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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**REPUBLIC OF MOLDOVA**

**JOINT OPINION**

**ON THE LAW FOR AMENDING**  
**AND COMPLETING CERTAIN LEGISLATIVE ACTS**

**(ELECTORAL SYSTEM FOR THE ELECTION OF THE PARLIAMENT)**

**Adopted by the Council for Democratic Elections**  
**at its 61<sup>st</sup> meeting (Venice, 15 March 2018)**  
**and by the Venice Commission**  
**at its 114<sup>th</sup> Plenary Session (Venice, 16-17 March 2018)**

**on the basis of comments by**

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**Mr Eirik HOLMØYVIK (Substitute member, Norway)**  
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## I. Introduction

1. By letter of 14 September 2017, Mr Cesar Florin Preda, Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly, requested an Opinion of the Council of Europe's European Commission for Democracy through Law (Venice Commission) on the legal framework governing the funding of political parties and campaigns, as well as the recent amendments to the electoral legislation of the Republic of Moldova.

2. By letter of 15 September 2017, the Secretary of the Venice Commission confirmed the Venice Commission's readiness to carry out such an assessment and proposed, as a first step, that the Venice Commission jointly with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) prepare an Opinion on the legal framework governing the funding of political parties and electoral campaigns, which was adopted by the Council for Democratic Elections at its 60<sup>th</sup> meeting (Venice, 7 December 2017) and by the Venice Commission at its 113<sup>th</sup> plenary session (Venice, 8-9 December 2017).<sup>1</sup>

3. According to the letter of 15 September 2017, the recent amendments to the electoral legislation, adopted on 20 July 2017 (Law No. 154),<sup>2</sup> were to be assessed once the delineation of constituencies, in accordance with the new legislation, would be completed. On 7 November, the Government of the Republic of Moldova adopted legislation that delineated constituencies on the basis of a proposal of the National Commission on the Establishment of Constituencies.

4. According to established practice, the opinion was prepared jointly by the Venice Commission and ODIHR. Messrs Richard Barrett, Eirik Holmøyvik and Oliver Kask were appointed as rapporteurs for the Venice Commission, and Ms Tatyana Hilscher-Bogussevich as the expert for the ODIHR.

5. A delegation of the Venice Commission and ODIHR composed of Messrs Barrett (member, Ireland), Holmøyvik (substitute member, Norway), Kask (member, Estonia), and Pierre Garrone (Head of the Venice Commission Division of Elections and Political Parties), as well as Mr Oleksii Lychkovakh (ODIHR Election Advisor) and Ms Tatyana Hilscher-Bogussevich (ODIHR expert) visited Chişinău on 29 January 2018 to meet with the Speaker of the Parliament, the parliamentary factions and groups, the Central Electoral Commission (CEC), and the National Commission on the Establishment of Constituencies, as well as non-parliamentary groups and civil society. This Joint Opinion takes into account the information obtained during the above-mentioned visit.

6. The present Joint Opinion was adopted by the Council for Democratic Elections at its 61<sup>st</sup> meeting (Venice, 15 March 2018) and by the Venice Commission at its 114<sup>th</sup> Plenary Session (Venice, 16-17 March 2018).

## II. Scope of the Joint Opinion

7. The scope of this Joint Opinion covers only the amendments submitted for review. Thus, the Joint Opinion does not constitute a full and comprehensive review of all available legislation on elections in the Republic of Moldova.

8. This Joint Opinion is a follow-up to the Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the parliament), adopted by the Council for Democratic Elections at its 59<sup>th</sup> meeting (Venice, 15 June 2017)

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<sup>1</sup> [CDL-AD\(2017\)027](#)

<sup>2</sup> [CDL-REF\(2018\)001](#)

and by the Venice Commission at its 111<sup>th</sup> Plenary Session (Venice, 16-17 June 2017).<sup>3</sup> It examines whether the recommendations of the previous opinion were followed or not. References are made to previous recommendations that are still to be implemented without reiterating them in detail. The analysis of the adopted amendments, and the way they could still be improved, are more detailed.

9. The ensuing recommendations are based on the relevant international obligations and standards, including Article 3 of the First Protocol to the European Convention on Human Rights, the Venice Commission Code of Good Practice in Electoral Matters,<sup>4</sup> the 1990 OSCE Copenhagen Document, and the International Covenant on Civil and Political Rights (ICCPR), as well as other Council of Europe and OSCE commitments and international good practice. It takes into account previous opinions as well as reports on elections observed in the Republic of Moldova by ODIHR and the Parliamentary Assembly of the Council of Europe (PACE) already referred to in the June 2017 Joint Opinion.

