foreign special services. In reaction to the events, the Moldovan Government declared on 8 April both the Romanian Ambassador and a minister counsellor of the Embassy *persona non gratae* and introduced a visa requirement for Romanian citizens.

In the days following the public protests, a number of international media reported difficulties in entering the country. The OSCE/ODIHR EOM is aware that at least three Romanian journalists were expelled from Moldova. Some journalists of local media (*Ziarul de Garda, Journal TV*) faced difficulties in performing their duties. These practices were strongly condemned by the OSCE Representatives on Freedom of the Media as contradicting Moldova's international commitments.<sup>78</sup>

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<sup>75</sup> The system did not accept zero in certain fields, or omissions in protocols, blocking the information input until the situation was resolved.

<sup>76</sup> For vote recount, all the data was entered by operators at the CEC level.

<sup>77</sup> According to the Ministry of Interior, 129 persons received administrative charges, and criminal charges have been brought against 86 persons. On 15 April, President Voronin called for an amnesty people involved in the street protests of 7/8 April.

<sup>78</sup> See press release by the OSCE Representatives on Freedom of the Media at [www.osce.org/fom/item\\_1\\_37232.html](http://www.osce.org/fom/item_1_37232.html).

Notwithstanding considerable public controversy regarding the conduct of the election, public television did not provide timely reporting on the protests that took place on 7 April. While subsequently some information about the events was presented, the broadcaster mainly provided a platform for the President and authorities, and generally did not present the views of those who raised concerns regarding the election process. On 7 April, a number of web sites were temporarily inaccessible.

On 10 April, President Voronin, chairman of the PCRM, asked the Constitutional Court for a ballot recount with a view to ensuring the stable functioning of the newly elected Parliament. Initially, the opposition included such a recount among their demands, but had always prioritized a cross check of the voter lists after closure of the polls. Following the ruling of the Court to conduct a recount and the CEC decision to conduct it on 15 April, the opposition rejected the ballot recount as an attempt by the PCRM to legitimize the election results, and to pre-empt legal challenges by the opposition with regard to errors in the voter lists.

The PL, PLDM and AMN alleged election fraud such as widespread multiple voting, voting without appropriate ID documents, forged signatures on voter lists and voters with identical ID numbers. Some political parties provided the OSCE/ODIHR EOM with examples of inaccuracies that were allegedly contained in the information submitted by the MID to local government authorities to facilitate the compilation of voter lists.

In a follow-up effort, the OSCE/ODIHR EOM requested the MID to perform a joint review of some of these allegations using information from the State population register. The first follow-up effort was related to reported pairs of voter records with identical ID numbers provided by the representatives of the opposition. In most of these cases, the pairs comprised records of different citizens. However, in a number of cases, one digit of the ID number was different in the MID database compared to voter lists compiled by local authorities; in other cases, numbers of expired IDs or IDs which were registered as annulled were found on the lists. Discrepancies with ID numbers, typos and expired IDs were stated to have been results of human error during the verification of voter lists by local governments.

The OSCE/ODIHR EOM also attempted to follow up, with representatives of the MID, on a limited number of cases of alleged fraudulent voting based on deficiencies in voter lists. While most cases of alleged fraudulent voting appeared credible, the documentation provided by the opposition to substantiate these claims was not sufficient and further comprehensive analysis and thorough investigation would have been indispensable to reach authoritative conclusions on this issue.<sup>79</sup> Therefore, such cases should have been considered by the courts, including the Constitutional Court, in the timeframe available.

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<sup>79</sup> To illustrate the point, presented below is a case of Mr. Vasile Untilă, which received high public attention during the post election period and was followed up in detail by the OSCE/ODIHR EOM. According to the opposition, Mr. Untilă had voted in Bucharest with his passport, while someone else had voted on his behalf in his native village on the supplementary voter list; the opposition provided a copy of Mr. Untilă's passport and a copy of the respective page of the supplementary voter list. While the name of the person in question was spelled identically both in the passport and in the supplementary voter list, the OSCE/ODIHR EOM noted that the year of birth in the passport was 1986, while it was 1987 in the respective record on the supplementary list. According to the state population register, the passport data of Mr. Untilă was correct and he had returned to Moldova from Romania by car on 17 April; furthermore, in the State population register there was no record of a Moldovan citizen with the same name born in 1987. Consequently, one could conclude that in the supplementary voter lists there was a record of a non-existing person, which was signed as having voted. When the OSCE/ODIHR EOM discussed this case with a representative of the PCRM, this person expressed opinion that there was a typo in the spelling of the family name in the supplementary voter list (Untilă instead of the allegedly correct Untila) and that there was a person with the "correct" family name (Untila) who lived in a neighboring village and who was born in 1987. This example clearly illustrates

On 21 April, President Voronin by decree established a commission to investigate causes, exact details and consequences of the demonstrations and subsequent events under the chairmanship of a senior PCRM Member of Parliament, Mr. Vladimir Turcan. The commission consisting of several ministers, parliamentarians, senior officials and representatives of some media outlets was tasked to present a report on the findings to be discussed in Parliament.

