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Monitoring Organizations
**Election Observation Mission to Moldova
Presidential Elections 2016**

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EXECUTIVE SUMMARY

Following a Constitutional Court ruling on the unconstitutionality of the election of the President of the Republic of Moldova by the Parliament, reintroducing the election by direct vote of the citizens, on 1 April 2016, the National Assembly called the presidential elections for 30 October 2016. Nine candidates competed in the first round of elections. As no candidate gathered more than half of the votes cast, runoff elections were held on 13 November, which resulted in the candidate of the Party of Socialists of the Republic of Moldova, Igor Dodon, winning. Elections did not take place in Transnistria but Moldovan citizens residing there could vote in 30 polling stations established specifically to enable their voting.

Following an invitation by the authorities of the Republic of Moldova, on 10 October 2016 the European Network of Election Monitoring Organizations (ENEMO) established an Election Observation Mission (EOM) to observe the Presidential Elections. The EOM was limited in composition and scope; composed of a core team of six experts and covering some crucial aspects of the process. Ten teams of short-term observers (STOs) observed the Election Day of 30 October, while the runoff Election Day of 13 November was observed by four teams of STOs in Moldova and five short-term observers in polling stations established in three countries abroad.

Elections were held in a political context characterized by deep lack of trust in political parties and the state institutions, and high political polarization. Corruption scandals, combined with economic stagnation and concerns over personal and national finances have contributed to this lack of trust.

Needed changes to the Electoral Code were adopted only little over three months before elections. While this is, in general, not in line with good international practice for democratic elections, amendments were necessary to comply with the decision of the Constitutional Court of 4 March. The changes, mainly, focused specifically on the election of the President. Moreover, the procedures do not differ greatly from the ones already in force for other types of elections.

Inconsistencies, gaps and ambiguities still remain in the Electoral Code, among them, adjudication of post-election complaints and effective electoral dispute resolution mechanisms, procedures to challenge the results of the first round of elections, application of electoral sanctions, the official start of the runoff campaign, application of campaign finance rules, and collection and verification of supporting signatures for the candidates.

Overall, the CEC performed in an open manner and administered elections in accordance with the legislation and the election calendar. However, ENEMO noticed that in some instances the CEC lacked proactive approach and willingness to deal with complex issues, often referring to shortcomings in the legal framework. Different standards have been applied while verifying the supporting signatures for the presidential candidates, examining candidates' financial reports, dealing with violations of election legislation by candidates only in cases where there were official complaints, and in decision-making on particular candidates.

The support in election related trainings was provided by the Center for Continuous Electoral Training (CCET). The CCET has provided trainings to almost all stakeholders in the election process. The trainings of the CCET, observed by ENEMO, were well organized and professional. However, during elections, a number of DEC and PEB members lacked information and understanding regarding some aspects of the process, some of which were very important, such as the process of complaints and procedures for voters with disabilities.

One of the most debated matters regarding the State Registry of Voters (SRV) remains the inclusion of deceased persons. The process of exclusion of deceased persons from the SRV requires the submission of a death certificate, which is particularly difficult to obtain for persons who died abroad.

Despite previous Venice Commission recommendations and contrary to good practice on electoral matters, voters can only support one candidate during a signature collection process. Lack of sufficient time to verify signatures that have been submitted close to the deadline led to inconsistent verification of signatures. The CEC considered the first submitted signature as a valid one, even when a voter signed in support of more than one candidate.

The official election campaign of the registered candidates started on 30 September (30 days before Election Day), straight after the deadline of the signature submission. Thus, the candidates who submitted the signatures in the last days were in a disadvantaged position with respect to the already registered candidates, because they could not campaign for almost one week, waiting for the CEC to verify the signature lists. This created an unequal playing field for the candidates.

Despite recent legal amendments to the campaign finance regulations, gaps remain; the Electoral Code and the CEC regulation lack clarity on whether the campaign expenditure limit is applicable to the first round only or to both rounds cumulatively. In addition, the explicit legal requirement to report on campaign finance for the second round, clear regulation of donations from political parties, in-kind contributions, and third party campaigning remain unaddressed.

The CEC oversight on campaign finance was insufficient to ensure transparency, integrity and accountability of campaign finances. The CEC sanctioned only those campaign finance violations that were brought to its attention by candidates, which is in contradiction to the spirit and letter of the campaign finance regulation.

High concentration of media ownership and lack of autonomy from political and business interest is a concern. Some candidates have benefited from disproportionately favorable media coverage by different media outlets, to various extent. This situation can be said to have limited pluralism and put the other candidates, especially independent ones, but also the ones nominated by parties with less resources, into a disadvantaged position. Lack of independence of media itself and failure by the state authorities to impose efficient and appropriate sanctions was a concern for these elections, and it may have limited the possibility of the public to receive impartial information, as well as equity of conditions for the candidates.

Women were well represented in the second and third level election management bodies, and hold leadership positions at the CEC. However, women were represented in higher numbers in third level election management bodies than in first and second, and in membership positions than in leadership positions in the second level.

Inclusion of persons living with disabilities (PLWD) in the electoral process needs more attention from state institutions. The CEC has undertaken some efforts in this direction, in cooperation with NGOs working in this field, but these efforts are sporadic and depend on specific activities initiated by civil society organizations or international donors, while a structured and comprehensive strategy for the inclusion of persons living with disabilities in the electoral process is still lacking.

ENEMO observers visited 169 polling stations in both rounds of elections, including seven polling locations abroad. Overall, the assessment of the voting process by ENEMO observers was positive in both rounds of elections. However, some room for improvement still exists, especially with regard to procedures not clearly described in the Electoral Code or PEB instructions. The most noted irregularities reported were improperly sealed ballot boxes, especially mobile boxes, and presence of unsealed additional ballot boxes.

Observers noted only small number of minor or unfounded complaints filed at the PEB level; however, they noted difficulties of PEBs in handling those complaints already in the first round of elections. In the second round, the scope of the problem of registering and handling complaints was especially visible in the polling stations abroad where PEBs ran out of ballot papers due to excessive voter participation.

Instances of breaches of the secrecy of the vote, such as family voting, group voting inside the voting booth, secrecy of the vote insufficiently safeguarded due to improper layout of PS, or position and design of voting booth, were observed rarely.

The Electoral Code does not provide for a clear procedure of complaints and appeals, with a single hierarchical structure. Subsequently, there was often confusion among stakeholders about the adjudicating body. In many cases, complaints were filed with non-competent bodies or these bodies deemed complaints and appeals outside the scope of their jurisdiction.

Effective legal remedy and due process to resolve election related grievances were not adequately provided to electoral stakeholders, which went against paragraph 5.10 of the 1990 OSCE Copenhagen Document and paragraph II.3.3. of the Venice Commission's Code of Good Practice in Electoral Matters. In addition, electoral stakeholders used available dispute resolution mechanisms insufficiently, partly due to a reported lack of confidence in the capacity of election administration, courts, and law enforcement bodies, and, apparently, due to lack of clarity and sufficient understanding of the complaints resolution mechanisms.

I. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation by the authorities of the Republic of Moldova, on 10 October 2016 the European Network of Election Monitoring Organizations (ENEMO) established an Election Observation Mission (EOM) to observe the Presidential Elections that were conducted on 30 October and 13 November 2016.

The EOM of ENEMO for the Presidential Elections 2016 in Moldova was limited in composition and scope. The mission covered some crucial aspects of the process, such as, conduct of election administration bodies, with focus on the Central Election Commission (CEC) and Precinct Election Bureaus (PEB); legal framework; handling of complaints and appeals; media conduct; as well as the overall socio-political background in which the elections took place. The EOM consisted of six core team members, based in Chişinău. On 30 October ten teams of short-term observers (STOs) were deployed to observe Election Day, while the run-off Election Day of 13 November was followed by four teams of short-term observers in Moldova and five short-term observers in polling stations established in three countries abroad¹.

The analysis and recommendations presented in this report derive from the findings of the Core Team and short-term observers. The core team has met with various interlocutors during the period of deployment of the EOM and has closely observed the work of the Central Election Commission and courts; while the STOs followed the opening, voting, closing, counting and tabulation of results by PEBs, as well as activity of District Election Commissions (DEC) while taking into custody election materials. The assessment of the election process is made in light of compliance with international standards for democratic elections, national legislative framework, and international commitments of the Republic of Moldova.

ENEMO Election Observation Mission for the Presidential Elections of 30 October 2016 in Moldova was financially supported by the Embassy of the Kingdom of the Netherlands, within the Accountability Fund Program; and the Black Sea Trust, a Project of the German Marshall Fund of the United States.

II. BACKGROUND

Moldova is a representative parliamentary republic, with the legislative power vested in the Parliament, executive power in the government, and the President of the Republic as head of the

¹ Romania, Russian Federation and Ukraine.

state. The National Assembly is composed of 101 MPs, 74 of whom are grouped into five parliamentary factions and 27 non-aligned².

The President of the Republic holds limited authorities, mainly in the area of national defense, foreign policy and appointment of judges. From 1994 to 2000, the President has been elected by direct vote of the citizens and since 2000 - by the Parliament. President Nicolae Timofti's term in the office expired on 23 March 2016³ and he served as acting president until 23 December 2016, when Igor Dodon, elected in the second round of the Presidential Elections held on 13 November 2016, took oath of the office.

Following a complaint submitted to the Constitutional Court on 12 November 2015 by 18 MPs of the parliamentary faction of the Liberal Democratic Party of Moldova on the constitutionality of the election of the President by the Parliament, on 4 March 2016 the Constitutional Court ruled that this was unconstitutional, reintroducing the election by direct vote of the citizens, and reviving the provisions repealed in the year 2000⁴. In virtue of the decision of the Constitutional Court, on 1 April 2016, the National Assembly called the presidential elections for 30 October 2016.

