



REPUBLIC OF MOLDOVA
PRE-ELECTION TECHNICAL ASSESMENT:
FINDINGS AND RECOMMENDATIONS

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CONDUCTED BY:

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SECTION I: INTRODUCTION

Project Background

From 1994 to 2001, IFES maintained an on-site presence in Chisinau, Moldova, and implemented a non-partisan program to promote democratic governance through civil society strengthening and electoral reform. Beginning in 2000, IFES supported the founding of the "Asociatia pentru DEMocratie ParTicipativa" (ADEPT) to further bolster domestic capacity for democracy promotion.

In a common commitment to strengthening democracy in Moldova, ADEPT and IFES partnered to produce this evaluative report. In May 2004, a team of experts collected information and insights from public officials, members of the legislature, election officials, political party representatives, media representatives, civic groups, and international donor organizations working in Moldova. Appendix B contains a list of individuals with which the team of experts held meetings during May 2004.

The report aims to provide an overview of the strengths and weaknesses of the electoral process and make targeted recommendations to improve the preparedness for, and administration of, free and fair legislative elections in early 2005. The report relies heavily upon the cumulative experience of IFES and ADEPT with democracy promotion in Moldova over the past decade. The analysis and recommendations contained herein are meant to be constructive and realistic and are offered in a spirit of cooperation and respect.

Profiles of the international assessment team members are found in Appendix A. IFES' staff members Michael Svetlik, Eric Rudenshiold and Dorin Tudoran provided programmatic and editorial support to this assessment project. The administrative assistance of Timur Onica is also gratefully acknowledged.

Funding from the Soros Foundation Moldova made possible this assessment activity and the resulting report. The opinions and recommendations contained in this document are those of IFES and ADEPT.

Electoral History of Moldova

Since Republic of Moldova's independence in 1991, seven election campaigns (three parliamentary, three local and one presidential) have been conducted based on various electoral laws. In 1997, a new Electoral Code was elaborated with IFES' support and adopted. The Code aimed at standardizing electoral procedures and codifying them in order to solve the above mentioned problems and eliminate various inconsistencies.

One of the most significant innovations contained in the Code was the establishment of a permanent Central Election Commission (CEC). A permanent electoral management body allows for the systematic conduct of activities the Commission must perform between elections according to the Code. Among these responsibilities are studying laws and electoral experience, proposing necessary amendments, conducting civic and voter education programs, informing voters, analyzing electoral frauds—so as to avoid them in the future, and verifying voter rolls and updating them based on the data provided by the local public administration.

Over the past decade, parliamentary elections have been conducted in 1994, 1998, and 2001. Two of these polls (1994 and 2001) were early elections held almost one year prior to the expiration of the Parliament's mandate. All three elections were held based on the proportional system. Although a great many violations of the law were registered, none of them was deemed sufficient to influence the general outcomes of the elections, which were generally considered to be in compliance with international norms and commitments.

According to the Constitution of the Republic of Moldova new parliamentary elections may be held in the period between February 26 and May 26, 2005. Political parties in Moldova and international organizations working in the field are deeply concerned over the forthcoming elections, given deviations from the principles of free and fair elections registered in the Gagauz-Yeri regional and general local elections in Moldova in recent months.

SECTION II: EXECUTIVE SUMMARY

Moldova's recent transition to democracy has been positively characterized by successive competitive elections in which power was transferred from one party or coalition to another without violence, and in largely transparent elections. However, these same shifts have not been accompanied by progressive stabilization of the broader democratic development of the country, with the public administrative, economic, legislative and social sectors still struggling to internalize democratic norms and adapt practices to a reflect a new political reality.

Within this context, a shift to centralization, consolidation of vertical power and political exclusivity have grown to characterize the government in power since 2001. Empowered by a mandate of over 70% of the Parliament, as well as controlling the position of President, the party in power is supported by a recalcitrant administrative apparatus, and enjoys the comparable experience of governance.

The country's legal framework is comprehensive, and has benefited from numerous efforts by the Moldovan legislature to invite and cooperate with international experts to bring their laws closer to European standards. Deficiencies in the Rule of Law, however, stem from unequal application of legislation, manipulation of its provisions, and the use of political leverage to reshape legal and regulatory authority to ends unrepresentative of the public good and often to private gain.

Moldova's Electoral Code, promulgated in 1997, is comparatively advanced for the region, and includes a high degree of legislative specificity to the preparation and conduct of polling. When taken in consideration with relevant articles of the country's Constitution, there are, however, significant areas of ambiguity and potential instability which should be addressed to the greatest extent possible prior to voting in 2005.

The calling of elections, formation of subsidiary electoral bodies at the *Raion* (District) and Precinct levels, review, amendment and publication of voter lists, as well as development and implementation of professional and public training in electoral administration and participation, all should be initiated significantly in advance of legislatively determined minimum requirements. Further, while membership in administrative bodies such as the Central Election Commission and the Audio-Visual Coordinating Council is set by law (the exact formulation of which gives almost exclusive control over their composition to the seated government), this should be counter-balanced with broad political and public participation in the interests of transparency.

Perhaps more stifling to the electoral and civic health of the country, however, is a socio-political environment markedly resistant to diversity of opinion. Political representation, while numerous in diverse socio-political organizations, is seriously constrained by an incremental set of electoral thresholds which significantly restricts a plurality of opinion in Parliament. This factor also systematically destabilizes the institution by redistributing excess mandates (from that proportion of votes cast for parties not successfully meeting the thresholds) across the limited number of successful factions, further entrenching a disparate polarity by reinforcing a uni-dimensionally political authority of the largest vote-winner.

Media development in Moldova is still in its early stages, with a heavy dependence upon state-run broadcast outlets, largely under the exclusive control of the ruling party. Increasing direct and indirect restrictions on the freedom of the press, as well as subtler administrative restrictions and expectations have led to a gradual degradation of private-sector media sources, and a level of self-censorship incrementally threatening both public information about the electoral process, as well as access by opposition parties and independent candidates to public channels of expression.

Political, economic and social conditions in the country have given rise to a relatively organized civil society and span of non-governmental organizations, many of whom are actively engaged in public information and motivation in preparation for the upcoming elections, as well as functioning as advocates for increased transparency and representation in the preparations and conduct of polling. Their efforts, however, are hampered by a growing sense of civic apathy, and lack of institutional and educational engines driving constructive engagement by public citizens outside their ranks. These not-for-profit organizations are, however, receptive partners for those domestic and international actors eager to reach a broader national audience and encourage a larger base of participatory democracy in Moldova.

The economic health of the country is paradoxically tied to its largely *unofficial* ties to regional and international neighbors as a significant portion of its adult population is employed outside Moldova with legal or (much more often) illegal labor status providing much of the domestic market with a steady flow of hard currency back to remaining relatives and business partners. Politically, this raises significant issues as the eligible absentee voter base increases to a point of potential social and legislative destabilization, both through de facto disenfranchisement, as well as statistically narrowing election turn-out closer to minimum requirements necessary to validate a successful poll. Combined with the persistent unresolved status of the Transdnestrrian region and its inhabitants also separated from electoral participation, excluded populations make up approximately a third of the country's population (of an estimated 4.3 million), a dangerous flaw in an increasingly unstable balance of power.

Moldova has made significant improvements to its electoral system in the years since its independence. However, it has not capitalized upon corollary socio-political opportunities to further secure the overall democratic development of the country, and link governmental stability with civic and economic dynamism for the benefit of the entire population. Unfortunately, this disconnect of networked growth has resulted in a level of political stagnancy or even regression, and makes the open, balanced, fair and representative administration of upcoming Parliamentary elections all the more important for the country's stability, growth and integration into a successful regional progress toward democracy.

SECTION III. ELECTORAL ENVIRONMENT

In August 2003 OSCE-ODIHR released a final observation report entitled, *Report on Local Elections in Moldova 2003*, following the conclusion of the international observation of local administrative elections. The report was accompanied by a note, entitled "Negative trends observed during Moldova's local elections must be reversed". The fact that the report underscored this negative trend in light of the progress made in the previous elections is

significant and serves as an important pretext to the conduct of this IFES-ADEPT Pre-election Technical Assessment.

The purpose of this section is to describe the electoral environment which currently exists in Moldova and to offer recommendations which, should they be adopted, would serve to remedy the obstacles and difficulties which increasingly plague the practice of democratic politics.

Candidates and Parties

Since 1991 when Moldova adopted a multiparty system, there has been little if any change in the leadership of the major political parties. As a consequence, numerous schisms have occurred within these parties, leading to their weakening and fragmentation. Moreover, the personalized nature of party leadership and political conflict leads to negative campaigning which results in decreasing turnout and increasingly apolitical attitudes among voters.