Representatives of the opposition were not offered an opportunity to take part in the work of the commission. This, together with the lack of judicial follow-up on the opposition's concerns with regard to the accuracy of the voter lists and their potential abuse, represented a missed opportunity to re-build confidence in the Moldovan election process.

## **B. VERIFICATION OF VOTER LISTS AND RECOUNT OF VOTES**

On 7 April, the PLDM, PL and AMN submitted a joint declaration to the CEC asking for the verification of the voter lists, and for a deferral in announcing the final election results. In its 8 April decision,<sup>80</sup> the CEC granted all electoral contestants access to voter lists, including the right to scan or photocopy them. On 10 April, "Coalition 2009" submitted a similar request for access to voter lists to the CEC, which was also granted. On the same day, another request for the verification of voter lists and for recount of votes in specific PEBs was submitted to the CEC by an independent candidate Mr. Stefan Uritu.

On 7, 8 and 9 April, PSDM complained to the CEC about the inaccuracy of the voter lists and claiming that 5 April elections were rigged using voter lists deficiencies. The party requested access to the voter lists and asked the MID and the Border Guard Service of Moldova to provide a list of deceased persons for the past 10 years and a list of persons who were abroad on 5 April in order to cross check this data against the voter lists. According to the PSDM, the party did not receive the requested lists.

The CEC decision allowing the photocopying and scanning of voter lists was challenged by the PCRM in the Chisinau Court of Appeal on 10 April, reportedly on the grounds of concerns regarding the privacy of voters. The Court heard the PCRM and the CEC, as well as four opposition parties<sup>81</sup> and ruled on 14 April in favour of the PCRM. This decision was appealed to the Supreme Court, which upheld the Court of Appeal's decision on 22 April.

On 10 April, the CEC forwarded the requests from PLDM, PL and AMN and from Mr. Stefan Uritu to defer the announcement of election results to the Constitutional Court. On the same day, the PCRM submitted a request for a general recount of votes to the Constitutional Court.

In accordance with Article 60 of the Election Code, the CEC submitted the final results protocol and its decisions on the allocation of mandates<sup>82</sup> to the Constitutional Court on 12 April. Three members of the CEC<sup>83</sup> submitted dissenting opinions pointing to the inaccuracies in the voter lists and illegal campaigning by *EU TV* on the eve of election day and on election day.

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that a conclusive assessment of this case, to state whether the record of a non-existent citizen was signed as voted or whether a simple typo was the reason for the controversy, required a court decision preceded by a detailed investigation of all circumstances involved.

<sup>80</sup> CEC Decision nr. 2501, dated 8 April 2009.

<sup>81</sup> PLDM, PL, AMN, and the Democratic Party of Moldova (PDM).

<sup>82</sup> CEC Decisions nr. 2502, 2503 and 2506, dated 11 April 2009.

<sup>83</sup> Representatives of AMN and PDM.

On the day of the submission of final results by the CEC, the Constitutional Court convened in a plenary session and, taking into consideration different requests by political parties and the independent candidate, decided to order a general recount of votes to be carried out within 9 days.

Following the ruling of the Constitutional Court on recounts, the CEC passed a decision for recounts to be carried out on 15 April. The CEC also approved the recount procedures, tasking the PEBs in their original composition to carry them out in polling stations. Observers accredited for 5 April were entitled to be present. Votes from polling stations abroad were to be recounted by the Chisinau DEC.

The OSCE/ODIHR EOM followed a limited number of recounts in PEBs and tabulations at DEC in Causheni, Ialoveni, Hincesti, Straseni and Chisinau, as well as the recount of votes from abroad in Chisinau DEC on 15 and 16 April. In those recounts followed, only minor changes were made to original protocols. Inconsistencies in implementation of procedures were reported, and some ballot papers were found to have been counted for other election contenders.<sup>84</sup> DEC were to report the results to the CEC on 16 April. A limited number of DEC did not meet this deadline.<sup>85</sup> At the CEC, result protocols for each polling station were checked and entered into the CEC database. The CEC processed most of the results by the end of the day on 17 April. While on the basis of recounts the CEC reported slightly different numbers of votes cast for electoral contestants, these differences did not affect the initial allocation of mandates.<sup>86</sup>

### C. POST-ELECTION COMPLAINTS AND APPEALS

According to the information provided to the OSCE/ODIHR EOM by the CEC and by the Constitutional Court, any new contestations of election results after final result protocols on recounts were submitted by the CEC to the Constitutional Court were to be addressed to the latter before it took its decision on the legality of the election. In case of such contestations, the Court was to consider them and the possible effect of the alleged violation(s) on the results. The Court was also authorized to extend the legal deadlines in case more time was required for the review or verification of cases presented.