Needed changes to the Electoral Code were introduced only little over three months before elections, adopted by the Parliament on 23 June and promulgated by the President on 27 July. Amendments mainly focused specifically on the election of the President. While this is, in general, not in line with good international practice for democratic elections, the amendments were necessary to comply with the Constitutional Court decision. Moreover, the procedures do not differ greatly from the ones already in force for other types of elections.

The current political context in the country is characterized by a deep lack of trust in the state institutions, especially those at the central level, and political parties, more so towards parties with a longer track record, and high political polarization. Corruption scandals, combined with economic stagnation and concerns for personal and national finances have contributed to this lack of trust.

The most notable scandal is the disappearance of \$1 billion (approximately 12% of the country's GDP) from three Moldovan banks, which was uncovered at the end of 2014 (few days before the Parliamentary Elections of that year) and has greatly affected Moldova's political landscape, as it involved prominent politicians and businesspersons⁵. Fueled by the bank theft scandal, throughout

² Party of Socialists of the Republic of Moldova (PSRM) – 24 seats; Liberal Democratic Party (PLDM) – 10 seats; Party of Communists of the Republic of Moldova (PCRM) – 7 seats; Democratic Party of Moldova (PDM) 20 seats; Liberal Party (PL) – 13 seats; unaligned MPs - 27. Source: Parliament of Moldova, www.parlament.md/StructuraParlamentului/Fractiuniparlamentare/tabid/83/language/ro-RO/Default.aspx.

³ President Nicolae Timofti was elected by 61.4% of the votes of the Parliament on 16 March 2012.

⁴ Constitutional Court of the Republic of Moldova. Judgment No. 7 on constitutional review of certain provisions of the Law no. 1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova (modality of electing the President) (Complaint no. 48b/2015.), 4 March 2016. www.constcourt.md/ccdocview.php?tip=hotariri&docid=558&l=en.

⁵ Most notably, Vlad Filat, former Prime Minister of Moldova and former leader of the Liberal Democratic Party (arrested on October 2015 and currently serving a nine years sentence) and Ilan Shor, businessman, Mayor of Orhei

2015 and in the beginning of 2016, a series of demonstrations took place across the country opposing corruption and the government and calling for early elections. The protests gathered people with different ideological backgrounds and perspectives on the geopolitical course of the country.

Two governments were formed throughout 2015⁶, both followed by interim governments, until 20 January 2016, when the current government, headed by Pavel Filip, took office, following an agreement between the parliamentary factions of the Democratic Party (PDM) and Liberal Party (PL), with the support of some non-aligned members of the parliament. In reaction to the formation of the government, protests restarted and culminated with the storming of the parliament while the new government was being voted, and the opposition calling for another vote of non-confidence. Constant division within the society over the geopolitical course of the country and delicate relations with Transnistria are also part of the daily political discourse.

Main campaigning topics of most electoral contestants were the high corruption levels and socio-economic problems the country is facing, while geopolitical matters and relations with Transnistria, generally, have received less attention. Negative campaigning and attempts to undermine the image of electoral contestants was widespread and especially visible during the second round of elections. The involvement of the Orthodox Church, by expressing clear opposition to Maia Sandu and support for Igor Dodon, has raised many discussions in the society.

One of the parliamentary parties, the Party of Communists of the Republic of Moldova (PCRM)⁷ did not appoint a candidate and called for boycotting elections, deeming the process leading to the constitutional changes unconstitutional. PCRM has nevertheless appointed members in the second and third level election management bodies, while some members of the party have publicly endorsed the candidate of the Party of Socialists of the Republic of Moldova (PSRM), Igor Dodon.

Elections were not held in Transnistria, but 30 polling stations were assigned for the voting of Moldovan citizens residing there.

and leader of the Equality Party (in house arrest since May 2015 - he campaigned and got elected as Mayor of Orhei while in house arrest).

⁶ The first, headed by Chiril Gaburici, from 18 February to 22 June 2015; after his resignation Natalia Gherman headed the government as acting prime minister until 30 July 2015. The second, headed by Valeriu Streleț, from 30 July to 30 October 2015; after his government received a vote of no confidence amid popular protests, on 29 October 2015, Gheorghe Brega headed the government as acting prime minister until 20 January 2016.

⁷ PCRM came third in the Parliamentary Elections of the year 2014, receiving over 17% of the popular vote and 21 seats in the National Assembly. Since 2014, the parliamentary faction of this party has lost two thirds of its members, most of whom are currently non-aligned, and is currently composed of seven MPs.

III. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

In the Republic of Moldova the president is elected under a two-round nationwide majoritarian system for a four-year term. For the election to be valid, one third of the total registered voters have to participate in the first round. If election is declared null and void, the repeated voting for the same candidates shall be organized. A candidate is considered elected if s/he receives at least half of the votes cast. If no candidate obtains the required number of votes, a second round is held in two weeks after the first round between the two candidates who obtained the most votes. In the second round, the election is valid regardless of the turnout and the candidate who is supported by the biggest number of votes in the second round is considered elected.

Following the Constitutional Court ruling⁸ that a 5 July 2000 revision to the Constitution, allowing members of the parliament to elect the president was unconstitutional, on 1 April 2016 the parliament called the presidential elections for 30 October⁹. This was the first direct presidential election since 1996.

The legal framework generally provides a sound basis for the conduct of democratic presidential elections. Moldova is a party to key UN treaties¹⁰, the European Convention on Human Rights, and the Framework Convention on National Minorities. A comprehensive legal framework, primarily consisting of the 1994 Constitution, most recently amended in 2016, and the 1997 Election Code¹¹, amended in 2016, regulate Presidential elections. The Constitution guarantees the fundamental rights and freedoms and stipulates that the president is elected by freely expressed, universal, equal, direct, and secret suffrage¹², thus creating the necessary basis for democratic elections.

Other relevant legislation includes the Law on Political Parties, the Law on Freedom of Expression, the Law on Administrative Court, the respective parts of Code on Administrative Offences, and the Criminal Code. The Civil Procedure Code and the Criminal Procedure Code are applicable to proceedings of courts. Regulations¹³, decisions and instructions adopted by the CEC supplement the legislation.

⁸ Constitutional Court of the Republic of Moldova. Judgment No. 7, on constitutional review of certain provisions of the Law no. 1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova, cit.

⁹ Parliament of the Republic of Moldova, Decision No. 55, 1 April 2016.

¹⁰International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Political Rights of Women, International Covenant on the Elimination of all Forms of Racial Discrimination (CERD), and Convention on the Rights of Persons with Disabilities (CRPD).

¹¹ Electoral Code of the Republic of Moldova. www.lex.justice.md/md/312765/.

¹² Section 2 and Art 78.

¹³ Central Election Commission, Regulations Nos. 2674, 2688, 2689, 3328, 3353, 3375, and 4463. Decision of the CEC of the Republic of Moldova can be found here: www.cec.md/index.php?pag=news&id=1001&l=ro.

However, inconsistencies, gaps and ambiguities still remain in the Electoral Code; among them, adjudication of post-election complaints and effective electoral dispute resolution mechanism¹⁴, procedures to challenge the results of the first round of elections¹⁵, application of electoral sanctions, the official start of the run-off campaign¹⁶, application of campaign finance rules¹⁷, and collection and verification of supporting signatures for the candidates.

Unfortunately, the CEC did not adopt necessary regulations to clarify the gaps in the Electoral Code, thus missing the opportunity to avoid legal uncertainty and conflicting interpretations of the applicable legal framework.

Despite previous Venice Commission recommendations and contrary to the good practice, voters can only support one candidate during the signature collection process. Lack of sufficient time to verify signatures submitted close to the deadline led to inconsistent verification of signatures. The CEC considered a voter's first submitted signature as a valid one even when he or she signed in support of more than one candidate. The requirement for mayors to certify support signatures proved to be problematic, given their perceived political affiliation to political parties. Moreover, this mechanism is excessive in Moldova, where an electronic voters' database is in use. This also makes it difficult for Moldovan citizens living abroad to support candidates.

The sanctions for electoral violations include warnings and deregistration of the candidate. Provisions on sanctions are ambiguous, and do not stipulate an exhaustive list of violations, thus providing the CEC with broad discretionary powers. Warnings are insignificant and therefore not dissuasive. The law does not state how many repeated warnings lead to deregistration and does not state that it should only be a sanction of last resort, after serious and repeated breaches of the law, allowing inconsistent implementation of the law and leading to legal uncertainty.

IV. ELECTION ADMINISTRATION

IV.A. Election Management Bodies

Election administration in the Republic of Moldova is a three-tiered structure: Central Election Commission (CEC), District Election Councils (DEC) and Precinct Election Bureaus (PEB). In preparation for the Presidential Elections, the CEC established 35 DEC, including the Electoral Council of the City of Chişinău. The DEC formed 2,081 PEBs, 1,981 of them in Moldova and

¹⁴ See Complaints and Appeals Section.

¹⁵ The Electoral Code insufficiently regulates the procedures to challenge the results of the first round, in case a second round is organized. Moreover, the two-week period between the two rounds overlaps with the timeframe for adjudication of the complaints in the CEC and the courts, leading to situations in which the appeals might still be pending on Election Day. This situation may pose a barrier to the right to appeal, which contravenes Paragraph 5.10 of the 1990 OSCE Copenhagen Document.

¹⁶ The Electoral Code vaguely regulates procedures for the second round, as the law contains only one article specifically concerning the second round and few specific provisions that can be found on other articles.

¹⁷ See Campaign Finance Section.

100 abroad to enable people residing outside of the country to vote¹⁸. PEBs established abroad reported to the Electoral Council of the City of Chişinău.