10. The present opinion does not deal with the issue of campaign finance, which has been addressed by the (December 2017) Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns.<sup>5</sup>

11. This Joint Opinion is based on an unofficial English translation of the amendments as provided by the authorities of the Republic of Moldova. Errors from translation may result.

### **III. Executive Summary**

12. Successful electoral reform is built on at least the following three elements: 1) clear and comprehensive legislation that meets international standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; 3) political commitment to fully implement the electoral legislation in good faith.

13. In the June 2017 Joint Opinion, the Venice Commission and ODIHR underlined the lack of consensus on the change towards a mixed electoral system for the election of the parliament and the risk that independent majoritarian candidates may develop links with or be unduly influenced by businesspeople or other actors who follow their own separate interests. As such, while recognising the sovereign decision of the Moldovan lawmakers with regard to the electoral system, it was recommended not to change the electoral system in the present Moldovan context. The remarks made in the 2017 opinion are still valid and the Venice Commission and ODIHR regret that this fundamental recommendation was not followed. It remains to be seen how the mixed system will be implemented in practice in the forthcoming elections.

14. For the rest of the Venice Commission and ODIHR recommendations, a considerable number of them were addressed, if not fully implemented. In particular:

- An independent commission on constituency delimitation was established by law – with a membership appointed by the government. However, the discretion left to the government to determine its composition is so broad that it may jeopardise the commission's independence;
- Specific measures were taken to encourage parties to nominate women as candidates in single-member constituencies;
- The limit of campaign finance donations was decreased to 25% of the previous amount;

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<sup>3</sup> [CDL-AD\(2017\)012](#)

<sup>4</sup> [CDL-AD\(2002\)023rev2](#)

<sup>5</sup> [CDL-AD\(2017\)027](#)

- While some more precise rules were adopted on provisions for voters abroad, more detailed and comprehensive criteria for the establishment of constituencies and polling stations abroad could be considered.

15. Other provisions of the amendments should be reconsidered and are addressed more in detail below. Recommendations refer for example to the need to lower the threshold for entering Parliament, measures to ensure independence of the boundary commission, periodic review of constituency boundaries, and the need to distinguish proceedings against decisions of election commissions and against candidates.

16. As underlined by the Venice Commission and ODIHR in their previous opinion, building consensus on the choice of an electoral system and related electoral legislation contributes to the acceptance, legitimacy and stability of the governing system.<sup>6</sup> The June 2017 opinion noted that the existing polarisation around the issue was not indicative of meaningful consultation and broad consensus among key stakeholders.<sup>7</sup>

17. It is underscored that the good faith implementation of the revised legislation is crucial for the functioning of democratic institutions in the Republic of Moldova.

18. ODIHR and the Venice Commission remain at the disposal of the authorities of the Republic of Moldova for any further assistance that they may require.

#### **IV. Analysis and Recommendations**

##### **A. Process of reform**

19. Adoption of electoral legislation by broad consensus after extensive public consultations with all relevant stakeholders is one of the fundamental elements of electoral reform, in particular when a change of the electoral system is envisaged: it contributes to the acceptance, legitimacy and stability of the governing system.<sup>8</sup> The June 2017 opinion noted that the existing polarisation around the issue was not indicative of meaningful consultation and broad consensus among key stakeholders.<sup>9</sup>

##### **B. Electoral system**

20. The fundamental change to the Electoral Code ("the Code") in Law No. 154 from 20 July 2017 is the introduction of a mixed electoral system with one national constituency electing 50 Members of the Parliament (MPs) by proportional representation from closed party lists, together with 51 MPs elected from 51 new single-member constituencies on a first-past-the-post majority basis. Candidates may run simultaneously in the national constituency and in a single-member constituency, with the latter having preference if a candidate is elected in both cases. Similar to the mixed system reviewed in the 2017 Venice Commission and ODIHR Joint Opinion, but unlike the mixed system proposed in 2013, a majority of the votes in a single-member constituency is not required.<sup>10</sup>

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<sup>6</sup> CDL-AD(2017)012, par. 32