On 14 April 2009, the PSDM submitted two complaints to the Constitutional Court requesting the invalidation of the election. The first complaint was related to the unequal media coverage of the elections that favoured the PCRM. The second referred to the unsuccessful requests of the party to obtain from Moldovan authorities the lists of deceased persons and persons that were abroad on election day.

On 21 April, PL submitted a complaint to the CEC requesting the invalidation of the election. Referring to Articles 67 and 89 of the Election Code stating that appeals related to electoral bodies' decisions on results shall be examined by court simultaneously with decision-making on the legality of the election, the CEC forwarded the complaint to the Constitutional Court.<sup>87</sup>

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<sup>84</sup> In some places invalid ballots were declared valid, while in other PEBs similar ballots were invalidated. In some instances copies of the result protocols contained more than one correction. In other cases signatures of voters who received ballots were not counted. Observers noted instances where statements and protocols were signed by members of election commissions in advance.

<sup>85</sup> DEC Chisinau, DEC Ciruleni, DEC Soroca and DEC Ialoveni were reporting until the afternoon of 17 April.

<sup>86</sup> See annex for detailed results of 5 April vote and of recounts.

<sup>87</sup> CEC Decision, nr 2524, dated 21 April 2009.

On 21 April, the CEC submitted to the Constitutional Court the final results protocol on the recount and its new decisions on the voter turnout and the distribution of mandates.<sup>88</sup> These decisions were once again accompanied by dissenting opinions signed by the same CEC members as previously, with a detailed list of alleged irregularities attached.

On 22 April, the Constitutional Court convened in a plenary session. The Court allowed the opposition parties AMN, PL and PLDM to present their arguments for the annulment of the election. However, the Court did not allow the representative of PSDM to intervene, even though this party had also filed complaints with the Court on 14 April.<sup>89</sup> AMN, PL and PLDM claimed that their voter list verification effort had resulted in evidence of electoral fraud. Files with documents and evidence these parties collected in support of these claims were made available to the Court.

A representative of the PCRM attending the session stated that the evidence of electoral fraud had not been presented in accordance with procedural rules and that the contenders had not filed any complaints regarding the voter lists until election day. After the parties were heard, the CEC was provided with the opportunity to respond. The CEC representative qualified the cases of irregularities presented as mistakes and pointed out that the opposition parties were in power in many local governments and hence were equally responsible for the quality of voter lists. The increase in the number of registered voters, according to the CEC, corresponds to the statistical data on births and deaths. The CEC representative also stated that the recount was carried out without participation of commission members from AMN, and PDM, which in some cases left PEBs without quorum. In these instances the mayors' offices provided additional staff, which explains differences in protocol signatures between the count of 5 April and the recount.

Following the interventions by political parties and the CEC, the Constitutional Court declared the election legal and validated the mandates of elected candidates without ordering an investigation into the allegations of fraudulent voting submitted by the opposition. This represented another missed opportunity to rebuild confidence in the process.

## **XVIII. RECOMMENDATIONS**

The following recommendations are offered for consideration by the authorities of the Republic of Moldova, with a view to support their stated goal to conduct elections in line with OSCE commitments. Urgent measures to restore public trust in the electoral process need to be taken. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that are yet to be implemented.

### **A. LEGAL FRAMEWORK**

1. The OSCE/ODIHR encourages the authorities of the Republic of Moldova to follow up on the recommendations contained in the Joint Opinions on the Election Code of Moldova, issued in December 2007 and October 2008. Of particular concern are:
  - the prohibition of pre-electoral alliances;
  - the restriction of the right to take up a parliamentary seat for citizens with multiple citizenships;

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<sup>88</sup> CEC Decisions, nr 2516, 2517, 2520 and 2522, dated 21 April 2009.

<sup>89</sup> The Court argued the PSDM complaints would not be taken into consideration, as the party had not reached the threshold to be represented in Parliament.