IV.A.1. Central Election Commission

The CEC is a permanent institution established to carry out electoral policies and conduct of elections, including monitoring, supervision and enforcement of legal provisions on financing of political parties and electoral campaigns. The CEC consists of nine members, one nominated by the President of the Republic and the other eight by the Parliament, ensuring proportional representation of the parliamentary majority and of the parliamentary opposition. The composition of the Commission is determined by a parliamentary decision, supported by the majority of votes of the elected MPs. The CEC members have a five-year mandate

The Parliament voted on the current composition of the CEC on 17 June 2016. Three members of the CEC had been in the previous composition and six are new appointees. The mandate of the nine members from the previous composition of the CEC expired on 11 February 2016, but the draft law on the appointment of the new ones was postponed four times in the Parliament. First because of the failure of the political factions to nominate candidates; then, the nominated candidates had to be checked by the National Integrity Commission for potential conflict of interests and, in the last instance, a candidate withdrew.

Overall, the CEC performed in an open manner and administered elections in accordance with the legislation and election calendar. However, ENEMO noticed that in some instances the CEC lacked pro-active approach and willingness to deal with complex issues, often referring to shortcomings in the legal framework. This was noticed in the application of different standards while verifying the supporting signatures for the presidential candidates¹⁹, incomplete examination of candidates' financial reports, dealing with violations of election legislation by candidates only in cases where there were official complaints, and discretion in decision-making on particular candidates.

CEC Sessions and decision-making process

The CEC sessions took place twice a week, on Tuesdays and Fridays, while extraordinary sessions were held as required. The frequency of the CEC sessions increased as Election Day approached. The drafts of decisions were prepared and handed out to observers at the sessions. The CEC provided some information in Russian and less in English, explaining this with lack of resources to deliver timely translation.

¹⁸ Austria (1), Azerbaijan (1), Belarus (1), Belgium (1), Bulgaria (1), Canada (3), Czech Republic (1), China (1), Estonia (1), France (6), Germany (2), Great Britain and North Ireland (2), Greece (2), Hungary (1), Ireland (1), Israel (2), Italy (25), Qatar (1), Japan (1), Latvia (1), Lithuania (1), Netherlands (1), Monaco (1), Poland (1), Portugal (4), Romania (11), Russia(8), Spain (4), Turkey (3), Sweden (1), Switzerland (1), Ukraine (2), USA (7).

¹⁹ As outlined in Code of Good Practice in Electoral Matters of the Venice Commission, adopted on 18-19 October 2002, Section I 1.3 "Checking of signatures must be governed by clear rules, particularly concerning deadlines".

The CEC held 36 meetings (sessions) - 22 of them were ordinary and 14 extraordinary. Therein, were adopted 425 decisions, 302 of which were on the organization of the Presidential Elections²⁰.

The key decisions adopted before the first round addressed the following issues: registration of candidates; accreditation of domestic and international observers; acceptance of the applications from candidates to withdraw from the electoral race and their redirection to the Chişinău Court of Appeals; approval of ballot size, structure and circulation; approval of candidates' representatives with consultative vote; permission for citizens of the Republic of Moldova with expired passports to vote outside the country; review of the financial reports of candidates, and participation of voters without residential registration. In the period between the two rounds, the CEC has prolonged the effect for a number of decisions, without changing the substance of the legislative framework²¹.

At times, the decision-making of the CEC was inconsistent; while decisions regarding procedural issues were passed unanimously, some decisions regarding contestants raised concerns of being politically motivated, as some members of the CEC tended to align their votes along partisan lines while considering complaints²². This was accentuated by insufficient regulatory mechanisms in the Electoral Code²³.

While the electoral legislation specifies which kind of violations may lead to the deregistration of a candidate, it is unclear how candidates are sanctioned for violations, thus leaving space for the CEC to take arbitrary decisions. Based on the complaints received, the CEC issued two warnings against Maia Sandu, one for submitting incomplete financial reports²⁴ and the other for being supported by high officials of the EU²⁵; whereas, on the complaint against Inna Popenco, who was accused of using undeclared funds, the CEC voted for submitting the case to the Court of Appeals, which eventually ruled to deregister the candidate²⁶.

For the first round of elections, the CEC printed 3,131,227 ballot papers, 2,379,883 in the State language and 751,344 in Russian. In light of anticipated higher turnout for the second round, some members of the CEC suggested to increase the number of ballot papers both outside and inside the

²⁰ 6 on election campaign finance, 21 on registration of electoral candidates, 26 on registration of initiative groups, 11 on appointment of the staff within inferior election bodies and the temporary suspension of its members, 15 on organizational issues, 59 on establishment of DEC's, 5 on cooperation with central public authorities, 13 on confirmation of candidates' representatives and proxies, 100 on observers' accreditations, 21 on elaboration and the modification of normative legal framework of the CEC, 7 on approving ballot papers (registration order, model and circulation), 4 on tabulation of the final results of Presidential elections and 15 examinations of complaints.

²¹ Such as decision on extending the temporary exemption of DEC's and PEB's members from their main work places, decision on extending the validity of the most important decisions for the second round on participation of Moldova citizens living in Transnistria, participation of Moldova citizens living abroad and having expired passports, participation of Moldova citizens who do not have an official domicile registration, regulation of the presidential election campaign coverage in the media, etc.

²² See Complaints and Appeals Section.

²³ See Legal Framework Section.

²⁴ Central Election Commission, Decision No. 471, 22 October 2016.

²⁵ Central Election Commission, Decision No. 998, 25 October 2016.

²⁶ Following the submission of a complaint by Silvia Radu against Inna Popenco for organizing campaign event at which discount cards were distributed to voters, the CEC examined the complaint and decided to redirect it to the Court of Appeals, which ruled on the deregistration of Popenco.

country. The argument used for this decision were voter requests to the CEC. The final number of the ballots printed for the second round was 3,165,636; out of which 2,414,492 in State language and the remaining in Russian. The increase in number of ballot papers was, however, not sufficient to cover the number of voters in some polling stations. over a dozen of polling stations ran out of ballots²⁷, since the legislation limits the number of ballot papers to be provided to polling stations abroad to 3,000²⁸. This resulted in complaints by a considerable number of voters residing abroad²⁹.

The CEC has respected the deadlines outlined in the election calendar for the most important stages of the process³⁰. Sessions were held in a transparent manner, open to the media, the public and observers. The CEC sessions broadcasted live on the CEC's official webpage and the agenda of the sessions was published in advance, although sometimes topics were introduced in the agenda shortly before the start of a session. All the CEC decisions were published on the official webpage of the institution.

The activity of the Central Election Commission on election days

On both election days, the CEC established a press center, in which the digital screens provided information regarding the total number of voters who took part in the elections. The information was broken down by age and gender; number of voters on main voters' list by regions; voters who voted on the main voters' list, and voters who voted on the supplementary voters' lists. This information was also posted online.

However, the information provided during election days was only accessible during those days and, despite being prepared, it was not included in the official report that the institution published at the end of the process. Moreover, the final report focused mainly on statistical data, and it failed to provide analysis of the problems that arose during the elections. On a positive note, the information on elections results was broken down by polling stations, which is a good practice and contributes to transparency of the electoral process.

On Election Day, in both rounds of elections, the CEC held briefings every three hours, starting from 10:00 until 22:00. During the briefings, CEC reported on the highest and the lowest turnouts throughout the country and abroad, opening and functioning of the PEBs, as well as additional matters. As reported by the CEC, no complaints were received on elections days, except some isolated cases of violations³¹, which were immediately addressed by the electoral administration and other structures.

²⁷ Three in Italy, two in Russian Federation, two in United Kingdom, two in France, one in Belgium, one in Ireland, one in Germany and one in Romania.

²⁸ Article 49, paragraph 6 of the Electoral Code provides that polling stations abroad can receive a maximum of 3,000 ballot papers.

²⁹ See Complaints and Appeals Section.

³⁰ Attachment to the Provision of the Central Election Commission No. 119, 23 August 2016.

³¹ Case of negative agitation in Orhei, where several people at the entrance of polling stations urged voters not to cast the vote.

Overall, during the Election Days, the SAES “Elections” operated smoothly and without serious problems, except few instances in which the information was not timely updated, however the problem was always addressed and resolved within the timeframe of one hour. This enabled the CEC to receive and announce the preliminary results of elections in a swift manner. However, on the runoff elections, after comparing the CEC data with PEB protocols it was discovered that in three polling stations, due to data entry mistakes, the results were interchanged between the two candidates³²; problem that was resolved upon receiving the results on paper and the establishment of the final results.

IV.A.2. District Election Councils

In accordance with the Electoral Code, the CEC has established 37 electoral districts, the borders of which correspond to the borders of territorial-administrative units³³, of the autonomous territorial unit of Găgăuzia, and the municipalities of Chişinău and Bălţi.

District Electoral Councils (DECs) are formed by the CEC, which requests the parliamentary political parties and socio-political organizations, district or appeal courts and second level local councils to submit candidates for these bodies³⁴. DECs consist of an odd number of members, at least seven and no more than eleven; at least three of them must have completed higher legal education or public administration education.

Thirty-five DECs were established, with nine members each, except DEC No. 1 (Electoral Council of the City of Chişinău), which had eleven³⁵. The DECs were formed in compliance with the election calendar, 55 days prior to the elections.

The law foresees two ways of changing members of DECs and PEBs, resignation and dismissal for not respecting the law, violating provisions on agitation, or not attending the sessions of the commission (min. 2 sessions consecutively)³⁶. According to the CEC, 16 DEC members had to be replaced during the first round and three in the second.

If commission members resign, they have to submit a written request to the institution that nominated them (political party, local administration or court) and then this institution submits the replacement to the higher electoral body. If no replacement is submitted, the CEC draws candidates from the database. Nevertheless, institutions have no clear deadlines for replacing the members of the PEBs.

³² In three localities (Leuşeni [Hînceşti rayon] and Copceac [Ştefan Vodă rayon] and in Nisporeni town [Nisporeni rayon]) the results were reversed.

³³ According to Law no. 764-XV, 27 December 2001.

³⁴ According to Article 27, paragraph 4 of the Electoral Code.