At present there are twenty-one political parties and socio-political movements registered with the Ministry of Justice. In general the majority of Moldovan political parties are quite weak. Only three or four parties have the means to rally voters and influence public opinion. Communist Party and Christian Democratic Popular Party are the only ones to have party structures throughout the country.

In the 2001 Parliamentary elections, only three parties managed to pass the 6% threshold. The outlook for the 2005 legislative elections offers a similar scenario. As of May 2004, the two main parties represented in Parliament, the Communist Party and the Christian-Democratic People's Party, have already held party congresses indicating their intention to vigorously defend their mandates in Parliament.

Two political blocs have recently been established with the intention of participating in the 2005 poll. Citizens' Union "Patria - Rodina" (CUPR) was founded by two Socialist parties and several informal political organizations, declaring themselves in opposition to the Communist Party. Second, the Democratic Moldova Bloc (DMB) has been founded by the Moldova Noastra Alliance, the Democratic Party and the Social Liberal Party and seeks to establish itself as a centrist force also in opposition to the ruling party. Lastly, the Social Democratic Party has thus far declined the offer to join DMB, but has made public the key points of its political program entitled, "Towards a Democratic and Strong State". (For more detailed information on these parties and others which will likely participate in next year's elections, see <http://www.parties.e-democracy.md/en/>)

To date, political parties have failed to agree to a Code of Conduct which would seek to improve the methods, quality and content of political

campaigning. There have been calls from various political parties to refrain from black campaigning throughout the election period, however, these suggestions have met with little action.

Recommendation:

- A Code of Conduct for Political Parties should be developed and proposed for adoption.

Media

A gradual decline in media rights and freedoms over the last few years raises concern that media access and due impartiality of election coverage will be problematic in the upcoming parliamentary elections. Free speech has always been an awkward issue in countries of the former Soviet Union: recent “managed democracies” have reverted to the old habit of seeing the media as an instrument of propaganda for the ruling party, although paying lip service to democratic formalities. Since the Communist Party’s coming to power in Moldova, evidence points to attempts by the party to get control of the media and prevent opposition parties from access.

Although Moldova’s Constitution proclaims free speech and prohibits censorship, the sense of alarm felt by media professionals and human rights activists has focused on action taken by the authorities against media institutions. The international community - the OSCE, the Council of Europe and foreign embassies - has also participated in some of the protests against recent media interference.

In earlier elections, the media’s role was not overly criticized, but a change in the political climate was noted during the 2003 local elections. The OSCE/ODIHR report on the 2001 parliamentary elections indicates that state television “provided voters with unbiased information on political contestants”, while by contrast in its 2003 report it noted that the media was “heavily biased in favor of the state authorities”. If the authorities continue to curb media independence, the potential for pluralism and diversity will be threatened by the next election.

Media Environment

Over the past several years, the ruling party has been able to dominate the media landscape, often using indirect means to gain an increasingly monopolistic hold on media institutions. The most powerful medium is television, especially Teleradio-Moldova, the only national electronic media that embraces the whole country. Although this previously state company has been converted into a public broadcaster, the ruling party’s hold of the

company has not diminished as it has conveniently placed its supporters in positions of power.

The opposition has little chance to get its views across on television, although party-affiliated newspapers give them a voice. Readership, however, is small and newspapers are expensive for residents of rural areas, where the majority population lives. Even in the newspaper domain the ruling party has made a successful bid in the countryside by setting up state-subsidized newspapers in each region (rayon), making it less likely for cash-strapped private newspapers to set up business.

Since Teleradio-Moldova changed its status from a state-owned company to a national public broadcaster, under a law adopted in July 2002, attention has focused on the company's Supervisory Board, a 15-member body whose function is to ensure the public receives "truthful, complete and timely information". Proclaimed as an autonomous body, the Board has been heavily stacked in favor of the government and organizations loyal to it. An alternative law drafted by the Association of Independent Press and the Association of Electronic Press (APEL), which suggested a much wider representation of different sectors of civil society - women, youth, minorities, creative associations etc - was rejected with little consultation. In its composition, the board is unlikely to ensure fair and balanced coverage of political life.

In its transformation into a public broadcaster, Parliament decided that Teleradio-Moldova first needed to be liquidated before it could become a public institution. This means that current staff will be sacked before the new process of employment starts. It is natural to see this as a cynical move to get rid of uncooperative journalists before the elections. An amendment providing for the liquidation of the Teleradio-Moldova prior to its transformation into a public broadcaster was passed in the first reading and neither local experts nor those from the Council of Europe were consulted. An analysis of the amendment commissioned by the Media Working Group part of the Stability Pact indicated that changes to the new draft law on national public broadcaster are groundless, nor are the aims and end-goals clear. The Council of Europe has severely criticized the amendment in its notification.

The Audio-Visual Coordinating Council (CCA), a supposedly independent media watchdog with the powerful job of issuing and revoking broadcast licenses, also represents government interests. Of its nine members, three are appointed by Parliament, three by the President and three by government. As the President is elected by the majority in Parliament, it entails that all nine members will be close to the ruling party. In its official working relationship with the CEC in governing the media during elections, the CCA is not expected to present an independent stance. Its recent record for not issuing licenses to independent applicants does not bode well.

In an increasing number of cases, opposition media outlets have been targeted by the authorities. The most prominent case was the suspension by the CCA in April of this year of the important municipal radio station Antenna-C, which covers 70% of the country, and EuroTV Chisinau on the feeble ground that the stations needed to re-register. The suspension prompted mass protests and a hunger strike and was seen by journalists as a "hasty, disproportional, biased and abusive decision" by the CCA.

A more subtle move has been the duplication of media and civil society organizations by ones loyal to the government – two journalists' unions, two writers' unions and so on. Critics see this as a policy of divide and rule and another form of creeping intrusion into the media domain.

Recommendations:

- Transformation of the "Teleradio-Moldova" company into a public broadcaster should be monitored, including the process of re-hiring journalists, which would influence the editorial policy of the broadcaster.
- In the news, news-values predominate. Therefore, political parties should receive equitable and fair access but not equal access, which relates to advertising slots
- The public broadcaster should ensure coverage of women and minority groups, as well as broadcasting in minority languages as applicable

Media Regulation

During elections the media is regulated by the Electoral Code. In the 2003 local administrative elections the media was also governed by two further documents: the CEC Regulation on the coverage of the general local elections of May 25, 2003, in the media; and the CEC Concept on the general local elections campaign coverage on television and radio broadcasting of April 4, 2003. Local experts contend that these two documents – Regulation and Concept – included certain contradictions that force media outlets to adjust their coverage so as to avoid the risk of incurring sanctions.

An unacceptable restriction during the 2003 election was the absence of news coverage of the election campaign. This was prohibited in point 22 of the CEC Concept, which stated that "public and private television and radio are prohibited from covering electoral contestants in their news bulletins during the electoral campaign". This ban leaves the voter at the mercy of campaign advertising. The *raison d'être* of news coverage is that it acts as an antidote to advertising, providing voters with impartial and accurate information about political parties and candidates to enable them to make informed choices. It

is the traditional duty of journalists to inform, seek, probe, ask uncomfortable questions and hold those in power accountable.

The problem arises, of course, when news does not fulfill its proper function and the appropriate ethical and professional standards are wanting. It is this factor that electoral commissions fear when banning the use of news in elections. Excluding the news from elections does not in fact stop malpractice, as can be seen in the case of the analytical program Rezonance, in which Mayor Urechean received 81% of negative coverage; or the coverage of incumbents in the news supposedly carrying out government and not campaigning functions.

The role of a free and unbiased press is a vital part of any election campaign. Instead of ignoring the news as a source of information for the voter, it would be better to create suitable mechanisms to help ensure that balance and impartiality is followed. This can be done in a number of ways: through a regulatory body, codes of ethics and conduct; self-regulatory mechanisms within the journalist corps or with the assistance of the CEC in which different stakeholders pledge best practice. These demands can be put forward by media and civil society organizations, as well as opposition parties.

The Civil Code continues to act as a threat to media freedom by intimidating journalists from writing probing or investigative pieces. The code prohibits damaging a person's honor and dignity, without making a clear distinction between facts and value judgments. As the law does not place a ceiling for fines in defamation cases, media outlets are hesitant to take undue risks. A recent case involved the newspaper Timpul, which ran a story on government corruption. It was fined out of all proportion –2 million lei (about \$170,000).