- the 50 per cent turnout requirement for an election to be valid; and
  - the threshold for parliamentary representation.
2. The vagueness of the new provision introduced in 2008 concerning the recount of votes could be addressed in order to clarify the body responsible for the recount, the acceptable grounds for requesting a recount, the deadlines for presenting a request, as well as the modalities of the recount itself.
  3. Consideration could be given to introducing amendments to the Election Code to cover the issues that were dealt with in these elections by means of CEC decisions, including provisions on safeguards against multiple voting and on types of documents on the basis of which voting is permitted.

#### **B. ELECTION ADMINISTRATION**

4. The CEC decisions and regulations should be drafted in a clear and unambiguous language, referencing other legislation as necessary. In cases when the CEC amends earlier decisions, these should be part of the new document with clear indications of the amended portion.
5. The CEC should avoid responding to complaints and appeals of any nature by memoranda and letters, as such documents do not allow complainants seek further legal redress.
6. Communication channels between the CEC and lower level election commission could be streamlined in order to ensure uniform and timely application of CEC decisions and regulations.
7. The commendable efforts by the CEC to publish election results by polling station on its website as they become available should be maintained. The technical capacity of the CEC website could be improved.
8. The legal requirement of displaying election results at PEBs and DECAs immediately upon completion of count should be strictly abided by.
9. Full transparency and accountability needs to be ensured at all stages of ballot handling, including the publication of numbers of ballots printed, reprinted and/or destroyed. In addition, detailed regulations on the use of Absentee Vote Certificates could be developed. Accountability on printing, distribution and voting with AVCs should be ensured and the serial numbers of AVC received on election day should be recorded by PEBs in the result protocols to provide full transparency.
10. Training of members of election administration should place particular emphasis on count and tabulation procedures, completion of result protocols, as well as the use of mathematical verification formulas to ensure accuracy. Training could be made more efficient by conducting it in smaller groups and in a more interactive format.

#### **C. VOTER REGISTRATION**

11. As recommended previously, the Election Code should provide for a clear division of responsibilities for the maintenance and update of voter lists between local authorities,

election administration and the Ministry of Information Development, in line with their obligations under other legislation.

12. It would appear most effective if the MID held primary responsibility for the compilation and ultimate accuracy of voter lists since it possesses the most reliable initial voter information. This would significantly enhance transparency and accountability.
13. A clear mechanism should be promulgated by which the raw MID voter lists should be verified on the ground to ensure the accuracy of the final voter lists. Draft voter lists should be made available for public review at local self-government bodies on an annual basis. Information collected by local self-government authorities in the review process should be analyzed and verified by the MID and relevant adjustments be made in the central register.
14. The legislation could clearly stipulate the day by which the final version of voter lists is to be available and the CEC, in conjunction with the MID, should announce the final number of registered voters per polling stations at least a week before election day.
15. As long as supplementary voter lists remain in use on election day, the CEC should ensure that adequate safeguards against potential multiple voting continue to be in place.

#### **D. ELECTION CAMPAIGN**

16. Measures should be taken to ensure that all contestants have free and equal access to voters and can campaign without any impediments. Any undue interference in campaign activities by representatives of central and local government authorities, including law enforcement agencies, should be curtailed.
17. Further steps should be taken to prevent the abuse of administrative resources for campaign purposes at all levels.
18. The articles of the law providing protection to candidates from administrative and legal actions during an electoral period should be adhered to and applied in a spirit of protecting the right to seek public office and to campaign freely. Consideration could be given to prohibiting through the Electoral Code all types of pressure and intimidation of voters, candidates, campaign activists and election officials. The letter and spirit of the law should also be applied to the period preceding the official election campaign. Cases of pressure and intimidation should be investigated and individuals found guilty held accountable.
19. Further efforts are necessary to facilitate the implementation of the new Law on Public Assemblies by all stakeholders, including local authorities and law enforcement agencies. Training of stakeholders on the provisions of the Law should be considered.

#### **E. ELECTION DAY PROCEDURES**

20. The maximum number of registered voters per polling station could be considerably reduced in order to facilitate the voting process and to avoid possible overcrowding.
21. Election administration could ensure that practical arrangements necessary for safeguarding ballot secrecy are in place in all polling stations, including an adequate number of curtained voting booths that preserve the secrecy.

22. The CEC could issue instructions to streamline data processing on election night at the DEC level in order to speed up data entry and to prevent bottlenecks.

#### **F. COMPLAINS AND APPEALS**

23. Consideration could be given to ensure that the Election Code clearly defines powers and responsibilities of bodies dealing with various categories of complaints and appeals. The possibility for appellants to choose the body to appeal to should be revoked to ensure uniform procedures and to avoid possible conflicts of jurisdiction and/or conflicting judgments.
24. The CEC could adopt comprehensive rules of procedure related to the complaints and appeals process, including criteria for categorizing complaints, the role of CEC members and the legal staff in processing them. Rules should be established to ensure the respect of the right of both parties to be heard and to present all relevant evidence.
25. Consideration could be given to ensure that the Election Code clearly defines which body is responsible for deciding on contestations of final results of elections based on alleged fraudulent actions and the timeframe for such contestations.