³⁵ Central Election Commission Decisions Nos. 189-223, 9 September 2016.

³⁶ Central Election Commission, Regulations No. 2688, 7 October 2014 and No. 2689, 7 October 2014. Regulation of the Central Election Commission of the Republic of Moldova can be found here:

www.cec.md/index.php?pag=page&id=1884&l=ro.

ENEMO observed sessions of the Chişinău DEC. Similarly to the CEC, DEC sessions were also open to observers. Major issue concerning the functioning of the DEC of Chişinău was that it covered a large number of constituencies. During the Election Days, ENEMO observers noted that the premises of the DECs were not suitable for accepting the results of elections from the PEBs due to small or inadequate space.

A major problem in the activity of the DECs was the lack of clear procedures on handling complaints, combined with the lack of capacity of DEC members to deal with complaints. This incapacity could be attributed to unclear legislative framework in this area and insufficient training of DEC members on the hierarchy of complaint handling and their role in it. It was difficult to assess information on all complaints, as DECs were not gathering information from all PEBs.

IV.A.3. Precinct Election Bureaus

According to the Electoral Code precincts are established by the DECs in localities, based on the recommendations of the mayors of towns (municipalities), districts and villages (communes), 35 days prior to the elections. A precinct should have between 30 and 3,000 voters.

To compose PEBs, DECs receives nominations of three candidates from local councils, while the other members are nominated by parties and other socio-political organizations represented in the Parliament on the date of its establishment, one candidate from each party or social-political organization. If the nominated number of members is not sufficient, the remaining positions are filled by the DEC, at the proposal of the CEC, from the Register of Electoral Officials.

PEBs were established by the DECs no later than 25 days before the elections and consisted of an odd number of members, between five and eleven. Special precincts were also established in hospitals, sanatoriums, maternity hospitals, asylums and homes for the elderly. The citizens of Moldova residing in Transnistria were assigned to vote on supplementary lists in 30 ordinary polling stations, five of them located in Chişinău. Two additional special polling stations were established only for voters from Transnistria and had no basic voters' lists.

A total of 2,081 polling stations were created, including 100 PSs abroad³⁷. In total, there were 18,584 polling station workers, 859 of them abroad.

PEBs were to be established in public property premises that should have been able to facilitate the access of the elderly and persons with disabilities. However, in many instances ENEMO observed that the ramps for persons with disabilities could not provide adequate access to the polling stations.

Similar to the DECs, many of the PEBs on Election Day had no clear understanding of procedures for handling the complaints and they turned down many complaints.

³⁷According to Articles 29 and 291 of the Electoral Code.

IV.B. Election Trainings

The support in election related trainings was provided by the Center for Continuous Electoral Training (CCET), which is a structure regulated by the Electoral Code.

According to the CCET, trainings were conducted for the participants of the electoral process, including members of various levels of commissions (DECs and PEBs), observers and representatives of political parties and candidates. In total 11,608 participants attended 295 trainings³⁸. The trainings of the CCET observed by ENEMO were well organized and conducted in a professional manner. However, on Election Days ENEMO observers noted that DEC and PEB members lacked information and understanding regarding important aspects of the process (i.e. regarding voters with disabilities and the process of complaints).

The CCET prepared manuals for members of the DECs and PEBs, containing compilation of CEC regulations, posters with vote counting procedures and election calendar. The PEB members referred to these materials during their work; however, the manuals need further improvement³⁹.

Other election stakeholders that underwent training were persons responsible for the financial records of the DEC and observers nominated by non-governmental organizations. Moreover, in partnership with the National Institute of Justice from the Republic of Moldova, the CCET trained 14 judges on examination/solving procedures of election complaints disputed in court.

From the start of the electoral campaign, including on the Election Days, the CCET and the CEC established a 24-hour call center to provide consultation to voters and/or other election stakeholders on challenges faced with participating in the election process. According to the CCET, the consultation provided by the call center specialists was sufficient; however, in some isolated cases the CCET has only redirected callers to the official structures for interpretation of legislation. According to the CCET, the call center addressed 9,002 questions during this period, and the most common questions were about the voting procedure⁴⁰.

IV.C. Voter Education

The CEC organized and conducted an extensive informational campaign, developing a series of materials aimed at encouraging voters to vote and providing them with information about the electoral process. All materials were disseminated/placed throughout the country and abroad, among the Diaspora. The CEC ordered the production of eleven election awareness Public Service Advertisements (PSA), and eleven audio PSAs for Radio. PSAs were also aired in ethnic minority

³⁸ 35 of which for 247 DEC members, 164 for 4,814 PEB members, and 2 trainings were conducted for 48 heads of PEBs established abroad.

³⁹ The manual for PEB members outlines that in case the voter spoils ballot paper, the entitled second and last ballot will be issued to him/her by Chair of the PEB. However, according to the Electoral Code Article 54, paragraph 6 this function is to be filled by the PEB.

⁴⁰ Which are the documents that allow voting; where should be "Elections" applied; how many ballots should receive a voter; in which polling station should the voter vote, questions about SAES "Elections", etc.

languages. The PSAs broadcasted from 30 August to 30 October 2016, on the national and regional TV channels and radio stations. The voter education campaign in audiovisual media also continued during the second round. The CEC ordered the production and broadcasting of five voter education spots, three Get-Out to Vote spots and two spots about election procedures. These public service advertisements aired in both State language and Russian, free of charge.

There were also other initiatives aimed at voter education, such as the CEC informational telephone line, and a promotional bus. Apart the official campaign, civil society organization Promo-LEX complemented with an information and civic mobilization campaign, targeting voters.

IV.D. Executive Authorities

To ensure the necessary conditions for proper organization of the Presidential Elections, the Central Election Commission outlined additional responsibilities for the following institutions and authorities: Ministry of Economy, Ministry of Internal Affairs, Ministry of Foreign Affairs and European Integration, Ministry of Informational Technology and Communications, Ministry of Transport and Roads Infrastructure, Informational and Security Service, Civil Registration Service/Office, National Regulatory Agency for Electronic Communications and Informational Technology, State Institution "Center for Special Telecommunications", Moldtelecom, and Local Public authorities⁴¹.

Throughout the election period, all the above-mentioned authorities and institutions submitted periodic reports (every 10 days) to the CEC on the ongoing implementation of the CEC decision. The CEC adopted four decisions⁴² and took note of the information provided by these authorities. Representatives of all these agencies reported on on-going preparations for two rounds of elections at the CEC sessions. They reported no major problems, throughout the electoral period.

V. VOTER REGISTRATION

Citizens of Moldova from the age of 18 on Election Day have the right to vote, except the individuals declared incapable to vote by a final court decision. The persons who have lost their election rights remain in the State Registry of Voters (SRV) with the note "Lost voting right" and are not included in the list of voters.

The State Register of Voters is an integrated informational system of voters in the Republic of Moldova. It is designed to collect, store, update, and analyze the information regarding all citizens of the Republic of Moldova with the right to vote. Update of the personal data of voters is a

⁴¹ Central Election Commission, Decision No. 237, 14 September 2016 (MIA – to provide security, safeguard against violations in election process, MFA – legal, staff and logistical assistance abroad, MITC – to provide update of citizens in the State Registry of Population, Moldtelecom – uninterrupted communication, etc.).

⁴² Central Election Commission, Decisions No. 306, 27 September 2016, No. 371, 11 October 2016, No. 436, 21 October 2016 and No. 502, 28 October 2016.

continuously automated process, performed daily without human intervention via the module of data import from the State Register of Population. The updated data stays intact, and it is not possible to make any changes. The voters' list, created based on the SRV, is the list that contains all citizens with the right to vote, with a registration within the borders of a polling station. The voter who has both domicile and temporary registration is included in the electoral list of the PS in which's jurisdiction he or she resides.

On 3 October 2016, according to the State Register of Voters, the CEC created the basic voter list, containing all citizens with the right to vote and with a registration within the borders of each PS.

The State Register of Voters contains more than 3.2 million eligible voters, while only 2,816,377 were included in the basic voters' list at the time of printing. The difference is composed of more than 220,000 citizens of Moldova residing in Transnistria, 63,000 voters without a permanent official residential registration (but who can vote on the supplementary list⁴³); and 100,000 voters who possess expired ID cards⁴⁴.

For the 2016 Presidential Elections, the Central Electoral Commission printed and distributed several voters' lists: the basic voters' list, and the basic voters' list for polling stations created outside the country; the preprinted forms of supplementary voters' list, and preprinted forms of supplementary voters' list for polling stations created outside the country; and the preprinted forms of voter's list to vote at home.

Citizens residing on the territory of a precinct but not included in the voter lists could be entered on a supplementary voter list upon presentation of an identification document confirming their place of residence within the precinct⁴⁵. The following categories of voters were also included in the supplementary voters' list: voters who came to the PS with the absentee vote certificate; individuals detained based on an arrest order until a court sentence is pronounced; individuals sentenced to prison (deprivation of liberty) whose sentence is not final; individuals under arrest for committing an offence; persons sentenced to prison (deprivation of liberty) by a final court decision, located in penitentiaries; voters who do not have a registration at a domicile or residence.

Voters who for health reasons or any other reasonable excuse (patients staying at home, elderly) who were physically unable to come to the polling station, had the possibility to submit a written request and vote using the mobile box.

Persons receiving treatment at the hospitals located in the precinct of their residence were included in the basic voters list, while persons under arrest before the pronouncement of court sentence, persons sentenced to prison whose sentence is final and persons serving sanctions for administrative offence were included in supplementary voters' lists. Moreover, persons sentenced

⁴³ The CEC made a decision on 25 October to enable these voters to vote at the place of the last residence, or any other polling station, by including them in the supplementary voters list.

⁴⁴ The legislation allows voters with expired identification documents to apply for a temporary certificate in order to be able to cast a ballot in their precinct.