Recommendations:

- Inconsistencies and overlaps between Electoral Code, Concept and Regulation should be rectified. Moreover, the mechanisms for enforcing the election law should be provided for, so that violations can be sanctioned;
- News on the election campaign and coverage of the campaign trail should be part of the normal news bulletin on Teleradio-Moldova, given its special obligations to the public during elections. It is advisable to separate the electoral news segment from other segments of the news;
- A Code of Electoral Conduct should be drafted after wide consultation with the journalist corps to set out ethical and professional standards of reporting during the elections;
- Any amendment of the electoral law with regard to media shall be done transparently, by involving and consulting local and international experts;

- The Civil Code should be amended so that compensation for damages resulting from defamation should be proportional to the damage incurred.

Media Access

It appears that the CEC does not have the means or the organizational capacity to implement all its functions related to public relations and the media. At present the CEC lacks a public information office, headed by a media spokesperson, who serves as the main contact person between the CEC members and the press. Such an office would manage a CEC web-site, conduct press conferences and briefings, and explain administration and procedure to the media.

The regulations were unclear about whether debates formed part of the free allocation of airtime in the 2003 election. As a result debates did not play a significant role in the election campaign. Debates, round-tables and other formats for discussion present more attractive viewing for audiences, as well as being better indicators by which voters can compare the quality of candidates. Debates should not only form part of the free-time allocation, but should be encouraged on private channels.

Another phenomena registered in the 2003 electoral campaign was campaigning not compliant with the regulation especially during news bulletins or special shows, during advertisements broadcast, without attribution to the electoral contestant being promoted.

As well as access for political parties, access to information needs to be guaranteed for journalists. Although an Access to Information Law was passed several years ago, it has not been implemented and journalists complain at the lack of basic information they receive from ministries and departments. It is the job of the CEC to ensure access and accreditation for journalists during the election campaign.

Recommendations:

- Debates should be part of the free-of-charge, direct, equal-access programs offered to candidates. For a comprehensive coverage of elections, election debates on the public broadcast outlets should be binding;
- A distinction should be clearly made at all times between election news and campaign advertising. The title and cues introducing the election news bulletin and campaign advertising slots should be different;

- Campaign advertising without indicating electoral contestant shall be prohibited;
- The CEC should establish a public information center, headed by a media spokesperson, who will be the contact person between the CEC and the media and organize the dissemination of information to the media and other stakeholders

Civil Society

There are around 3,000 NGOs registered in the Republic of Moldova. The greatest number of them are active in the social field: youth, community development and environment. The great majority of civil society organizations are based in urban areas, however, a steady growth in regional and grassroots initiatives has been registered in the recent years.

With regards to the electoral process, civil society has thus far been largely invisible. The most active have been a limited number of specialized NGOs, whose efforts were concentrated on mobilizing independent observers on election day, and conducting voter education and media monitoring. These programs, while limited in scope, were professional and in line with international standards.

In 2003, Moldovan NGOs played a somewhat bigger role with more than 2,000 observers being mobilized by LADOM, the Helsinki Committee and the Center for Protection of Consumers Rights. Also active were media NGOs in monitoring election coverage in media outlets. In addition to the voter education campaign conducted in cooperation with the CEC, a significant Get Out the Vote campaign was undertaken by ADEPT with TV spots, posters, flyers and wallet cards being produced. NGOs also had a role in providing comprehensive and unbiased data on the candidates (www.e-democracy.md). Albeit significant, those efforts were not sufficient to cover the whole range of challenges in elections.

In view of ensuring free and fair elections in 2005, a group of 13 NGOs came with the initiative of establishing a broad-based Coalition in this respect. The Civic Coalition for Free Elections was launched in May 2004 with the founding NGOs subscribing to the Charter on Free and Fair Elections. The Coalition is open to all NGOs that subscribe to the values and principles of the Charter. One of its goals is to involve as many NGOs so as to be able to conduct comprehensive monitoring of the electoral process and wide-scale voter information activities.

Recommendations:

- A media monitoring group should conduct the regular monitoring of media outlets before and during the election;
- Donors should give careful consideration to support of the Civic Coalition's activities.

Civic Education

Citizen participation in all aspects of public life remains quite low in Moldova both at the grassroots and national levels. Civic education is carried out most notably through the school system with the introduction of the discipline in high school curricula in 2002 by the SIEDO NGO and Street Law Project. There are also a number of NGOs active in the field such as youth NGOs promoting concepts underpinning a democratic society, the respective roles and responsibilities of citizens, government, political and special interests, the mass media, and the business and non-profit sectors, as well as the significance of periodic and competitive elections.

As for the voter information and education in the previous parliamentary and local elections it has been provided by election authorities together with civil society organizations. For instance CEC & ADEPT Voter information campaign included TV clips on voting procedures, posters on voting procedures (displayed in front of each of Moldovan polling stations), and wallet cards on voting procedures for first-time voters.

As for the upcoming elections, one of the Civic Coalition's working groups is specifically dealing with civic and voter education. It aims at encouraging citizen participation in all aspects of public life, motivating the electorate to vote and would target young voters, grassroots voters, Moldovans working abroad, and the unemployed, among others.

International Support

The international community in Moldova largely enjoys a close, coordinated relationship, as well as varying degrees of interaction with their governmental and civic counterparts. Additional integration between organizations, as well as an expansion of cooperation with governmental agencies, political parties and non-governmental/civic groups will strengthen the electoral process.

In addition, due to the economic situation in Moldova, and the State's relatively limited anticipated funding of the CEC and other agencies/bodies critical to transparent and efficient polling, international donor coordination and assistance may both be necessary to supplement the election budget, and prove to provide an otherwise unattainable level of access to the technical process of preparation and conduct of the vote.

At a minimum, a comparable level of international long- and short-term monitoring should be planned, with attention being paid to diplomatic representations outside Moldova as well, based upon lists submitted to the CEC of anticipated registered voters abroad.

Recommendations:

- Technical and financial support to international and domestic organizations active in Moldova is necessary to improve and build upon election process monitoring and election observation.

Disenfranchised Populations

The Transdnistrian region does not participate in elections organized by the government of Moldova, with the exception of tacitly permitting eligible voters in the region to cross over to special polling stations set up on the 'border' and cast ballots. However, in practice, significant resistance exists *de facto* and participation levels remain low and are arguably diminishing.

Nation-wide provisions exist for election materials (including ballots) to be developed in languages of national minorities (primarily Russian) based upon statistical data maintained by the Department for Informational Technologies. Feedback from Moldovan interlocutors (both of Romanian and Russian ethnicity) indicated that linguistic accessibility was sufficient and not a cause for tension or disenfranchisement, though in isolated cases an additional level of administrative review of translations would be beneficial.

Much like other countries in the region, there is a strong legal basis for the participation of women in the political process, but resultant candidate lists and parliament itself only shows approximately 10% representation.

There is a core group of organized and activist youth (18-35 year-olds), both participating in political parties, but particularly found in civic groups and non-governmental organizations. A certain and unfortunate degree of apathy in this demographic exists, though, with trends indicating that a general pessimism exists about the political process, and their access to and influence upon it. Moldova also suffers from 'intellectual flight' of its youth to other countries for education and economic reasons.

About one quarter of citizens entitled to vote have fled the country in search for a job. The great majority are staying illegally abroad. A number of political parties and NGOs have systematically pointed to need of enabling those citizens to exercise their right to vote.

Recommendations:

- Public broadcasters should ensure coverage of women and minority groups, as well as broadcasting in minority languages as applicable;
- Authorities should establish mechanisms for external voting so that ballot papers may be printed in due time, sent abroad and received via mail by the diplomatic missions in the relevant countries.

SECTION IV. ELECTORAL PROCESS

The conduct of recent elections in Moldova has largely been orderly and efficient, with only sporadic and statistically insignificant incidents marring the actual voting and counting process on election days.

While additional measures could be taken to further educate polling station personnel, protect the secrecy of the ballot, and ensure transparency of ballot tabulation, concerns regarding democracy development in Moldova do not generally revolve around election day itself, but rather the legal, institutional and civil sectors during which electoral preparations and campaigning take place.

Nonetheless, specific issues in the electoral process bear examination, and recommendations can still be made to strengthen individual electoral components.

Electoral Management Body

On December 16, 2003, the CEC's six-year mandate expired. Although under Moldova law CEC members could hold two mandates at most, Moldovan authorities chose to replace its entire membership. This change does not run counter to the law, however, it did raise eyebrows.