<sup>7</sup> CDL-AD(2017)012, par. 40

<sup>8</sup> CDL-AD(2017)012, par. 32

<sup>9</sup> CDL-AD(2017)012, par. 40

<sup>10</sup> See CDL-AD(2014)003, par. 24 and CDL-AD(2017)012, par. 29

21. This fundamental change to the electoral system is contrary to prior recommendations of the Venice Commission and ODIHR. Both the 2014 and the 2017 Joint Opinions raised concerns over the introduction of a mixed electoral system to replace a proportional system in the Republic of Moldova.<sup>11</sup> The 2017 Opinion recognised the sovereign decision of the Moldovan lawmakers with regard to the electoral system,<sup>12</sup> but in the particular circumstances of Moldova, it recommended against the proposed change on the grounds that the election stakeholders in single-member constituencies could be vulnerable to undue influence and manipulation by well-resourced local businesspeople. More precisely, the 2017 Joint Opinion found that, “[i]n the present Moldovan context, the proposed reform could potentially have a negative effect at the constituency level, where independent majoritarian candidates may develop links with or be influenced by businesspeople or other actors who follow their own separate interests”.<sup>13</sup> Concerns were also noted over the competent body and the criteria for the establishment of single-member constituencies, as well as the effect of thresholds on the representation of women. In light of these concerns, and in view of the lack of consensus on this polarising issue, the Joint Opinion concluded that the change of electoral system “is not advisable at this time”.<sup>14</sup> It remains to be seen how the mixed system will be implemented in practice in the forthcoming elections and the concerns raised in the 2014 and 2017 Joint Opinions are reiterated. There is no new information that suggests a different conclusion in the current opinion.<sup>15</sup>

22. To mitigate potential negative effects of the change of electoral system, *adequate provisions should be adopted in the field of campaign finance and oversight, as recommended in the December 2017 Joint Opinion*.<sup>16</sup> Stronger measures may be needed to counter-balance undue influence by local businesspeople in the single-member constituencies. In this respect, it is a positive development that the limits for donations have been lowered in Article 38(2)e).

23. Under the adopted law, independent candidates may stand only in single-member constituencies, based on the definition of “Electoral candidate” in Article 1 first indent. This restriction should be reconsidered. Independent candidates’ chances to be elected in single-member constituencies are not equal to a possible chance to be elected in the nationwide constituency, as in single-member constituency the candidate has to receive more votes than any other candidate. Thus, an independent candidate who could receive 15% of votes in all regions, might not win a seat in any single-member constituency. *The Code should provide a possibility for the nomination of independent candidates in the nationwide constituency*.

## 1. Thresholds

24. The concerns raised on the adoption of a mixed electoral system should also take into account the thresholds for representation in the proportional component of the election. In other recent opinions, the Venice Commission has stressed the importance of considering the combined effects of measures in the electoral law on the voters’ right to equal suffrage.<sup>17</sup>

<sup>11</sup> See CD-AD(2014)003, par. 27-29 and CDL-AD(2017)012, par. 15, 29-35

<sup>12</sup> Cf. Code of Good Practice in Electoral Matters, II.4; para 4 of the 1990 OSCE Copenhagen Document; UN CCPR GC25, para 21 / UN GA RES - A/RES/72/164

<sup>13</sup> See CDL-AD(2017)012, par. 14

<sup>14</sup> See CDL-AD(2017)012, par. 15

<sup>15</sup> Cf. the study by the EU Directorate-General for External Policies entitled “*The electoral reforms in three association countries of the Eastern Neighbourhood – Ukraine, Georgia and Moldova*”, published in October 2017

<sup>16</sup> See CDL-AD(2017)027

<sup>17</sup> In the 2017 opinions on the draft revised Constitution of Georgia, the Venice Commission warned against the effects of a 5% threshold in a proportional system, in combination with a ban on electoral blocs and a system of allocating seats to the winning party. See CDL-AD(2017)013, par. 42 and CDL-AD(2017)023, par. 22-29

25. Although decreased for electoral blocs, the threshold remains at 6% for parties and socio-political organisations, and 8% for electoral blocs (Article 89). The June 2017 opinion stated that “[t]he thresholds for political parties to enter the Parliament, as stipulated in Article 86 (2) of the current Electoral Code and replicated in Article 89 (2) of the draft, remain high. While a certain threshold may be necessary to provide stability in Parliament and effective governments, such thresholds should be carefully justified within a specific legislative and political context. Given that five party lists obtained seats in the last election<sup>18</sup>, the necessity of such threshold should be further examined. The Venice Commission and ODIHR have consistently recommended lowering the thresholds in the Republic of Moldova.<sup>19</sup> As ODIHR and the Venice Commission mentioned in the 2008 joint opinion on the election code of Moldova, a relatively high threshold of 6% may lead to a high number of wasted votes.<sup>20</sup> In this respect, the introduction of 51 single member constituencies to be awarded by a first past the post system will amplify the effect of the 6% threshold in the proportional part of the electoral system. *The ODIHR and the Venice Commission reiterate their recommendation to consider lowering the threshold and stress its importance within the context of the new mixed electoral system.*