⁴⁵ Article 53, paragraph 2 of the Electoral Code.

to prison by a definitive court decision, who are detained at the penitentiary institutions, and voters who are receiving treatment at the curing stations, sanatoriums or hospitals on the territory of Moldova but outside the location of their permanent residence on Election Day, are as well included in supplementary voters' lists.

From 10 May to 19 September 2016, voters residing abroad had the possibility to register online for voting outside of the country using the application "Preliminary Registration". Within the provided period for registration, 3,570 of citizens of the Republic of Moldova used this option for registering.

For the polling stations established outside of the country, the voters' list was created based on the data that was collected by the heads of diplomatic missions and consular offices in the territory of the respective states. According to the CEC, in order to provide more comfort for the activity of PEBs created outside of the country and not to oblige the citizens to come to a particular polling station, only the officials of embassies and consular offices were included on basic voter's lists for polling stations outside of the country. Voters who registered to vote abroad were purposely excluded from the basic voter list based on their domicile registration, so that they could vote at any of the polling stations established abroad.

One of the most debated matters regarding the SRV remains the inclusion of deceased persons. The process of exclusion of deceased persons from the SRV requires the submission of a death certificate, which is particularly difficult to obtain for persons who died abroad. According to the law, the Register cannot change the status of the dead person without a death certificate and if the citizen died abroad, the local authorities should transcribe the death certificate.

Between the two rounds of elections (31 October – 13 November), 1,448 citizens reached the voting age. For the runoff elections was used the same basic voter list as for the first round, and persons who reached voting age between the two rounds could vote in the second round by being included in the supplementary list.

Students studying away from their place of official registration could not vote at polling stations near their place of studies for these elections, a possibility that existed in the parliamentary elections of 2014. Between the first and the second round there were some initiatives aiming at allowing students to vote near their place of study, including a protest organized in front of the CEC and a legislative initiative by the MP Valeriu Ghilețchi. The parliament did not examine the draft law presented by Ghilețchi on grounds that the rules for the voting could not be changed between the first and the second round. However, the Chairwoman of the CEC addressed the deans of universities with a letter, calling upon them to help students organize temporary residential registration.

VI. CANDIDATE REGISTRATION

Any citizen with the right to vote and over 40 years old, who has been living on the territory of the Republic of Moldova for no less than 10 years and speaks the official language, may run for the position of President of the Republic of Moldova. The Electoral Code further specifies categories of individuals who cannot run for the President office⁴⁶: persons declared incapable by a final decision of a court; military personnel in active duty; persons sentenced to prison by a final court decision who are serving their sentence in a penitentiary; persons whose criminal records include crimes committed with intent which have not been expunged; persons deprived of the right to hold decision-making positions by the final decision of a court.

The age requirement to stand as a candidate was raised from 35 to 40 years by the Constitutional amendments of the year 2000. Although, on March 2016, the Constitutional Court declared the 2000 amendments unconstitutional on procedural grounds, the change in the age limit introduced at the time was retained, without sound legal basis, which left room for political speculations⁴⁷.

Political parties, electoral blocs and citizens of the Republic of Moldova have the right to nominate candidate for the Presidential post⁴⁸. However, only registered initiative groups of a candidate can collect signatures and are obliged to submit financial reporting. This leaves room for political organizations to use their resources and structures to support a candidate in signature collection and campaigning, while being exempted from submitting financial reports. This fact seriously disadvantages independent candidates and creates unequal playfield, which is in contradiction with Article 7.6 of the Copenhagen Document⁴⁹.

The candidates created initiative groups composed of at least 25 persons and no more than 100 persons with the right to vote. Candidates for the President must submit lists with 15,000 to 25,000 voters' support signatures collected in at least half of the second level administrative and territorial divisions of the country. The maximum number of valid signatures to be collected from each territory was 600⁵⁰.

The nomination of candidates for the position of President of the Republic of Moldova shall start 60 days and end 30 days before the date of presidential elections⁵¹. 30 September was the last day when the candidates could submit the signatures to the CEC. On 30 September, eight candidates submitted the signatures to the CEC. The Central Electoral Commission had 5 days to verify the

⁴⁶ Article 13, paragraph 2 of the Electoral Code

⁴⁷ The increase of the age limit was also negatively assessed in the OSCE/ODIHR and Venice Commission Joint Opinion on the Draft Law on Changes to the Electoral Code.

www.osce.org/odihr/elections/moldova/246576?download=true.

⁴⁸ Article 41 of the Electoral Code

⁴⁹ Article 7.6 of the Copenhagen Document - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.

⁵⁰ Article 102 of the Electoral Code.

⁵¹ Article 100 of the Electoral Code.

signatures' lists⁵². As a result, on 6 October the CEC took a decision to register four candidates out of eight. The official election campaign of registered candidates started on 30 September (30 days before Election Day). Thus, the candidates who submitted the signatures in the last days were in a disadvantaged position from the already registered candidates because they could not campaign for almost a week, waiting for the CEC to verify the signature lists.

Twenty-four persons submitted their requests for registration as candidates for the Presidential Elections, 16 of them submitted the required number of signatures. Nine of the candidates who submitted the required number of signatures were candidates supported by political parties, and citizens nominated seven.

The signature lists submitted by four candidates did not meet the minimum requirements set forth by the electoral law – no less than 600 signatures from at least half of the administrative-territorial units of the second level. As a result, all these requests for registration were rejected⁵³.

On 20 October, Andrei Năstase, the candidate for the President of the Republic of Moldova nominated by the Political Party “Platform Dignity and Truth”, requested the CEC withdrawal from the electoral campaign for the Presidential Elections. Năstase stated that he voluntarily withdrew his candidacy to support Maia Sandu, the common candidate from the right wing opposition parties.

Based on a complaint filed by the presidential candidate Silvia Radu, which stated that representatives and entrusted persons of the candidate Inna Popenco organized an event where they distributed free discount cards for voters for a specialized social store to be opened soon, on 21 October the Chişinău Court of Appeal decided to accept the request of the CEC the registration of Inna Popenco as candidate for the President of the Republic of Moldova.

On 27 October, the CEC registered the request on the withdrawal of another candidate, Marian Lupu, nominated by the Democratic Party of Moldova. The Chişinău Court of Appeal confirmed the next day the voluntary withdrawal of the candidate. Lupu stated publicly that he withdrew his candidacy to support Maia Sandu. However, Sandu refused to accept his support.

As a result, nine candidates competed for the first round of Presidential Elections, six of whom were nominated by the political parties and the remaining three were registered as independent candidates.

⁵² Article 43, paragraph 1 of the Electoral Code.

⁵³ Two candidates, Vitalia Pavlicenco and Roman Mihăeş, whose requests for registration as candidates were rejected, submitted complaints to the court against the CEC decision. On 7 October, Vitalia Pavlicenco filed in court two complaints - one against the CEC decision on the failure to register the candidate V. Pavlicenco to participate in the Presidential campaign, and the second against the CEC decision on the registration of four candidates: Ana Guţu, Valeriu Ghileţchi, Maia Laguta and Silvia Radu, about which she insisted to be checked all their submitted subscription lists with signatures. Another candidate for the Presidential campaign, Roman Mihăeş, also appealed the CEC in court on 8 October after he was denied the registration in the electoral race. Their complaints were dismissed as unfounded.

VII. CAMPAIGN FINANCE

Campaign finance regulatory framework underwent substantial changes recently, including criminalizing campaign finance irregularities, strengthening reporting requirements and introducing spending limits. However, not all stakeholders were sufficiently prepared either for compliance with them or for their implementation. The CEC oversight was insufficient to ensure transparency, integrity and accountability of campaign finances. Furthermore, gaps in the campaign finance regulation remain; the Electoral Code and the CEC regulation lack clarity on whether the campaign expenditure limit is applicable to the first round only or to both rounds cumulatively. In addition, the explicit legal requirement to report on campaign finance for the second round, clear regulation of donations from political parties, in-kind contributions, and third party campaigning remain unaddressed.

The domestic organization Promo-LEX carried out campaign finance monitoring and, in its reports, released estimated campaign expenditures by the candidate campaigns, comparing them with the expenses reported to the Central Election Commission by the Initiative Group Funds and Electoral Fund accounts financial statements of presidential candidates and initiative groups. Promo-LEX stated that there was high number of campaign expenses not reported by Electoral Funds (e.g. failure to include office rent, remuneration of campaign staff, volunteers, etc.). Among the presidential candidates, Promo-LEX estimated that four had underreported campaign expenses of more than 1 million MDL⁵⁴.

The CEC has a campaign finance oversight mandate but lacks sufficient financial and human resources to efficiently monitor the campaign. Regarding campaign finance, the CEC limited its activity to publishing the candidates' financial reports on its website, which was done in a timely manner. Moreover, the CEC cooperation with other state institutions, like State Tax Inspectorate and National Anticorruption Centre, is not sufficiently effective to fully implement the campaign finance regulation.

The CEC sanctioned only those campaign finance violations that were brought to its attention by candidates, which is in contradiction to the spirit and letter of the campaign finance regulation.

VIII. MEDIA

The ENEMO mission has not conducted media monitoring. Findings and opinions in this section are drawn from interviews with interlocutors and desk research.

Moldova's media landscape is diverse, with television and radio being the main sources of information. Internet is gaining popularity, especially among young age groups and urban

⁵⁴ Highest unreported campaign cost estimates by Promo-LEX: Igor Dodon 3 485 656 MDL, Marian Lupu 1 418 477 MDL, Dumitru Ciubasenco 1 101 293 MDL and Mihai Ghimpu 1 049 845 MDL.

population, while use of printed media is very limited. Despite the relatively high number of media outlets⁵⁵, Moldovan media suffers from strong partisanship and polarization. This situation is mostly visible with regard to television, which is also the media with the largest audience. The monitoring reports of the body in charge for monitoring television and radio conduct (Audiovisual Coordination Council – CCA) and other domestic and international stakeholders that have monitored media, showed this strong polarization and partisanship throughout the electoral campaign.