First, the replacement of the entire CEC membership is contrary to one of the cornerstone principles employed when the Electoral Code had been drafted back in 1997, namely ensuring the continuity of CEC activity. Continuity was to be ensured via a gradual replacement of the CEC membership, and that is exactly why the mechanism of two consecutive mandates was provided for. It was recommended by certain international organizations working in the electoral field, such as the International Foundation for Election Systems (IFES) and the Association of Central and Eastern European Election Officials (ACEEEO). However, due to the shortage of funding, Moldovan authorities accepted only partially the recommendations, thereby establishing a CEC with only 3 out of 9 members working on a permanent basis, i.e. Chairman, Deputy Chairman and Secretary, the other six being summoned only during electoral campaigns. During those six years both ACEEEO and other international organizations have made significant investments in the Moldovan CEC, by accepting it as a full-rights member, providing it with research and conference publications, exempting it from the membership fee.

The second cornerstone principle employed in drafting the Electoral Code had been the impartiality of CEC members. To ensure the CEC's impartiality, it was provided for that the Parliament, Presidency, and Supreme Magistracy Council should each designate three members to the CEC.

Serious concerns remain regarding the level of preparedness and the transparency of the Commission.

Recommendations:

- The CEC should develop and publish an electoral timetable of all key deadlines, decisions, and events;
- The CEC should deliberately publish the electoral budget for educational and information purposes.

Voter Registration

According to the Moldovan Electoral Code¹:

“Voter rolls shall be developed by the mayoralty in two copies for every polling station. After being developed, the rolls will be checked with voters who are on the list, at their domicile. Then the rolls will be signed by the mayor and made public no later than 10 days before election day.” [Article 39 (1) – Voter Rolls]

While the separation of voter registration from the structure of the election commission (and its subsequent management by public administrative authorities) is neither unusual nor inherently flawed procedurally, concerns have been voiced as to the accuracy of resultant lists in Moldova’s experience.

Specifically, citations have included examples of ‘recycling’ of previous lists without verification, lack of updates to population registers citing deaths, relocations and coming-of-age (of majority), as well as delays or a complete lack of public display and/or opportunity for review and amendment [Article 40 (1) and (2) – Review of Voter Rolls].

An additional and increasingly serious issue is population mobility and extra-territorial status, as the economic situation prompts urbanization, and a growing number of Moldovan citizens living and working outside the country, legally or (more often) illegally. Consequently, while still officially

¹ Electoral Code of the Republic of Moldova, Number 1381-XIII of November 21, 1997, entered into force with the official Register 81/667 of December 8, 1997 and as amended to date.

registered at their legal domicile, they are often or habitually absent for the enumeration-verification, prompting both uncertainty as to their status on the voter register of the mayoralty, and their *de facto* removal from the electoral process.

According to the CEC, within the Ministry of Interior, the Department for Information Technology maintains a least three separate population registries (Health Insurance, Pension and Identity Cards) covering approximately 90-92% of the population. Currently, there is no integration or verification of this data vis-à-vis voter rolls maintained by local mayoralties, but initial discussions have taken place exploring options for collaboration and coordination.

This issue also has in-country implications. In order for elections to be declared valid, a minimum turn-out of 50% of registered voters for parliamentary elections is required [Article 91 - Invalid Elections]. While the Electoral Code does allow for out-of-country registration [Article 39 (5)] to be conducted "...on the basis of data collected by heads of diplomatic missions and consular offices who operate on the soil of the respected countries", citizens actually utilizing this option have only numbered in the thousands world-wide out of an estimated eligible population of approximately 500,000 - 750,000.

In addition, recent elections have demonstrated that between five and ten percent of voters utilized the supplemental list option [Article 53 (2) - Voting] when discovering their name was not included on the official register. While legal, the extremely high proportion of absent names is indicative of procedural problems in enumeration and maintenance, and opens issues as to whether supplemental voters, though participating, actually count against the 50% threshold necessary for validation of results.

Recommendations:

- Strengthen regulatory framework and training at the mayoralty level to raise levels of accuracy in local population registries (from which voter rolls are drawn);
- Increase the time mandated for display and amendment of voter rolls from ten days to a minimum of twenty days in advance of the election;
- Conduct spot checks nation-wide to ensure compliance with provisions of the law regarding public display;
- Clarify legal standards of voter eligibility to include the context of voters who are not habitually present in Moldova due to work or other status abroad;

- Create a working group at the CEC on registration issues, with a mandate to coordinate with applicable national and local governmental agencies, to improve the quality of voter rolls and examine options of centralized or civil registration.

Candidate and Party Registration

The Political Party Law of Moldova² provides detailed terms of creation, registration and conduct of political parties in the country. This legislation is further elucidated by the Electoral Code, which sets down regulations on the nomination and registration of candidates in Articles 41 - 44.

In parliamentary elections the process of nominating candidates commences as soon as the election is announced and ends thirty days before election day. The following entities are entitled to nominate candidates:

- a. Parties and other socio-political organizations registered prior to the announcement of elections, in accordance with their statutes and current legislation;
- b. Electoral blocs formed on the basis of decisions adopted according to the statutes of parties and other socio-political organizations, registered respectively with the CEC, upon general local and parliamentary elections; or by district electoral councils upon new elections, within 15 days of their formation; or if they were formed prior to the electoral period, within 15 days of the commencement of that period;
- c. Citizens of the Republic of Moldova who nominate themselves (independent candidates).

To be registered by the CEC, independent candidates shall submit petitions containing 2,000-2,500 signatures of supporters eligible to vote. Each voter may sign the petition for only one candidate in any particular election. Lists for collecting signatures in support of an independent candidate must contain the last and first name, year of birth, profession, position (occupation), place of work, place of residence and party membership of the candidate, as well as the last and first name of the voter who collects the signatures. Another requirement for the petition is that it shall be certified on each page with the official stamp of the respective local public administration.

² Law of the Republic of Moldova on Parties and Other Socio-Political Organizations, Number 718-XII of 17 September, 1991, entered into force with the official Gazette of 11-12/106, 1991 and amended to date.

No later than 30 days before elections, the CEC shall start reviewing the accuracy of the signature lists that are submitted to it, in terms of the eligibility of the persons whose names appear on the petitions to vote in the elections, their residence, and the authenticity of their signatures. It shall do so within five days of the date of submission. Upon completion, the CEC shall inform the submitters of such lists about the results of the review and shall announce the total number of names included on the petitions submitted by individual contestants in elections, as well as the number of signatures found valid. Petitions in which names have been entered prior to the official start of the nomination period or petitions which have not been signed by the signature collector, or have not been certified by the stamp of the local public administration authority, shall be considered null and void.

Electoral contestants shall submit the following documents to the CEC no later than 30 days before election day:

- a. An official record of the meeting of the supreme or territorial body of the party, other socio-political organization or electoral bloc regarding the nomination of the candidate (list of candidates);
- b. Petitions containing the required number of signatures in support of independent candidates;
- c. Biographical data about the candidate;
- d. The candidate's statement of agreement to run for the office for which his/her candidacy has been proposed;
- e. A declaration by the candidate stating his/her real estate, bank accounts, securities, inheritance and income over the two years preceding the election year, and the sources of that income, including income derived from investment funds and lease of property, etc.
- g. A declaration on suspension from previously held positions, for the time period of the electoral campaign - for the persons who fall under the provisions of paragraph (3) of art. 13.

The CEC shall make public the place and time of receiving those documents days of the launch of candidate designation period, only after which will applications be accepted. If representatives of several contestants simultaneously submit all the necessary documents to the relevant body entitled to register them, the order or receiving them shall be established by lots.

The CEC registers candidates for elections within seven days of the date of submission of the documents and issues a certificate of candidacy to

registered candidates as soon as possible but no later than three days of the day of registration. Upon expiration of the term for registration of candidates, the CEC shall publish the list of candidates that it has registered, providing their names, surnames, year of birth, locality of residence, political affiliation, professions (occupations), and the name of the party, socio-political organization or electoral bloc that has nominated them.

Recommendations:

- Registration of political parties, coalitions, or blocs should include standards for dispersing party resources and identity in the event of its dissolution;
- Clear-cut provisions in the Electoral Code should be established to ensure that verification of signature lists in support of an independent candidate is impartial and transparent;
- Refusal by the CEC to register a candidate or party must include the specific reasons for the declination of eligibility;
- Sanctions for violations of the Election Code should be strengthened.

Ballot Design

Ballot design is clearly laid out in Article 48 of the Electoral Code. While a significant improvement over previous designs and methodology of voting has been in evidence, there was still a comparatively significant percentage of 2.6% invalid ballots in 2001 polling, according to the CEC. In 2003, the percentage of invalid ballots was 4.2%.

Serious concerns remain regarding ballot security and the lack of information for voters prior to election day regarding ballot design and instructions.