## 2. Allocation of seats

26. Article 90(3) first provides, for the proportional representation component, for the rounding of the number of seats to be allocated to lists passing the threshold to the entire number nearest to the quota. While, according to Article 90(4), regardless of the size of the remainder, the rest of the seats are allocated on a seat by seat basis to political parties that overcame the threshold, according to their number of votes, in decreasing order. These provisions – which are not new - could have unexpected results.<sup>21</sup> *This allocation formula could be reconsidered.*

## 3. Representation of women

27. As noted in the June 2017 opinion, “somewhat larger numbers of women tend to be elected under proportional systems than under “first-past-the-post” majority or plurality systems, or under mixed systems.”<sup>22</sup> The revised Code maintains the provision that required either gender to be represented with a minimum of 40% of candidates on each list.<sup>23</sup> However, the introduction of a mixed system reduces the applicability of this provision to those lists for the proportional component, and thus includes only half of the seats.

28. The June 2017 opinion also recommended special measures to be taken to encourage gender-balanced representation in single-member constituencies.<sup>24</sup> The adopted law introduces two such measures, which are a welcome step forward. For single-member constituencies, Article 80(1) provides special and lower signature requirements for female candidates (250 signatures instead of 500 for male candidates). Article 41(2<sup>2</sup>) introduces

<sup>18</sup> CDL-AD(2017)012, par. 35

<sup>19</sup> CDL-AD(2014)003, par. 45; CDL-AD(2008)022, par. 15; cf. CDL-AD(2007)040, par. 16. For a comparative approach, see Report on thresholds and other features of electoral systems which bar parties from access to Parliament (II) (CDL-AD(2010)007), par. 20ff

<sup>20</sup> CDL-AD(2008)022, par. 15

<sup>21</sup> For example, a party with a quotient of 10.51 would be provided with one seat based on Article 90(3) and one based on Article 90(4) and another party with a quotient of 10.49 would receive no mandate based on any of these provisions if all the rest have already been allocated. A small party with a remainder of 0.51 could be allocated two such seats and a large party with a remainder of 0.49 only one seat

<sup>22</sup> CDL-AD(2017)012, par. 54, quoting the [OSCE/ODIHR Handbook on Monitoring Women's Participation in Elections](#), p. 20

<sup>23</sup> Article 41(2<sup>1</sup>)

<sup>24</sup> CDL-AD(2017)012, par. 55

financial incentives for political parties nominating at least 40% female candidates in single-member constituencies by increasing the budgetary support with at least 10% of the amount allocated for the budgetary year to the respective party and a multiplication coefficient for every women elected in each single-member constituency, according to the legislation on political parties. The effect of these measures on women's representation remains to be seen. *The Venice Commission and ODIHR reiterate their recommendation to consider additional measures and that the multiplication coefficient for women elected (Article 41(22) of the EC) be included in the law.*<sup>25</sup>

### **C. Delimitation of constituencies (in-country)**

#### **1. Procedural requirements**

29. The establishment and redrawing of single-member constituencies is regulated in Article 74. Constituency borders are fundamental elements of an electoral law, and their establishment and redrawing may have significant consequences on the allocation of seats to parties. For this reason, the Code of Good Practice in Electoral Matters stresses the importance of a non-partisan process by an independent commission, which does not disadvantage national minorities.<sup>26</sup>

30. In previous draft laws to introduce constituencies in the electoral system in 2014 and 2017, the responsibility for establishing such constituencies and drawing electoral boundaries was left to the CEC. In the joint opinions of 2014 and 2017, the Venice Commission and ODIHR had reservations about tasking the CEC with establishing constituencies as there were risks of politicising the CEC with managing such a process as well as overburdening the CEC with additional tasks.<sup>27</sup> The June 2017 joint opinion recommended setting up an independent body to establish and to review constituency boundaries.<sup>28</sup> A body declared in law to be independent has been created, although stakeholders' concerns remain as to the specific composition and work of this body.