High concentration of media ownership and lack of autonomy from political and business interests is also a concern, again mostly visible with regard to television. Of five TV stations with national coverage, the same media-holding group, with close ties to one of the political parties, owns four. All four of these TV channels are among the ones that have been found to have partisan behavior during the campaign. At least four candidates have benefited from disproportionately favorable media coverage by different media outlets, to various extent. This situation can be said to have limited pluralism and put the other candidates, especially independent ones, but also the ones nominated by parties with less resources, into a disadvantaged position.

TV and radio coverage of elections is regulated primarily by the Audiovisual Code⁵⁶ and the Electoral Code, the latter including general provisions about principles of operation for print media and internet⁵⁷, but there is no regulatory or monitoring body for the conduct of the last two, while complaints about their conduct can be filed in a court of law. General provisions include the obligation to provide equal, balanced and impartial conditions to electoral contestants. Broadcasters with national coverage also have the obligation to provide free airtime to electoral contestants⁵⁸, while public broadcasters must, in addition, broadcast content regarding voter education.

Specifically, for these elections, on 6 September 2016, the CEC adopted the “Regulation on electoral coverage in mass media for the Presidential Elections of 30 October 2016⁵⁹”, based on the concept provided by the Audiovisual Coordination Council⁶⁰. The regulation includes provisions on the conduct of print media and internet, provisions that are non-enforceable in practice, in absence of a body to monitor their conduct. Electoral campaigning is prohibited on

⁵⁵ 67 TV channels, 56 radio stations, and around 50% of internet penetration.

⁵⁶ Audiovisual Code of the Republic of Moldova (Law No. 260-XVI, 27 July 2006).
lex.justice.md/document_rom.php?id=041D82D8:3A07C731.

⁵⁷ Articles 64 and 64/1 of the Electoral Code.

⁵⁸ Ibid. - 5 minutes/day for TV channels and 10 minutes/day for radio stations for presenting their program and inform voters and 1 minute per day for electoral advertising.

⁵⁹ Central Election Commission, Regulation No. 181, “Privind reflectarea campaniei electorale la alegerile prezidențiale din 30 octombrie 2016 în mijloacele de informare în masă din Republica Moldova”, 6 September 2016.
www.cca.md/files/Regulament%20reflectare%20alegeri%20prezideniale%2030%20octombrie%202016_1.pdf

⁶⁰ Audiovisual Coordination Council, Decision No. 22/126, Cu privire la aprobarea “Conceptiei privind reflectarea campaniei electorale la alegerile prezidențiale din 30 octombrie 2016 de către instituțiile audiovizualului din Republica Moldova”, 25 August 2016. www.cca.md/files/D.22-126%20din%2025%20august%202016%20-%20Cu%20privire%20la%20aprobarea%20Conceptiei%20Campaniei%20Electorale_0.pdf.

Election Day and the day preceding it; nevertheless, electoral advertising has continued to be present on the internet during the electoral silence period for both rounds of elections⁶¹.

For the electoral campaign for Presidential Elections of 2016, the Audiovisual Coordination Council has monitored 14 TV channels⁶², and has examined five reports on their conduct – the first three covering the campaign for the first round⁶³ and two covering the campaign for the run-off elections⁶⁴. The monitoring covered only news editions broadcasted by the monitored TV channels during prime time, thus not sufficient to have a full picture on the impartiality of media. Over the five reports examined, the CCA has found that several media outlets have violated not only the Electoral Code, but also the journalistic norms, while some have resorted to denigration of some of the candidates, misinformation and manipulation of the public opinion, as well as hate speech based on religion⁶⁵.

Over the course of the electoral campaign, the CCA has applied sanctions to ten out of fourteen monitored TV Channels for partisan coverage of elections, in favor or disfavor of given candidates⁶⁶. The type of sanctions that the institution can apply ranges from issuing a public

⁶¹ Article 47, paragraph 8 of the Electoral Code does exclude “information which has already been posted on the internet” from this obligation. Nevertheless, it is not clear if the provision refers to articles already posted or advertising, as it states “dissemination of campaign information”.

⁶² "Moldova-1", "Prime", "Canal 3", "Canal 2", "Publika TV", "TV 7" "Accent TV", "Pro TV Chişinău", "Jurnal TV", "N4", "Realitatea TV", "Ren Moldova", "NTV Moldova" and "RTR Moldova".

⁶³ (1) 30 September – 9 October, (2) 10 – 19 October, and (3) 20 - 30 October.

⁶⁴ (4) 31 October – 5 November and (5) 6 – 13 November.

⁶⁵ Press Release of the CCA, 8 December 2016. [cca.md/news/cca-accent-tv-ntv-moldova-publika-tv-i-jurnal-tv-nu-
vor-avea-dreptul-s-difuzeze-publicitate-com](http://cca.md/news/cca-accent-tv-ntv-moldova-publika-tv-i-jurnal-tv-nu-
vor-avea-dreptul-s-difuzeze-publicitate-com).

⁶⁶ - Prime TV – sanctioned five times, for the whole duration of the electoral campaign (1st Rep. – public warning; 2nd Rep. – maximum fine (5,400 MDL); 3rd Rep. – maximum fine (5,400 MDL); 4th Rep. – maximum fine (5,400 MDL); 5th Rep. - maximum fine (5,400 MDL).

- Canal 2 - sanctioned three times, during the campaign for the first round of elections (1st Rep. – public warning; 2nd Rep. – maximum fine (5,400 MDL); 3rd Rep. – maximum fine (5,400 MDL).

- Canal 3 - sanctioned three times, during the campaign for the first round of elections (1st Rep. – public warning; 2nd Rep. – maximum fine (5,400 MDL); 3rd Rep. – maximum fine (5,400 MDL).

- Publika TV – sanctioned five times, for the whole duration of the electoral campaign (1st Rep. – public warning; 2nd Rep. – maximum fine (5,400 MDL); 3rd Rep. – maximum fine (5,400 MDL); 4th Rep. – prohibited to broadcast advertisement for three days; 5th Rep. - prohibited to broadcast advertisement for three days.

- Jurnal TV – sanctioned five times, for the whole duration of the electoral campaign (1st Rep. – public warning; 2nd Rep. – maximum fine (5,400 MDL); 3rd Rep. – maximum fine (5,400 MDL); 4th Rep. – prohibited to broadcast advertisement for three days; 5th Rep. - prohibited to broadcast advertisement for three days.

- Accent TV – sanctioned five times, for the whole duration of the electoral campaign (1st Rep. – public warning; 2nd Rep. – maximum fine (5,400 MDL); 3rd Rep. – maximum fine (5,400 MDL); 4th Rep. – prohibited to broadcast advertisement for three days; 5th Rep. - prohibited to broadcast advertisement for four days.

- NTV Moldova – sanctioned five times, for the whole duration of the electoral campaign (1st Rep. – public warning; 2nd Rep. – maximum fine (5,400 MDL); 3rd Rep. – maximum fine (5,400 MDL); 4th Rep. – prohibited to broadcast advertisement for three days; 5th Rep. - prohibited to broadcast advertisement for four days.

- N4 – sanctioned once for the period 2nd Rep. – public warning.

- TV7 – sanctioned three times, during the last days of the first round campaigning and for the whole period of the second round campaigning (3rd Rep. – public warning; 4th Rep. – minimum fine (1,800 MDL); 5th Rep.– maximum fine (5,400 MDL).

warning to withdrawal of the license, with different degrees of other sanctions in between⁶⁷. However, none of the cases for which the license can be revoked concern violations of the electoral legal framework⁶⁸. The Audiovisual Code provides that sanctions should be applied gradually, for repeat violations, and it does not mention penalties based on gravity of violation.

The applied sanctions by the CCA during these elections were gradual and discretionary, regardless of the type and gravity of the violation. Combined with the fact that the amount of fines the law prescribes are very low and not dissuasive, reports being examined on a ten days bases and a very slow examination process, due to both lack of adequate resources and procedural requirements, according to the CCA, the monitoring and sanctioning mechanism has failed to ensure balanced and impartial coverage of the electoral campaign or adequate sanctioning for media outlets that violated the law. Numerous interlocutors of ENEMO have also raised doubts on the impartiality and independence of some of the CCA members.

In addition to the media monitoring, the CCA has relied on self-reporting of media outlets, submitted weekly, and complaints received on the conduct of the media. The CCA reported to have received and examined ten complaints throughout the electoral period, but has not undertaken sanctions in any of the cases.

Lack of independence of media itself and failure by the state authorities to impose efficient and appropriate sanctions (i.e. timely and proportional to the gravity of the violation) was a concern for these elections, and it can be said to have limited the possibility of the public to receive impartial information, as well as equity of conditions for the candidates. Combined with the fact that media is one of the most trusted institutions in the Republic of Moldova, according to a poll conducted just before elections⁶⁹, the shortcomings may have had an effect on the possibility for the Moldovan voters to make an informed choice.

IX. PARTICIPATION OF WOMEN

Of the twelve candidates initially registered by the CEC, five were women. Following the two withdrawals⁷⁰ and one candidacy annulment⁷¹, nine candidates participated in the first round, out

- Ren Moldova - sanctioned three times, during the last days of the first round campaigning and for the whole period of the second round campaigning (3rd Rep. – public warning; 4th Rep. – maximum fine (5,400 MDL); 5th Rep. – maximum fine (5,400 MDL).

⁶⁷ Fines, ranging from 1,800 to 5,400 MDL (approximately 85 and 255 EUR), prohibition of broadcasting commercials for a given number of days, depending on the gravity of the violation, and suspension of the broadcasting license. Article 38, paragraph 1 of the Audiovisual Code.

⁶⁸ Article 27 of the Audiovisual Code.