Recommendations:

- Increased voter education prior to elections and distribution of combined example ballots and illustrated instructions would be beneficial to voter understanding of proper procedures;
- The quality of ballot paper stock should be improved, with integrated safeguards of unique paper, watermarking, and/or sequential numbering to improve security and increase public confidence;
- Develop ballots with a counterfoil/receipt to increase security and transparency;

- Additional levels of training for Precinct Electoral Bureaus would decrease mistakenly invalidated ballots, and supplementary regulatory permission for observer participation in the review process would increase public confidence regarding counting procedures;

Polling

In the 2003 local elections and the 2001 Parliamentary elections, polling procedures were generally judged positively, with isolated incidents identified by international and domestic observers (namely in presence of candidates or police in select polling stations, and questions regarding secrecy of the ballot).

According to the Electoral Code [Chapter III – Precincts and Precinct Electoral Bureaus], polling stations will be established by District Electoral Councils no later than 35 days prior to elections, and have between 30 and 3000 voters each [Article 29 (2)]. The actual levels of population distribution result in most polling stations serving approximately 1000 to 1500 voters.

Precinct Electoral Bureaus (polling station) staff number between five and 11 people, selected no later than 20 days prior to the election [Article 29 (2)] and drawn from qualified personnel not affiliated with a political party, nor members of local councils or having other governmental positions [Article 29 (15)]. Historically, problems have arisen identifying, retaining and training sufficient numbers of personnel, though not to a degree threatening procedure and validity of the electoral process.

According to the Electoral Code, voters indicate their selection of political party or candidate by application of a stamp in the corresponding space, leaving other spaces blank [Article 54 (2) – Balloting Procedure]. Before depositing the completed ballot into the ballot box, it is marked with a control stamp on the reverse side to indicate eligibility [Article 54 (5)].

Voting via mobile boxes is permitted [Article 55 (4, 6) – Voting Security] due to health or other legitimate reason, and given sufficient legal and procedural guarantees to ensure transparency and security if applied for. Precedent with mobile voting has largely been positive, though instances of mismanagement are higher than in fixed polling, and in some cases have resulted in legal challenges, and repeat elections.

While allegations of proxy or group/family voting existed, and the maintenance of order was a challenge on occasion in populous regions, polling station staffs were generally competent and exercised their responsibilities ably.

Recommendations:

- The development and utilization of an Election Day Procedures Manual (Voting and Counting) would significantly improve the polling process;
- The CEC should consider the use of pre-folded ballots or ballot envelopes to more securely guarantee secrecy of the vote;
- The CEC should consider the use of transparent ballot boxes to further increase public confidence in the vote;
- The first voter in a polling station should be required to sign a declaration confirming that the ballot box is empty at the commencement of voting;
- Increased security of ballots, validation stamps, and the mobile ballot box could be achieved by improved regulatory instruction, and signature-verified forms.

Counting and Verification

The counting procedure is enumerated in the Electoral Code [Chapter 10] and gives specific and comprehensive instruction in most issues, including verification of the total number of ballots in the polling stations, those unused, spoiled and legitimately cast [Article 56 - Vote Counting by the Precinct Election Bureau].

Comparatively, the Moldovan Electoral Code is very specific about the counting process, transmission of result and verification processes. Regulatory issues still remain, though, in the application of these legal requirements, and should be clarified in CEC materials and training.

Specifically, the Electoral Code instructs that:

“Using a procedure determined by the precinct electoral bureau, or upon instruction by the Central Election Commission, members of the precinct election commission shall unfold the ballots and determine for which electoral contestant the ballot was cast.” [Article 56 (7)]

In the past, this has led to varying levels of transparency in the actual counting process as Precinct Electoral Bureaus each totaled votes in different fashions, including disparate degrees of accessibility by candidate/party representatives and observers.

Recommendations:

- A clear-cut procedure should be set, whereby only a specially designated member of the polling station would be entitled to take the ballot and distribute it into the piles of relevant contestants.
- A large-format protocol should be posted in each polling station, on which poll workers would indicate latest tabulation results, as provided by the Electoral Code.
- Adequate copies of the protocols should be available in each polling station to be issued to both independent and electoral contestants' observers.

Observation

Article 63 of the Moldovan Electoral Code provides clear and broad allowances to candidate, party, domestic and international observers. Recent local and parliamentary elections have seen significant international and domestic observation. OSCE electoral observation missions have fielded several hundred international personnel, and the CEC accredited several thousand domestic observers from civil society groups, in addition to candidate and party observers.

Domestic observation goes back to 1994 with the first independent observers being mobilized by IFES/Moldova and Pro-Democratia NGO for the parliamentary elections. Until 2001, IFES/Moldova provided support and training to the independent observers first through Pro-Democratia and later on via the League for the Human Rights of Moldova (LADOM).

For the local 2003 elections, LADOM mobilized 2006 independent observers, the Helsinki Committee another 20, the Center for Protection of Consumers Rights 15 and ADEPT 7. ADEPT also trained about 500 party observers. Observers faced no difficulties in the first round, however, some of LADOM's observers were initially denied access to polling places, and the CEC promptly reacted. Also, there were some cases registered by the Chairperson of the polling station refused signing observer complaints and attached them to the minutes.

Reports of observers have been largely positive, with isolated allegations of actions in conflict with the electoral law, regulations or standards, and no systematic abuse.

Recommendations:

- The CEC should also accredit domestic, long-term observers in addition to any international counterpart observation;

Budget and Resources

In Moldova election budgets are the lowest in the Southeastern Europe, which impedes proper administration of the electoral process. In the last elections about 1 million USD were allocated.

Recommendations:

- CEC expenditures in the time period between elections should be reconsidered, to enable it to conduct activities provided by the Electoral Code, which for the lack of resources it never did.
- The CEC budget should be increased so as to adequately remunerate poll workers.

SECTION V. LEGAL FRAMEWORK

The Venice Commission concluded in 2002 that the Electoral Code and the Constitution provide an “adequate framework for political parties and electoral blocs to enter the political arena on an equal basis.”³ Nevertheless, the same Venice Commission report also identified shortcomings in the overall legal framework of Moldova. A combination of extra-legal factors, such as corruption, economic hardship and a corrupt and inefficient judicial system, have the potential to exacerbate these deficiencies and thereby negatively impact the upcoming legislative elections.

In this section of the report, the most important legal issues relating to the 2005 Parliamentary elections are highlighted and recommendations are offered on how the legal framework should be modified to overcome the difficulties in meeting general election standards.

Constitutional Issues

The Constitution of the Republic of Moldova was adopted on July 29, 1994 and is widely believed to be in line with democratic standards. On July 5, 2000, Parliament adopted - with 92 votes in favor and 5 votes against - a series of constitutional changes, which significantly reduced the power of the President in certain areas, while strengthening those of Parliament and government. Most importantly, the President was to be elected by Parliament with a three-fifths majority. As such a majority was unable to coalesce around a single candidate for President in December 2000, when former President's Lucinschi term expired, Parliament was dissolved on January 12, 2001 and early elections were set for February 25 of that year.

³ cf. OSCE ODIHR Report on the Parliamentarian Elections 25 February 2001, p.1, OSCE ODIHR Final Report on the Local Elections 25 May and 8 June 2003, p.1)

The Constitutional Court has played a major role in filling election-law gaps, especially with regard to the election of the Parliament, President, local government, their competencies and mandates, terms of holding elections, and decision-making procedures.

Ruling no. 43 of December 14, 2000, by the Constitutional Court decided that, upon the vacancy of the Presidential office as a result of mandate expiry under Article 90 (1) of the Constitution, the President would exercise his mandate in line with Article 80(2) of the Constitution, until the newly elected President is sworn into office. Constitutional Court Ruling no. 45 of December 18, 2000, states that 61 out of the 101 deputies should take part in elections for the results of the presidential elections to be considered valid, as article 78(3) of the Constitution affirms that the President may be elected by a 3/5 majority of deputies. Constitutional Court Decision no. 4 of December 26, 2000, decided that Parliamentary failure to elect a President in two rounds serves as grounds for dissolving the Parliament and announcing early elections.

The only ruling issued by the Constitutional Court that attracted a storm of criticism was decision no. 21 of November 24, 1998, defining what a "Parliament majority" is, namely "an absolute majority, i.e. half of deputies plus one out of the total deputies elected in Parliament". The formula put forth by the Constitutional Court was used by political foes in the 1999 political crisis to foment the Prime Minister's resignation and a subsequent attempt to form a new "parliamentary majority" that would unite 51 out of the 101 deputies.