31. According to Article 74(2), the single-member constituencies shall be established by an independent commission appointed by the government. This commission is to operate based on its own regulations, approved by the government, and shall elect a Chair and a Secretary out of its own members. The commission's composition is set out in Article 74(2) a-j, and its members

“shall be the representatives of

- a) Central Election Commission;
- b) Legal, Appointments and Immunities Committee of the Parliament of the Republic of Moldova;
- c) Presidency of the Republic of Moldova;
- d) parliamentary fractions and groups;
- e) extra-parliamentary political parties which obtained during the last parliamentary elections over 2% of the validly cast votes;
- f) People's Assembly of Gagauzia;
- g) associations of national minorities;
- h) local public authorities;
- i) Bureau for Relations with Diaspora;
- j) civil society and academia from the area, including geographers and

<sup>25</sup> See CDL-AD(2017)027, par. 35

<sup>26</sup> See the Code of Good Practice in Electoral Matters, I.2.2 vii and the Explanatory Report, I.2.2. and paragraph 7.3 of the 1990 OSCE Copenhagen Document

<sup>27</sup> See CDL-AD(2014)003, par. 33 and CDL-AD(2017)012, par. 43

<sup>28</sup> See CDL-AD(2017)012, par. 47

sociologists.”

32. It is positive that the commission is to be composed of members from both parliamentary and extra-parliamentary stakeholders and includes representatives from Gagauzia and other national minorities. However, the exact composition of the commission remains unclear as the wording of Article 74(2) does neither provide the exact number of representatives to be appointed from each group listed in letters a-j nor does it set a total number of members.

33. The use of the plural form in the introduction to the list (“...representatives of...”), combined with broad and indefinite categories such as “local public authorities” and “civil society and academia from the area”, leaves wide discretion as to the size and the exact composition of the commission. The law provides the government with such discretion in the appointment of the independent commission that it may jeopardise the commission’s independence. In theory, there is nothing in Article 74(2) to prevent even a minority government from making appointments that provide it with majority representation in the commission, i.e. by appointing only party sympathisers from civil society and academia. Representatives of local public authorities might be in practice representatives of political parties, and here again no guarantee is given that this representation will be balanced. During the visit to Chişinău, a number of stakeholders alleged that most members of the commission, which was established in September 2017, were affiliated with the main governing party and informed the Venice Commission and ODIHR delegation that most opposition parties boycotted the work of the commission.

34. As Article 74(2) is framed as an obligation for the government to appoint an independent commission, it should be worded to ensure its independence. A suggestion may be to define in the text a fixed number of members from each of the groups listed in letters a-j. Vague terms such as “local public authorities” should be replaced by a reference to a specific local public institution, such as mayors or local councils. Moreover, the text does not say whether the commission’s members from local public authorities are to represent a specific administrative sub unit for the establishment of a specific constituency, or whether these members are to represent all local authorities in the country. If so, it is not clear how and under which criteria these members are to be selected. The same applies to the groups “associations of national minorities” and “civil society and academia”. For the latter group, the wording “from the area” in Article 74(2) j) seems to suggest that these members are to be appointed *ad hoc* from the different geographical or administrative areas of the country. However, the provision provides no criteria for the selection of these members. This point should be clarified. *Whichever way the provision is framed, it should provide for a balanced composition of the commission based on precise and objective criteria.*<sup>29</sup>

35. From Article 74(2) and (3), it also appears that all the commission’s decisions, both on the delimitation of constituencies and its regulation, are to be approved by the government. Article 74 does not provide an appeal mechanism in the event of the government rejecting the commission’s decision or its regulations. *The Venice Commission and ODIHR recommend limiting the government’s approval to formal requirements, and not to the content of a decision concerning the drawing of the constituencies.* In this context, it has to be noted that, in 2017, the recommendations of the commission were accepted in their entirety by the government. The substance of the internal regulations should be for the commission to develop.