⁶⁹ International Republican Institute. Moldova Poll: Desire for Change Drives Enthusiasm for Presidential Election. www.iri.org/resource/moldova-poll-desire-change-drives-enthusiasm-presidential-election.

⁷⁰ Andrei Năstase and Marian Lupu.

⁷¹ Inna Popenco.

of which four were women. One of the two candidates participating in the run-off elections was a woman and the other a man.

Women were well represented in the second and third level election management bodies, while at the CEC there are only two women out of nine members. Respectively, according to CEC data, approximately 47% of the DEC members and 79% of the PEB members were women. With regard to leadership positions, both the Chair and the Deputy Chair of the CEC are women, while on the second and third level commissions women were in the chairperson position in 31% of the DECs and in 77% of the PEBs, and in the deputy chairperson position in 43% of the DECs and 76% of the PEBs.

The inconsistency among women DEC members and women holding a chairperson position in DECs (47% vs. 31%); as well as the higher number of women in the third level commissions as compared to second level commissions (79% vs. 47%) was noticeable. Women were, thus, better represented in the lower level commissions and in membership positions, but less so in DECs and chairperson positions.

X. PARTICIPATION OF PERSONS WITH DISABILITIES

Inclusion of persons living with disabilities (PLWD) in the electoral process needs more attention from the state institutions. The CEC has undertaken some efforts in this direction, in cooperation with NGOs working in this field, but these efforts have been sporadic and, mostly, related to specific activities initiated by civil society organizations or international donors, while a structured and comprehensive strategy for the inclusion of persons living with disabilities in the electoral process is still lacking.

ENEMO commends the CEC for adopting the Regulation “For the accessibility of disabled persons in the electoral process”⁷² for these elections, which was the first time such a regulation was adopted in Moldova. According to organizations working with persons with disabilities, the environment for the voters with disabilities is improving, but improvements are very slow and persons with disabilities still face serious difficulties in participating in elections, as well as in other aspects of the political life in the country.

Over 81% of the polling stations visited by ENEMO observers during both Election Days lacked adequate structures that would facilitate access of persons with locomotor disabilities (especially persons on a wheelchair) to the polling station⁷³. In a number of polling stations visited by ENEMO observers on Election Days there were magnifying glasses for voters with slight visual impairment

⁷² Central Election Commission, Regulation No. 4463, 26 January 2016.

⁷³ ENEMO observers evaluated accessibility for persons with locomotor disabilities at the polling stations as “requiring minor assistance” in 45% of the visited polling stations and as “inaccessible” in 33% of them during the first round Election Day (30 October); while for the second round (13 November) polling stations were evaluated as “requiring minor assistance” in 42% and as “inaccessible” in 43% of the visited polling stations.

available, but no templates in Braille alphabet were produced for these elections. However, as organizations working with blind people have noted in meetings with ENEMO, the templates for the past elections could have been adopted for these elections with slight modifications.

XI. ELECTION OBSERVERS

The legislation of the Republic of Moldova provides for observation by authorized observers of the political parties and for non-partisan observation of both international and domestic organizations, as well as foreign countries⁷⁴.

For the accreditation of the domestic observers, the electoral bodies shall adopt a decision on granting an accreditation or declining proposed candidate for observing elections, in the presence of the applicant or his/her representative within 5 days. The decisions regarding accreditation of international observers shall be made by the electoral body within 10 days, but no later than the day before Election Day. In case of rejecting the proposed candidate, the electoral body must inform the party proposing the candidate the reasons for such denial. ENEMO notes that the procedure for the accreditation of international observers is complicated and not completely transparent, as other bodies, besides the CEC are involved in it⁷⁵. In at least two cases, the CEC did not respect the ten days deadline for the accreditation of foreign observers⁷⁶, set forth in the “Regulation on the status and registration of observers”.

In order to ensure the efficient operation of international observers for the Presidential Elections of the Republic of Moldova, the CEC established the Protocol Office for the International Observer⁷⁷. For the informational support, the CEC provided the accredited observers with the Electoral Code (in State language, Russian and English) and the Guideline for Observer (in State language and English).

The CEC accredited 636 international observers (74 of them for the second round), nominated by 54 institutions and 3,285 domestic observers (197 of them for the second round), nominated by 20 institutions. These observers conducted their activity in the polling stations established within the country. The polling stations outside of the country were monitored by 114 domestic observers, including 103 nominated by two NGOs, and 11 nominated by the electoral contestants. Promo-LEX was the domestic organization that accredited the largest number of domestic observers -

⁷⁴ Article 63 of the Electoral Code and CEC Regulation No. 110 “On the status of observers and their registration”, 18 August 2016

⁷⁵ Ministry of Internal Affairs, Ministry of Foreign Affairs and European Integration, Security and Intelligence Service and Ministry of Justice – CEC Regulation No. 110 “On the status of observers and their registration”, 18 August 2016.

⁷⁶ ENEMO Core Team members were accredited fifteen days after submitting the required documentation. No additional documentation was requested, nor problems in the provided documents pointed out. According to CEC officials, the delay was due to procedures conducted by other institutions.

⁷⁷ Central Election Commission, Decision No. 357, 7 October 2016.

2720 observers – and deployed them to all polling stations in the country and to almost half of the polling stations abroad.

The district election councils accredited 7,419 observers nominated by electoral candidates, and 55 observers nominated by public associations.

ENEMO observers have not reported instances of being obstructed in their monitoring activity by election management bodies.

XII. ELECTION DAYS

The ENEMO EOM deployed ten teams of short-term observers during the first round of presidential elections and four teams in the runoff elections, with additional five STOs observing the procedures at polling stations established in five cities outside of Moldova⁷⁸.

XII.A. OPENING

In both rounds of elections all polling locations visited had all necessary material for polling and opened in time, with only one exception. One polling station observed in the first round of elections opened with delay of less than 15 minutes due to late arrival of the PEB members.

Opening procedures were generally followed properly in observed PEBs, both in Moldova and abroad, except for two cases. In one of the polling stations observers noted improper sealing of the ballot boxes, using only three security seals instead of four⁷⁹. In other polling station⁸⁰ opening procedures were not transparent, the opening protocol seemed already filled in before the opening of the polling station, the PEB members allowed voters inside the polling station before the opening procedures were completed, and the setup of the polling station did not make it possible to observe all aspects of the voting process simultaneously.

XII.B. VOTING

ENEMO observers visited 169 polling stations in both rounds of elections including seven polling locations abroad. Overall, the assessment of the voting process by ENEMO observers was positive in both rounds of election (93% in the first round and 95% in the second round).

PEBs were commended for good organization and efficiency; however, some room for improvement has been noted in the procedures that are not clearly described in the Electoral Code or PEB instructions (e.g. sealing of ballot boxes, set up of polling stations, folding of ballot papers,

⁷⁸ Bucharest and Brasov (Romania), St. Petersburg (Russian Federation), Kyiv and Odessa (Ukraine).

⁷⁹ PEB 1/112.

⁸⁰ PEB 25/54.

and lack of direction of voters to the operators' desk). Essential election materials were present in all polling stations. The most noted irregularity concerned sealing procedures: improperly sealed ballot boxes, especially mobile boxes, and presence of unsealed additional ballot boxes, that was reported in 9% of the polling stations visited.

The electronic voter database functioned effectively throughout the country, with only few cases of internet connectivity difficulties that had to be resolved. In cases of malfunctions with internet connection for one laptop, the other laptop was still operational with alternative connections. Such problems were solved with additional technical support, without interruption of voting, resulting in queues of voters being processed by just one operator during this period. In cases when both operators had difficulties accessing the internet, they manually wrote down the names of the voters and entered them in the system only after the connection was reestablished. However, in such cases there was lack of procedural safeguards against possible omissions or potential fraud.

Identification procedures were always followed properly in 92% of the polling stations visited. In one case, the PEB did not stamp ID card inserts and in another one PEB issued ballots to persons not on the voter list without valid documents. Observers noted only small number of minor or unfounded complaints filed at the PEB level (5%); however, they noted difficulties of PEBs in handling those complaints already in the first round of elections. In the second round, the scope of the problem of registering and handling complaints was especially visible in those polling stations abroad where PEBs ran out of ballot papers due to high voter turnout.

Instances of breaches of the secrecy of the vote were observed rarely, such as family voting, group voting inside the voting booth, secrecy of the vote not sufficiently safeguarded due to improper layout of PS, position and design of voting booth, or candidate representative standing near the ballot box.

ENEMO observers evaluated accessibility of the polling stations for persons with disabilities. On average, for both rounds, in 18% of polling stations easy access was ensured, while in 43% minor assistance was required and in 38%, voting premises were not suitable for PLWD. For visually impaired voters, PEBs were equipped with magnifying glass in only approximately half of the polling stations visited.

In the polling stations visited by ENEMO observers on both rounds of elections, the majority of PEB members were women (80%). Women were well represented also in leadership positions in the PEBs, as in 69% of the PEBs visited women served as Chairpersons; in 77% as PEB Deputy Chairpersons; among 97% of PEB secretaries were women in the precincts visited.

A number of irregularities and violations were observed during the voting at the Prison No. 13 in Chişinău. Voters were called in the room for voting by the prison administration who also verified voters' IDs and surnames and asked if they were willing to vote. Disproportionate number of prison administration staff and its interference in the work of the PEB confused the voters and created an intimidating atmosphere inside the room, taking into consideration its location. Moreover, the prison administration, in its copy of the supplementary voters list, marked each voter's surname

with “+” or “n” if s/he voted or refused to vote. Voters names who refused to vote were written down by the prison administration on a separate paper.

ENEMO observers on out-of-country polling station PS 1/390 in Bucharest reported that thirty voters were denied the right to vote since the PEB ran out of ballot papers as more than 3,000 voters turned up at this polling station. According to the information from the CEC, more than a dozen polling stations abroad encountered a shortage of ballot papers since the turnout of voters exceeded the maximum of three thousand ballots.