#### **G. MEDIA**

26. The independence of the public broadcaster could be strengthened, including the development of impartial editorial practices, in order to provide the public with equitable, critical and pluralistic reporting. Public media should develop a neutral, objective and informative editorial line and its reporting should be balanced, including when covering activities of state authorities.
27. The independence of the Audiovisual Co-ordination Council could be further strengthened to limit possibilities for political or other influence on its decision-making. The Council should act promptly on observed cases of media-related infringements, as required by law.
28. The clarification of competences over media-related complaints should be considered in order to prevent overlapping jurisdiction of several bodies. The CCA could be given the sole responsibility to oversee media compliance with media-related provisions of the Election and Broadcasting Codes, with the aim to take prompt and effective action in cases of violations.
29. Article 47 (4) of the Election Code restricting the right of broadcasters to cover electoral activities in news and current affairs programs should be reviewed; in the same vein, reporting on a broad range of views and platforms should be encouraged. When covering governmental activities, broadcasters should provide balanced reporting by offering an opportunity to a broad range of electoral contestants and parties to present their views to the electorate.
30. State bodies should refrain from interfering in the activities of the media during election period. The media should operate free from any intimidation, threats or pressure.
31. Election authorities should be making greater use of media in its voter information and education activities so as to ensure better voter outreach.

## **H. PARTICIPATION OF WOMEN**

32. The Law on Ensuring Equal Rights and Opportunities for Men and Women obliges the election administration and political parties to observe the principle of gender equality. Consideration could be given to the inclusion of practical suggestions on how to achieve this goal, what will greatly enhance the chances of implementation of these provisions.
33. Efforts should be undertaken to increase the representation of women on decision-making positions within election administration, in particular in DEC's and the CEC, as well as to encourage their nomination among leading candidates on party lists.

## ANNEX: OFFICIAL ELECTION RESULTS<sup>90</sup>

	Preliminary Results	Result Protocol of 11 April		Recount, Result Protocol of 21 April	Difference after recount	
a. Number of voters on permanent voter lists	2583129	2564710		2586309	21599	
b. Number of voters on supplementary voter lists	117563	100906 <sup>91</sup>		117794	16888	
c. Number of voters who received ballots	1555734	1555734		1556244	510	
d. Number of voters who turned out to vote	1555577	1555577		1556083	506	
e. Difference between C and D	157	157		161	4	
f. Invalid Ballots	19433	19433	1,2%	18996	-437	1,2%

### g. Number of Votes per Election Contender

			Percent of Valid Votes	Mandates			Mandates Percent of Valid	Mandates
PSD	56855	56855	3,7%		56866	11	3,7%	
PL	201812	201812	13,1%	<b>15</b>	201879	67	13,1%	<b>15</b>
AMN	150110	150110	9,8%	<b>11</b>	150155	45	9,8%	<b>11</b>
PPCD	46549	46549	3,0%		46654	105	3,0%	
PCRM	760139	760139	49,5%	<b>60</b>	760551	412	49,5%	<b>60</b>
PLDM	190932	190932	12,4%	<b>15</b>	191113	181	12,4%	<b>15</b>
PDM	45623	45623	2,97%		45698	75	2,97%	
UCM	42242	42242	2,75%		42211	-31	2,75%	
MAE	15447	15447	1,01%		15481	34	1,01%	
PDSMU	3360	3360	0,22%		3357	-3	0,22%	
PC	4384	4384	0,29%		4399	15	0,29%	
Banari Sergiu	8751	8751	0,57%		8759	8	0,57%	
Urîtu Ștefan	2796	2796	0,18%		2803	7	0,18%	
Railean Victor	665	665	0,04%		667	2	0,04%	
PRM	1438	1438	0,09%		1436	-2	0,09%	
Țîmbalist Tatiana	2465	2465	0,16%		2467	2	0,16%	
Lomakin Alexandr	2576	2576	0,17%		2591	15	0,17%	
h. Valid Ballots	1536144	1536144			1537087	943		
i. Ballots Received by PEB	2677864	2677864			2680379	2515		

<sup>90</sup>

Source: website of the Central Election Commission, [www.cec.md](http://www.cec.md).

<sup>91</sup>

The numbers of voters on regular and supplementary voter lists in the CEC protocol excluded voters abroad in an attempt not to count them twice; rectified later.

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).