36. The June 2017 Joint Opinion’s recommendation for a periodic review of constituency boundaries appears to have been only partially followed.<sup>30</sup> Article 74(7) prohibits the review of constituency borders less than one year before “ordinary elections”, but does not impose any

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<sup>29</sup> Cf. the [Report on constituency delineation and seat allocation](#) (CDL-AD(2017)034), par. 113-118

<sup>30</sup> See CDL-AD(2017)012, par. 46

periodical review. *Should the mixed system be maintained, a review should take place at least every ten years.*<sup>31</sup>

37. A delay for new constituency boundaries to take effect is important to limit possible advantage of the political groups in power at the given time. For this reason, the Code of Good Practice in Electoral Matters requires that fundamental elements of the electoral law, which include the “drawing of constituency boundaries”, be defined not later than one year before an election.<sup>32</sup>

38. A number of allegations of gerrymandering were voiced during the expert visit to Chişinău. It was also alleged by several interlocutors that the outcome of the delimitation process represented a political compromise among the interested political parties rather than the result of a purely technical process. The Venice Commission and ODIHR are not in a position to verify or reject these allegations within the remit of this opinion.

## 2. Criteria for the delimitation of constituencies

39. The criteria for the delimitation of constituencies are important to ensure equal voting power. In the law, the criteria for the delimitation of single-member constituencies are set out in Article 74(4) a-f. This provision prescribes *inter alia* that constituencies on the territory of the Republic of Moldova shall have between 55,000 and 60,000 voters, and that the deviation of the number of voters between constituencies shall not exceed 10% (instead of 15% in the draft; this requirement is superfluous if the former one is respected). The calculation is based on the number of voters registered in voter lists during the last general election. The reduction of the maximum deviation is welcome.<sup>33</sup> Finally, the constituencies are to follow existing administrative-territorial units and, in particular, they have to respect the administrative limits of Gagauzia. These criteria are in line with the Code of Good Practice in Electoral Matters, which allows States a margin of discretion relative to their geographical, administrative and historical characteristics. However, it appears difficult, if not impossible, to respect all criteria together.

40. For example, the number of registered voters in Gagauzia is 130,170, which makes it impossible to have in this region only constituencies with between 55,000 and 60,000 voters. More generally, the official data indicate that the number of registered voters in the constituencies ranges from 55,161 to 65,739, not taking into account the constituency of Taraclia with 35,082 voters, and one of the constituencies in Gagauzia with 67,278 voters. The maximum deviation from the average is about 10%, and does not go against international standards. However, a number of constituencies have more than 60,000 voters, which goes against the letter of the law. Compliance of all authorities with the law is a requirement of the Rule of Law.<sup>34</sup> Since the simultaneous respect of all provisions of the law appears difficult, if not impossible in some cases, and the law appears to ask for such a simultaneous respect, *the Venice Commission and ODIHR recommend amending it to avoid any possible contradictions.*

41. National minority representation is a recurrent topic in the ODIHR and Venice Commission joint opinions on the electoral law of the Republic of Moldova.<sup>35</sup> According to the 2014 census, 24.9% of the population identified themselves as having an ethnicity other than Moldovan.<sup>36</sup> The June 2017 Joint Opinion addressed that the draft law in its initial version did not prescribe any single-member constituencies specific to the Gagauz ethnic group in the Autonomous

<sup>31</sup> Code of Good Practice in Electoral Matters, I.2.2.v

<sup>32</sup> Code of Good Practice in Electoral Matters, II.2.b

<sup>33</sup> Code of Good Practice in Electoral Matters, I.2.2 and CDL-AD(2017)012, par. 45

<sup>34</sup> Rule of Law Checklist, CDL-AD(2016)007, II.2

<sup>35</sup> See CDL-AD(2010)014, par 12, CDL-AD(2007)040, par. 12, CDL-AD(2014)003, par. 35, and CDL-AD(2017)012, par. 48-51

<sup>36</sup> See <http://www.statistica.md/newsview.php?l=en&id=5583&idc=168>

Territorial Unit of Gagauzia.<sup>37</sup> The recommendation to create single-member constituencies exclusively for the Gagauz Territorial Unit has been followed. Article 74(4) g) prescribes that single-member constituencies established within this autonomous territorial unit shall not exceed its borders or be mixed with localities outside the borders. This led to creating two constituencies in Gagauzia - one of them having the highest number of registered voters in the country. Giving one seat to the Bulgarian community in Taraclia with 35,082 voters appears justified under the Framework Convention for the Protection of National Minorities<sup>38</sup> and the Code of Good Practice in Electoral Matters.<sup>39</sup>

42. Concerning other national minorities, minority interests are listed in Article 74(2) f) as one of several criteria to be taken into consideration when drawing up constituencies. However, the wording is quite general (“shall be ... taken into account”) and non-binding, and minority representation does not have precedence over the other criteria listed in Article 74(2) a-g. It remains to be seen in practice how these criteria impact minority representation in the single-member constituencies.