Recommendation:

- The difference in three votes between absolute majority and minority require clarification, as follows: "an absolute majority is the number of votes cast 'for' an issue being greater than the number of votes 'against' and the number 'abstained'

Legal framework of elections

Moldova is a parliamentary republic. According to the Constitution⁴, the President is elected by the Parliament to a four-year term. In 2005, Parliamentary and Presidential elections will be held in the same timeframe as the four-year terms of office of both the legislature and the President will both expire.

⁴ Before, the President was elected by the people of Moldova through direct vote. After the Moldovan Constitution was changed in 2000, the President is elected by the Parliament (art. 78 I Moldovan Constitution). Art. 78 VI of the Moldovan Constitution delegates the details of the presidential elections to an organic law, which was passed on 22 September 2000 (Law on the Procedure of Electing the President of the Republic of Moldova).

According to the Constitution⁵ and the Clarifying Rule of the Constitutional Court⁶, Parliamentary elections shall take place within three months **after** the expiration of the four-year term of the Parliament. Thus Parliamentary elections shall be scheduled between February 26, 2005 and May 26, 2005.

In addition, the Law on the Procedure on Electing the President ⁷ stipulates that the presidential elections shall occur no later than 45 days **before** the end of the President's mandate. As the President's term began on April 7, 2001, Presidential elections shall be scheduled between February 22 and April 7, 2005.

Proportional system

Parliamentary elections in the Republic of Moldova are conducted on the basis of a fully proportional system according to a one-country-one-constituency formula. Mandates are distributed according to the d'Hondt formula, with registered independent candidates being included in the same list as registered parties and blocs. Voters may vote for one electoral contestant, i.e. party, electoral bloc, or independent candidate.

Initially, after the 1993 electoral reform, Law No. 1609-XII of October 14, 1993 envisaged a limited proportional system. Multiple-mandate electoral districts were to be established according to second level administrative-territorial units. The number of mandates for each district was to be proportional to the number of citizens eligible to vote residing in that district.

As administrative-territorial reform of the country had not been completed prior to the electoral campaign so as to establish multiple-mandate electoral constituencies, Parliament passed Resolution No. 1613 on October 19, 1993, allowing Parliamentary elections to be conducted by going against the provisions of Law no. 1609-XII on Election of the Parliament and establishing a single electoral constituency.

In fact, it was not the administrative-territorial reform, but rather the impossibility of opening polling stations in the secessionist Moldovan Dnestrian Republic that forced Parliament to opt for a single, national constituency. In order to allow Moldovan citizens residing in the secessionist region to exercise their right to vote, special polling stations were opened.

Vigorous debate over the system of representation has been consistent since 1997, when the Electoral Code was adopted and deputies insisted on preserving the fully proportional system. In 2000, two parliamentary factions, the 'Democratic Convention' and 'For a Democratic and Prosperous

⁵ Art. 61 III

⁶ Decision Nr. 31 as of 10 November 1997

⁷ Art. 2 I

Moldova', made yet another attempt to introduce a mixed electoral system. In 2003, the so-called "Braghis Alliance" faction came up with a draft law amending the Electoral Code to introduce a mixed electoral system, whereby half of the deputies would be elected based on a proportional system and half on a majoritarian system.

There are sound arguments in favor of changing the electoral system again in 2004 to bolster its ability to provide adequate and appropriate representation. For instance, a fully proportional system may often inadequately distribute political representation across the country, resulting in skewed political interests and limiting the influence of certain voters or interest groups. In fact, in the three previous legislatures elected by a fully proportional system, approximately 60-75% of the total number of deputies resided in the capital city. In addition, high thresholds of representation for parties, electoral blocs and independent candidates result in "lost" votes cast in favor of candidates who failed to pass the threshold. In past electoral contests, the number of such "lost" votes have ranged from 18% to 28%. Yet, perhaps the strongest argument in favor of changing the electoral system is that a majority of citizens (61%) are in favor of a majoritarian system, 10% for a proportional system, 12% a mixed system and 17% have not made up their minds⁸.

Party Law

In 1991, the Law on Political Parties and Other Socio-Political Organizations was adopted and was widely considered by emerging independent political parties as providing a level playing field for political competition.

Over the past several years, a number of amendments have been introduced to the Law that impose additional restrictions on party registration and operations. For instance, in 1993, an amendment was passed which prohibited parties/ socio-political organizations from receiving support from the state, state enterprises and institutions, except for the funding of electoral campaigns as provided by the electoral law. This amendment also prohibited foreign sources of support, as well as support by joint-venture companies where the state held shares or that of the foreign shareholder exceeds 20%.

Article 29 of the Party Law provides that the Ministry of Justice may suspend the activity of a party/socio-political organization if it infringes upon the Constitution, after notifying the party in this respect and allotting it a deadline to correct itself. The most serious case of suspending a party happened in 2002 when the Ministry of Justice attempted to suspend the Christian-Democratic Peoples' Party for staging unauthorized protest rallies that lasted four months. Following calls from the Council of Europe and a resolution from the Parliamentary Assembly of the Council of Europe calling

⁸ Barometrul de Opinie Publică - 2000, opinion poll commissioned by IPP and conducted by IMAS, August 2000

for a moratorium on actions that might escalate the conflict between the governing party and opposition, it became possible to reach a compromise.

Recommendations:

- Article 29 of the Party Law should be amended so that it is only possible to suspend a party/ socio-political organization based on a court order.

Issues in the Electoral Code

There are two levels on which electoral issues can be addressed: first, there are legislative issues. They affect the legislative framework, mainly the Electoral Code of 1997, which provides for the framework to conduct free and fair elections. Secondly, there are administrative issues, mainly the regulations concerning the electoral process, which are issued by the CEC and which concern personal, organizational and material resources to elections.

Setting the Election Day

According to the Election Code⁹ and the Constitution¹⁰, the elections have to occur within three months (90 days) after the mandate of the Parliament expires. Accordingly, new legislative elections shall be called between February 26 and May 25, 2005. The norms referring to these dates are stipulated only in the Election Code¹¹. The Parliament must decide the election date no later than 60 days prior to the election, thus allowing at least two months for pre-electoral preparations.

In order to ensure a thorough organization and to allow the international community time to plan and provide assistance, an early date-setting by the Parliament is advisable. Should the date be set earlier, for instance, prior to the Parliament's Winter Break, the CEC would have more time to proceed with needed preparations. Such a procedure would not contradict either the Constitution or the Electoral Code. Nor would such a move require any changes in the legislation.

Recommendation:

- Parliament should set the election day for the upcoming Parliamentary elections between February 26 and April 7, 2005 to allow for the maximum period of preparation by those managing the administration of the election.

The Formation of District and Precinct Election Commissions

⁹ Art. 76 I Electoral Code

¹⁰ Art. 61 III Moldovan Constitution

¹¹ Art. 76 II of the Electoral Code. The Moldovan Constitution is silent on this question, as art. 61 II defers all other details of the Electoral Code

A major deficiency in the relevant legislation is that the CEC does not start preparations in a timely fashion and should be started much earlier than the tight deadlines in the Electoral Code suggest, as all these are formulated as “no later than”¹². Usually the Parliament, the CEC and the subsidiary election commissions take last-minute decisions just before the given deadlines set in the Electoral Code.

Recommendations:

- The CEC should establish the district election councils at least 180 days before election day;
- The CEC should require that voter lists (electoral rolls) be prepared and published by the mayoralities not later than three months before the elections;

Legal Basis and Competence of the Central Election Commission (CEC)

The membership of the CEC is elected proportionally by the President of the Republic, the Parliament and the Supreme Council of Magistracy. As the Communist Party has had 71 seats out of the total 101 since 2001, a single party can decide directly and indirectly over 2/3 of the members of the CEC. Minority factions in Parliament have virtually no influence on the composition of the three members of the CEC nominated by the Parliament.

Another problem is the balance of interests within the CEC. According to the Election Code, only a majority within the CEC can initiate meetings of the Commission¹³. As there are chances that the ruling party creates a majority within the CEC, calls initiated by parliamentary minority representatives could be easily blocked.

Recommendations:

- The Electoral Code should provide a system of nomination of the members of the CEC which also gives the parliamentary minority a possibility to decide on the composition of the body;
- A minority of four, or preferably only three, members of the CEC should have the right to ask for a meeting of the CEC – and not only a majority of its members as provided for in Article 25 I;
- Further clarification of the role and responsibilities of the CEC between and during electoral periods (Articles 22 and 26) is necessary.