43. A problem could arise from Article 87(4), which requires voters to vote only in the single-member constituencies in which they are domiciled. From the information received during the visit, while students may vote in the locality where they study (Article 87(2), this applies only to the voting for single-member constituencies. *The possibility for students to vote in the constituency where they study could be considered.*

#### **D. Delimitation of constituencies and voting in Transnistria and abroad**

44. The territory on the left bank of the Nistru river (Transnistria), which is outside of government control, has been a recurrent topic in ODIHR and Venice Commission joint opinions due to the various challenges it entails in organising elections. Both the 2014 and the June 2017 Joint Opinions addressed the need for clear criteria for the creation of constituencies and organising elections in Transnistria.<sup>40</sup> The new Article 29<sup>2</sup> provides detailed procedures on establishing polling stations and voting in Transnistria. While it remains to be seen how these procedures can be applied in practice due to the government’s current lack of control on the territory, it is positive that these components are addressed in the law.

45. Two constituencies were established for the voters residing in Transnistria, one for the northern part and the other for the southern part. Concerning the establishment of constituencies in Transnistria, the 2017 Joint Opinion cautioned against using the number of registered voters in the last parliamentary elections as a basis for the calculation. Historically, due to the challenges in organising elections on a territory outside of government control, participation in elections of voters from Transnistria is lower than the country average. Accordingly, using the number of registered voters in parliamentary elections as a basis for the establishment of constituencies may be inaccurate and as a result increase, due to the practice of low turnout, the voting power of citizens residing in Transnistria compared to citizens residing on government controlled territory. Article 74(6) appears to have followed the recommendation by basing the establishment of constituencies on advance registration of voters according to a procedure set up by the CEC. It is unclear whether advanced registration is more accurate than using registration data from the previous parliamentary elections.

<sup>37</sup> See CDL-AD(2017)012, par. 50

<sup>38</sup> [ETS 157](#)

<sup>39</sup> CDL-AD(2002)023rev, I.2.4.b

<sup>40</sup> See CDL-AD(2014)003, par. 39-40 and CDL-AD(2017)012, par. 52-53

CDL-AD(2018)008

46. Due to the high number of Moldovan citizens residing abroad, the criteria for the establishment of single-member constituencies is a significant issue.<sup>41</sup> The revised Code provides for three such constituencies. The establishment of these constituencies has also a significant political impact as voters residing in various countries tend to support different political parties.<sup>42</sup> A particular challenge is to ensure equal voting power between the domestic and three foreign constituencies, which is a general obligation according to Article 4(2).

47. Article 74(5) appears to address the recommendation made in the June 2017 Joint Opinion of not fully relying on voter pre-registration in Moldova, but instead lists non-exhaustively a number of additional sources of data to be taken into account in determining the number of constituencies abroad, among them information on Moldovan voters abroad from diplomatic missions and host countries. While this may be a step forward, the actual criteria for establishing constituencies abroad are not precise. The final delimitation of constituencies in November 2017 resulted in three single-member constituencies abroad. *The possibility to further clarify the criteria for determining the number of single-member constituencies abroad as well as their boundaries could be considered.*

48. Article 29<sup>1</sup>(3<sup>1</sup>) provides the criteria for opening polling stations abroad. Similar principles are applicable for the opening of polling stations for voters living in Transnistria (Article 29<sup>2</sup>(3)). The decision is made based on a wide margin of appreciation. Even if this rule provides for more relevant criteria to be taken into consideration compared to the draft law assessed in the June 2017 Joint Opinion, it does not provide clear and fixed criteria for the CEC on how to determine the number of polling stations abroad for each location. A possible requirement could be to have a fixed set of polling stations relative to the number of voters registered in advance in the various locations abroad. This would, however, imply that a sufficient number of voters register abroad. For the time being, the provision leaves it to the CEC's discretion to determine the number of polling stations in each location based upon the relevant statistical data listed in Article 29<sup>1</sup>(3<sup>1</sup>). *The Venice Commission and ODIHR reiterate their recommendation to establish clear and fixed criteria for the CEC to follow and to avoid any arbitrary or unreasonable restrictions to the right to vote.*<sup>43</sup>