¹² The formation of the electoral districts (“no later than 55 days”, cf. art. 27 I), of the district election councils (“no later than 50 days”, cf. art. 27 I”) and of the precinct election councils (“no later than 35 days”, cf. art. 29 II). Eventually, the voter lists shall be published by the mayorality “no later before 10 days before election day” (cf. art. 39 I).

¹³ Art. 25 I

Thresholds

The Electoral Code sets thresholds counted on the basis of valid votes¹⁴. Since changes made in the election legislation just before the 2001 elections, the system of thresholds has controversial. Although believed to be forged with a political aim (that of preventing the fragmentation of the political forces within the Parliament), the thresholds meet international standards. Some inexactitudes, however, remain.

The thresholds allow awarding Parliament mandates for the parties who have acquired at least 6 % of the total valid votes. The threshold is 9 % for blocks of two parties and 12 % for blocks of three or more parties.¹⁵ Independent candidates have to meet a barrier of 3% to be granted a seat in the Parliament.

The critics of the present system regard the thresholds as too high. A 6 % threshold for parties seems insurmountable for some of the regional or minority parties. There are certain regional and minority groups in Moldova, whose number of voters count less than 6 % of the electorate.

The 9 % and 12 % threshold for electoral blocks are excessively high. This threshold actually benefits the small parties over multi-party blocks. The thresholds are calculated on the basis of valid votes (and not the total votes cast). The exclusion of invalid votes from the count lowers the threshold (e.g. if there are 10 % invalid votes, a threshold of 6 %, which is calculated on the basis of the valid votes, is equal to a threshold of 5.4 %, calculated on the basis of total number of votes). A single party is much more likely to be able to benefit from the created difference than a block.

Recommendations:

- Thresholds for political parties and electoral blocs should be lowered to 4 % or abolished altogether;
- The threshold for individual candidates should be lowered to 1 % or abolished altogether.

Validation

The Election Code also sets a validation threshold of 50% (half of the total number of voters included on the voter rolls) for the election to be valid. There is, however, a discrepancy in the calculation of the total turnout.

It is difficult to establish a clear reference number of 100 % of the votes.

¹⁴ Art. 86 I of the Election Code

¹⁵ Art. 86 II

Art. 91 of the Election Code, which refers to thresholds calculated on the basis of the total voter turnout, contradicts Articles 86 and 87 which take into account the valid votes only.

Recommendation:

- The minimum threshold for voter turn-out in Parliamentary elections (fifty percent) should be abolished.

Voter Entitlement

The Electoral Code generally meets international standards with regards to voter entitlement. It restricts rights to vote and to be elected to those incapacitated or sentenced to imprisonment by a final decision of a court.¹⁶ The law does, however, contain unclear wording that could lead to the disfranchisement of certain categories of individuals.

The bulk of the imperfections refer to the restriction of the right to be elected. The clause forbidding the right to be elected to individuals with "... unsettled criminal records", is too general and could be used to deprive an individual of the chance to run for office. According to the wording, conviction of any crime can serve as reason to forbid an individual the right to run for office. As the Venice Commission remarks, it would be suitable to designate the crimes explicitly before this unusually harsh law would remove such important civil rights¹⁷. The Venice Commission suggests limiting the catalogue to capital crimes and/or introducing a timely limit, e.g. for crimes, for which individuals sentenced by a final court decision 10-15 years prior to the election day.

The law is also unclear on the status of individuals who are in pre-trial investigation, or whose sentence is pending. The law can restrict the civil rights of an individual who has not yet been proven guilty.

Recommendations:

- Reconsider the catalogue of sanctions in Article 13 I and II in a clearer and proportionate manner according to the Venice Commission recommendations;
- Provide greater specificity to the scope of application of Article 13 I and II, by issuing a clarifying regulation prior to the registration of candidates for the Parliamentary elections.

External Voting

¹⁶ art. 13 I, II lit. b

¹⁷ VC remark 93

There are no available sources to determine the exact number of the electorate outside of Moldova. The October 2004 census was cancelled for budget-related reasons. According to anecdotal evidence, approximately 25 % of Moldovan voters currently reside abroad. The bulk of these individuals are unofficial workers and thus are not legally registered in their countries of residence.

Absentee voting (e.g. by post) is not mentioned in the Electoral Code. The code allows voting only "in person." The code does not provide an option such as, "in person, but locally absent." This right is not explicitly forbidden, but neither is it explicitly stipulated.

Apart from the problem of absentee voting, no regulations or mechanisms exist on how a participation of voters, residing outside the country on election day, will be organized. Although the legislation refers to the right to vote in diplomatic and consular missions¹⁸, its application to the aforementioned laws has been ignored in the Election Code¹⁹.

Returning to Moldova to vote is not feasible for most because of time and distance. On the other hand, there are too few voting locations abroad, limited to the capitals of countries like Russia, Ukraine, Germany, France, Italy, Israel, and Turkey.

Recommendations:

- Absentee voting should be made possible by the Electoral Code;
- Specific regulations and procedures should be issued to allow voting by Moldovan citizens who wish to vote in Moldovan diplomatic missions and consulates on election day.

Election Dispute Resolution

Chapter 12 of the Electoral Code specifically refers to the adjudication of electoral disputes. Decisions of the electoral bodies may be appealed in two ways: in hierarchically superior electoral bodies and in court. Citizens and parties alike may appeal in court. Appeals should include the reasons for appeal, any evidence, and the identity data of the petitioner.

Electoral bodies' resolutions or actions may be appealed within three days of discovering the action or taking the decision. Appeals against decisions and actions by the electoral bodies shall be filed with the court in the locality

¹⁸ Art. 2 III and Art. 29 XIII of the Electoral Code

¹⁹ Art. 26 I lit. h, stipulates the responsibility of the CEC "to resolve issues regarding the participation in elections of those citizens, who are outside the country at the time of voting".

where the respective council or bureau is located. Actions and decisions by the CEC shall be appealed to the Supreme Court of Justice.

Appeals against actions and decisions by the electoral bodies are examined within three days of filing, whereas those against the CEC are acted upon within five days of their filing. Appeals should not be examined later than election day, if submitted on election day they should be examined the same day.

Recommendations:

- The Electoral Code should clearly provide that actions of electoral contestants and of other state bodies that have to ensure the normal conduct of elections may be examined by courts under the same terms as the decisions and actions of electoral bodies.

SECTION VI: SUMMARY OF RECOMMENDATIONS

Electoral Environment

- A Code of Conduct for Political Parties should be developed and proposed for adoption.
- Remove point 22 of the “CEC Concept on the general local elections campaign coverage on television and radio broadcasting” of April 4, 2003, to allow news coverage of the elections.
- Transformation of the “Teleradio-Moldova” company into a public broadcaster should be monitored, including the process of re-hiring journalists, which would influence the editorial policy of the broadcaster.
- The election news should be part of the regular news bulletin of the public broadcaster, Teleradio-Moldova, but highlighted as a block, separate from other news segments, with its own title and jingle.
- A clear distinction should be made at all times between election news and campaign advertising. The title and cues introducing the election news bulletin and campaign advertising slots should be different.
- In the news, news-values predominate. Therefore, political parties should receive equitable and fair access but not equal access, which relates to advertising slots.
- Inconsistencies and overlaps between Electoral Code, Concept and Regulation should be rectified. Moreover, the mechanisms for enforcing the election law should be provided for, so that violations can be sanctioned.
- The compensation for damages relating to the business reputation or a person’s honor and dignity in the Civil Code should have a ceiling.
- Campaign advertising without indicating the electoral contestant responsible for the advertisement should be prohibited.
- The CEC should establish a public information centre, headed by a media spokesperson, who will be the contact person between the CEC and the media and organize the dissemination of information to the media and other stakeholders.
- Domestic and international organizations should coordinate and conduct seminars for journalists, which will provide know-how on the election process and models of best practice reporting.
- A Code of Electoral Conduct should be drafted after wide consultation with the journalist corps to set out ethical and professional standards of reporting during the elections.

- A media monitoring group should conduct the regular monitoring of media outlets, before and during the election.
- The public broadcaster should ensure coverage of women and minority groups, as well as broadcasting in minority languages as applicable.
- Debates should be part of the free-of-charge, direct, equal-access programs offered to candidates.
- Donors should give careful consideration to support of the Civic Coalition's activities.
- Technical and financial support to international and domestic organizations active in Moldova is necessary to improve and build upon election process monitoring and election observation.