49. The Electoral Code provides in many areas for more detailed regulations to be adopted by the CEC. Whereas this solution is advisable for many technical questions and allows for the law to focus on the main issues of the electoral process, issues that appeared to be controversial and were largely debated in public should be decided by parliament. Article 29<sup>2</sup>(3)(b) includes questions of procedure for the registration of voters who reside in Transnistria among the issues regulated by the CEC. It is a sensitive issue of high importance and the possible number of voters it concerns is rather high. *The Venice Commission and ODIHR recommend including more detailed regulation on such procedure in the Code. The same recommendation applies to voting abroad by voters that are not pre-registered (Article 87(6)).*

### **E. Nomination of candidates**

50. In the June 2017 Opinion,<sup>44</sup> the Venice Commission and ODIHR recommended to provide clarifications concerning the required submission of integrity reports of the nominated

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<sup>41</sup> See PACE Election Observation Report on the 2014 parliamentary elections, par. 22, which puts the number of Moldovan citizens residing abroad between 700,000 and 900,000, while there was a total of 3.2 million registered voters; among them, about 160,000 were registered abroad in 2016 (PACE Election Observation Report on the 2016 presidential elections, par. 17)

<sup>42</sup> See EU Directorate-General for External Policies 2017: The electoral reforms in three association countries of the Eastern Neighbourhood – Ukraine, Georgia and Moldova, p. 25

<sup>43</sup> See and CDL-AD(2017)012, par. 59

<sup>44</sup> CDL-AD(2017)012, par. 70-71

candidates and to avoid extensive regulation on initiative groups. Both recommendations have been taken into account, but *the rules on integrity reports should still be revised*.

51. According to Article 44, candidates need to present a list of documents for registration to the respective electoral body. This includes a candidate's biographical data and health certificate. The CEC and district election commissions should assess only whether candidates are entitled to stand for election based on formal criteria such as holding the right to be elected and whether they have presented the required signature lists or were lawfully nominated by a political party. It should be up to the electorate to assess the suitability of the candidate, taking into account the candidate's health and former activity. The Venice Commission and ODIHR recommend removing these requirements on biographical data and health certificate. Moreover, the practice should ensure that provisions on integrity certificates are applied impartially.

52. As said in the June 2017 Opinion, the possibility of a late replacement of candidates by political parties facilitates centralised control over the candidates, including those in single-member constituencies. It is a positive step that the deadline for amending the list of candidates will be 14 days rather than 7 days as appeared in the earlier proposal. However, *the Venice Commission and ODIHR recommend further reducing the deadline for the withdrawal of candidates to avoid replacements so late in the process*.<sup>45</sup>

#### **F. Complaints and appeals**

53. The Code (Article 66) describes complaint procedures against election management bodies (EMBs) at all levels and candidates. Current complaint procedures against candidates could lead to a confusion between administrative (electoral) and civil procedures. The Code does not explicitly provide in which case a complaint should be lodged against a candidate. In case candidates violate their duties, it is the obligation of EMBs to order them to stop their illegal activities. Thus, the civil cases initiated during election periods should not be considered as electoral complaints even if the case was initiated due to irregularities while campaigning. Possible defamation cases should not be solved in an exceptionally speedy manner without a reasonable time for providing legal arguments before the court. Otherwise candidates might be involved in numerous court cases initiated against them and left little time for campaigning. The aim of specific regulations concerning legal remedies during an election period should be to guarantee the legality of the election process and election results. Therefore, *the Venice Commission and ODIHR recommend revising the law in order to distinguish clearly between proceedings against decisions of election commissions and against candidates*.

54. The Code (Article 68(6)) provides a short deadline for the submission of appeals against court decisions. A deadline of one day is exceptionally short.<sup>46</sup> Point II.3.3.g of the Code of Good Practice in Electoral Matters states that time limits for lodging appeals must be short (three to five days at first instance). A shorter time-limit hampers the possibility to present solid reasoning and proof for the case to be dealt with efficiently. It is recommended to extend the deadline for submitting appeals to three days.

#### **G. Other issues**

55. It is welcome that, as previously recommended, the recent amendments clarify that provisions for media coverage will apply to the single-member constituencies in the same manner as they do to the nationwide constituency.

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<sup>45</sup> CDL-AD(2017)012, par. 69.

<sup>46</sup> CDL-AD(2009)054, paragraphs 56-58

CDL-AD(2018)008

56. The provisions in relation to sanctions and partial elections have been reformed. In particular, Article 94<sup>2</sup> clarifies the circumstances in which a decision of the Constitutional Court might result in elections being declared null.