Electoral Process

- The CEC should develop and publish an electoral timetable of all key deadlines, decisions, and events.
- The CEC should deliberately publish the electoral budget for educational and information purposes.
- The regulatory framework and training at the mayoralty level needs to be strengthened to raise the level of accuracy in local population registries (from which voter rolls are drawn).
- There should be an increase in the time mandated for the display and amendment of voter rolls from ten days to a minimum of twenty days in advance of the election.
- Spot checks should be conducted nationwide to ensure compliance with provisions of the law regarding public display.
- Legal standards of voter eligibility need to be clarified to include the context of voters who are not habitually present in Moldova due to work or other status abroad.
- A working group at the CEC should be created on registration issues, with a mandate to coordinate with applicable national and local governmental agencies, to improve quality of voter rolls and examine options of centralized or civil registration.
- Registration of political parties, coalitions, or blocs should include standards for dispersing party resources and identity in the event of their dissolution.
- Clear-cut provisions in the Electoral Code should be established to ensure that verification of signature lists in support of independent candidates is impartial and transparent.
- Refusal by the CEC to register a candidate or party must include the specific reasons for the declination of eligibility.
- Increased voter education prior to elections and distribution of combined example ballots and illustrated instructions would be beneficial to voter understanding of proper procedures.
- The quality of ballot paper stock should be improved, with integrated safeguards of unique paper, watermarking, and/or sequential numbering to improve security and increase public confidence.
- Ballots with a counterfoil/receipt to increase security and transparency should be developed.
- Additional levels of training for Precinct Electoral Bureaus would decrease mistakenly invalidated ballots; and supplementary regulatory permission for observer participation in the review process would increase public confidence regarding counting procedures.
- The development and utilization of an Election Day Procedures Manual (Voting and Counting) would significantly improve the polling process.
- The Central Election Commission should consider the use of pre-folded ballots or ballot envelopes to more securely guarantee secrecy of the vote.

- The Central Election Commission should consider the use of transparent ballot boxes to further increase public confidence in the vote.
- The first voter in a polling station should be required to sign a declaration confirming that the ballot box is empty at the commencement of voting.
- Increased security of ballots, validation stamps, and the mobile ballot box could be achieved by improved regulatory instruction, and signature-verified forms.
- A clear cut procedure should be set, whereby only a specially designated member of the polling station would be entitled to take a ballot and distribute it to the pile of the relevant contestant.
- A large format protocol should be posted in each polling station, on which poll workers would indicate latest tabulation results, as provided by the Electoral Code.
- Adequate copies of the protocols should be available in each polling station to be issued to both independent and electoral contestants' observers.
- The CEC should also accredit domestic, long-term observers in addition to any international counterpart observation.
- CEC expenditures in the time period between elections should be reconsidered, to enable it to conduct activities provided by the Electoral Code, which for the lack of resources it never did.
- The CEC budget should be increased so as to adequately remunerate poll workers.

Legal Environment

- Provisions of the Electoral Code should clarify how contestants sharing different options ("for" the issue subject to the referendum and "against" it) shall be registered.
- Provisions of the Electoral Code should clarify how airtime is allotted to contestants "for" and "against" the issue subject to the referendum.
- The date of the election day (which by law must fall between February 26 and May 25, 2005) should be set before or after the summer break in 2004.
- District election councils should be formed shortly after the election day has been set by Parliament (e.g. much in advance of election day).
- Electoral regulations and decisions should be made sufficiently in advance of election day to ensure proper development, distribution and public review, training and implementation.
- Provisional electoral lists (Electoral Law - Article 39) should be prepared and published by the mayoralties not later than three months before the elections.
- The Electoral Code should provide a system of nomination of the members of the Central Electoral Committee which also gives the parliamentary minority a possibility to decide on the composition of the Central Election Committee.
- Within the CEC, a minority of four, or preferably only three, members should have the right to ask for a meeting of the CEC - and not only a majority of its members as provided for in Art. 25 I.
- The role and responsibilities of the CEC between and during electoral periods (Articles 22 and 26) should be clarified.
- The thresholds for political parties and electoral blocs should be lowered to a maximum of 5% or abolished altogether.
- The threshold for individual candidates should be lowered to 1% or abolished altogether.
- The minimum threshold for voter turn-out in parliamentary elections (50%) should be abolished, or clarify the legal voter eligibility upon which the calculation is based to address the issues of out-of-country citizens, and potential voter apathy.
- The catalogue of sanctions in Article 13 I and II of the Electoral Code should be redefined in a clearer and proportionate manner.

- The scope of application of art. 13 I and II should be clarified before the registration of candidates for the parliamentary election begins.
- The possibility of absentee voting (for example, by mail) should be introduced in the Electoral Code.
- Specific regulations and procedures for the participation of Moldovan citizens who want to cast their votes in Moldovan diplomatic missions and consulates on election day should be clarified.
- Elections in key Embassies of Moldova abroad (Russia, Ukraine, France, Spain, Germany, Portugal, Italy etc.) should also be overseen by international observers.
- The Electoral Code should clearly provide that actions of electoral contestants and of other state bodies that have to ensure normal conduct of elections may be examined by courts under the same terms as electoral bodies' decisions or actions.

APPENDIX A: Assessment Team Members

The IFES/ADEPT Assessment Team included the following:

IGOR BOTAN, is Executive Director of ADEPT. He is a leading expert on electoral issues in Moldova. He previously took part in drafting Electoral Code, laws on local public administration, and non-governmental organizations. In 1997, Botan was designated by the President of the Republic of Moldova to serve in the Certification Commission of the Ministry of Justice. Botan also serves as an expert for the Economist Intelligence Unit and Radio Free Europe publications in which his views and comments have frequently appeared.

INA GUTIUM serves as Deputy Director/ NGO Program Coordinator of ADEPT. Ms. Gutium took part in developing public benefit criteria and the draft law on non-commercial organizations. In 2002, she was Editor in Chief of Civic Voice newsletter. Ms. Gutium is an experienced trainer on partnership building (NGOs & local government), strategic planning, HR management, motivation and presentation skills.

Dr. STEPHAN J. HEIDENHAIN is a lawyer, admitted to the Bar Associations in Germany and the Czech Republic. He has worked as a legal analyst for the OSCE Mission in Estonia and for the OSCE ODIHR in Warsaw, Poland, and has participated in various Election Monitoring Missions in Central and Eastern Europe. He holds a law degree from the Universität of Tübingen, Germany, and a PhD of the Europa Universität Viadrina in Frankfurt (Oder), Germany, on European and Polish Consumer Law.

ALEXANDER T. KNAPP is a Senior Operations Officer with IFES, and has worked in democracy development for over ten years, specializing in Central and Eastern Europe, as well as transitional and post-conflict countries. In addition to field assignments with IFES, he regularly consults for the United Nations (UN) and Organization for Security and Cooperation in Europe (OSCE). He holds degrees in Conflict Analysis and Resolution from the American University in Washington, DC, International Law from the University of Vienna in Austria, and Public Administration from Auburn University in Alabama.

ANGELA SIRBU is the Executive director of the Independent Journalism Center (IJC), Chisinau, Moldova. Since 2002, she has been the coordinator of the Moldovan Media Working Group under the Media Task Force of the Stability Pact for SEE. She is currently a doctoral student in Communication at the Moldovan State University. In 2002 she completed the "NGO Management and Organizational Development" Danida Fellowship Programme under the auspices of the Royal Danish Ministry of Foreign Affairs, Denmark and Serbia.

DR. DAPHNE SKILLEN is a consultant on media development. Her main regional focus has been the former Soviet Union and particularly Russia, where she worked for ten years with various international organizations such as IFES and the British Government's Know How Fund. She has specialized in media and elections and has managed media programs for most of Russia's general elections since 1993. She was awarded a medal for services to the cause of Russian journalism from the Russian Union of Journalists in 1999. In the last two years she has also worked as media advisor in South East Asia: for IFES in Indonesia and for UNDP in Cambodia, assisting the electoral commission and managing a special election news program for Cambodian state television in the 2003 parliamentary election. Earlier she worked as a journalist with the BBC and other media outlets. She has published articles and given papers on the role of media in elections.

APPENDIX B: LIST OF MEETINGS

Government Ministries and Agencies

The Parliament of Republic of Moldova, Juridical Department
Central Election Committee
Supreme Court of Justice
Coordinating Audiovisual Council

Political Parties

Christian-Democratic Peoples Party faction in Parliament
Social-Democratic Alliance faction in Parliament

Non-Governmental Organizations

Association of Electronic Press APEL
Association for Participatory Democracy
NGO Coalition
Institute for Public Policies
Soros Foundation Moldova
Helsinki Committee of Moldova

International Organizations and Governmental Agencies

United States Agency for International Development (USAID)
Organization for Security and Cooperation in Europe (OSCE)
United Nations Development Program in Moldova (UNDP)
Representative of the Council of Europe Secretary General to Chisinau