XII.C. VOTE COUNT

ENEMO observers visited 19 polling stations in both rounds of elections to monitor the closing and counting process. In the case of a polling station in Bucharest, voting was extended to 21:30 for the voters in line, but not all of them were able to vote due to the shortage of ballots. In most of the PS visited, the counting procedures were followed properly and in the right sequence; however, in five cases ENEMO observers reported procedural irregularities, such as ballots not announced one by one, ballots in doubt not considered and voted, notes in protocol not made after each step of counting, ballots for the candidate with receiving less votes candidate not counted properly, stationary box opened before the mobile box or preliminary results not entered in special sheets for the vote count. Nevertheless, the observers reported that such shortcomings seemed to be due to rushing through the vote count process and negligence, rather than intentional fraudulent behavior.

XII.D. Transfer of Materials and District Election Councils

The transfer of materials from polling stations by the PEBs to the DEC's went according to the procedures in twelve out of the fourteen observed cases. The STO team in Orhei reported that the PEB 25/01 stopped at the courthouse first to deliver the ballot papers and other election materials before submitting the protocols to the DEC.

Observers also reported that the DEC premises were quite small and inadequate for a transparent tabulation process. Breach of procedures of the corrections of PEB protocols were reported in two cases, while in another case, missing protocol copies were handwritten, including signatures of absent PEB members.

XIII. COMPLAINTS AND APPEALS

The complaints and appeals process is regulated primarily by the Electoral Code and the CEC regulation on adjudication of complaints during the electoral campaign⁸¹. Complaints are filed and reviewed within three days. Complaints requiring additional verification are reviewed within ten

⁸¹ Central Election Commission, Regulation No. 3353, 20 July 2010.

days, whereas complaints received on Election Day should be reviewed immediately in the court, without prior hierarchical review.

Voters and candidates can file complaints against actions, inactions and decisions of all levels of election management bodies, other contestants and the media. Before being lodged with the respective court, a complaint must be first considered by a higher election management body. Election Day complaints related to the right to vote and administration of elections may be directly addressed to the courts. Complaints on campaign finance are lodged with the CEC. The CCA adjudicates complaints related to broadcast media, whereas complaints on printed media and Internet websites are handled by the courts.

The Electoral Code does not provide for a clear procedure of complaints and appeals, with a single hierarchical structure. Subsequently, there was often confusion among stakeholders about the adjudicating body and, in many cases, complaints were filed with non-competent bodies or these bodies deemed complaints and appeals outside the scope of their jurisdiction. To some extent, the situation was solved by the Supreme Court's Plenum having the authority to issue advisory interpretations of election legislation for the lower-level courts⁸².

Effective legal remedy and due process to resolve election related grievances were not adequately provided to electoral stakeholders, which went against paragraph 5.10 of the 1990 OSCE Copenhagen Document and paragraph II.3.3. of the Venice Commission's Code of Good Practice in Electoral Matters. In addition, electoral stakeholders insufficiently used available dispute resolution mechanisms, including due to a reported lack of confidence in the capacity of election administration, courts, and law enforcement bodies, and, apparently, due to lack of clarity and sufficient understanding of the complaints resolution mechanisms.

The CEC reported having considered 52 complaints. The complaints to the CEC were filed mainly by the presidential candidates against other candidates. The CEC considered complaints in open sessions, where both parties were heard, but not always following the procedures established by the law. The CEC applied the campaign finance regulations inconsistently⁸³, e.g. the consideration of three complaints was postponed after Election Day, in violation of the law⁸⁴ and a number of decisions lack sufficient legal reasoning⁸⁵.

Contrary to the good practice, decisions of all levels of election administration bodies failed to indicate the venue and deadline of their appeal thus undermining the right to redress⁸⁶. Moreover, decisions on complaints were not taken by unanimous vote, highlighting the CEC members'

⁸² Supreme Court's Plenum, HOTĂRÂRE Cu privire la aplicarea de către instanțele judecătorești a unor prevederi ale legislației electorale 26 September 2016. jurisprudenta.csj.md/search_hot_expl.php?id=210.

⁸³ For more details see Campaign Finance Section.

⁸⁴ Article 67, paragraph 2 states that complaints against electoral candidates are examined within 5 calendar days but no later than Election Day.

⁸⁵ Contrary to paragraph 5.11 of the 1990 OSCE Copenhagen Document.

⁸⁶ Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity."

political sympathies. The CEC maintained the complaints register and published its decisions online; contrariwise, it lacked oversight of complaints lodged with the lower level election administration bodies and their decisions, therefore undermining the uniform application of the law. DEC and PEBs handled complaints even less efficiently⁸⁷ and less consistently⁸⁸. The Chişinău Center DEC exceeded its regulatory power and without considering in substance the diaspora voter complaints regarding shortage of ballots in the PSs abroad, forwarded them to the Constitutional Court without any legal reasoning. Diaspora voter complaints received at the CEC were forwarded to the Chişinău Center DEC according to the jurisdiction, however, the DEC declined its jurisdiction, thereby weakening the CEC's supervisory role and rising doubts regarding sufficient training and understanding of the complaints and appeals procedures within the election administration at its different levels.

On Election Day, several PEBs handled complaints informally or left them unresolved, which did not provide transparency and undermined the mandate of the CEC. Complainants did not pursue appellate procedures, explaining this by the lack of trust in the integrity of electoral dispute resolution.

CEC decisions are appealed at the Chişinău Court of Appeals. The Supreme Court is the last instance for appeals, but does not review the facts of the cases but only considers their legal basis. The Court's hearings are not public⁸⁹. The Constitutional Court validates election results after all post-election complaints are adjudicated by the ordinary courts as the Constitutional Court is not an appeal instance and does not review individual complaints. Contested CEC decisions were mostly rejected by the Chişinău Court of Appeal as unfounded. In general, the Supreme Court rejected appeals against the decisions of the court of first instance.

Post-election dispute resolution was marked by a formalistic application of the law⁹⁰. The courts used wide discretionary powers to interpret the law, at times in an inconsistent manner⁹¹. Almost all complaints were dismissed by courts as falling outside their competence. The Supreme Court

⁸⁷ Complaints were not always considered by the PEB as collegial body and, at times, were just disregarded as inadmissible.

⁸⁸ The PEBs abroad inconsistently handled diaspora voter complaints regarding shortage of ballots. Only in few cases the PEBs took a decision and the decisions were never handed over to the complainant.

⁸⁹ Paragraph 6 of the 1984 UNHRC General Comment No. 13 on Article 14 of the International Covenant on Civil and Political Rights (ICCPR) states that "the publicity of hearings is an important safeguard in the interest of the individual and of society at large."

⁹⁰ The majority of appeals were dismissed due to a lack of jurisdiction or as unfounded. This was also noted by the Constitutional Court in its judgement of 13 December 2016, stating that: „, the Court noted that both the electoral authorities and law-courts dismissed a great number of complaints as falling out of their competences". Later on the Constitutional Court concluded on "poor understanding by stakeholders of the process of resolving electoral disputes". Judgment of the Constitutional Court on the results of the Presidential Elections in the Republic of Moldova, 13 December 2016.

www.constcourt.md/libview.php?l=en&idc=7&id=926&t=/Media/News/Results-of-Presidential-Election-Confirmed-by-the-Constitutional-Court-of-Moldova.

⁹¹ Decision of the Court of Appeal of Chişinău on 25 November 2016, which was upheld by the decision the Supreme Court on 30 November 2016.

even came to the conclusion that the Electoral Code does not provide expressly that following Election Day the courts are competent to examine election related complaints.

As a positive step, the Constitutional Court issued six Addresses to the parliament together with its judgement⁹² in view of eliminating the gaps and uncertainties in the electoral legislation.

ENEMO interlocutors expressed their dissatisfaction with the efforts of law enforcement bodies to identify, investigate and prosecute instances of election related violations and crimes. Homophobic and hate speech by Bishop Marchel of the Moldovan Orthodox Church at the press conference against the presidential candidate Maia Sandu, was not properly prosecuted; even though, the law prohibits the church from being involved in the electoral campaign⁹³. In general, the government and, in particular, the ombudsman and the Council on the Prevention and Elimination of Discrimination and Ensuring Equality have done little to counteract the culture of intolerance, hate speech and homophobia in Moldova⁹⁴.

XIV. ANNOUNCEMENT OF RESULTS

For the first round of the Presidential Elections, after processing protocols and tabulation of the results submitted by the DEC's, the CEC stated that the number of voters included in basic voters' lists was 2,812,566, the number of voters included on additional voters' lists 117,128, and the total number of voters who participated in voting 1,440,733.

None of the candidates participating in the first round received more than a half of citizens' votes. Thus, the CEC announced the second round of Presidential Elections, which was held on 13 November 2016⁹⁵. The two candidates that received the highest number of votes participated in the second round⁹⁶: Igor Dodon, nominated by the "Socialist Party of the Republic of Moldova"⁹⁷

⁹² Judgement of the Constitutional Court, 13 December 2016, cit.

⁹³ Article 15, paragraph 2 of the Law on Freedom of Conscience, Belief and Religion provides that religious denominations and their components shall abstain from publicly expressing and manifesting their political preferences or favor a political party or socio-political organization. In addition Article 24, paragraph 2 (f) provides for suspension of activity in cases when religious denomination, institutions or their component parts unfold electoral campaigns and /or financially or materially support electoral candidates.

⁹⁴In addition, Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt recommends: "The Government should speak out clearly against any manifestations of religious hatred and related intolerance. In accordance with Article 20, paragraph 2, of the International Covenant on Civil and Political Rights, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited", www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-60-Add2_en.pdf.

⁹⁵ According to the Article 109, paragraph 1 of the Electoral Code.

⁹⁶ Decision No. 517, 2 November 2016.

⁹⁷ 680,550 votes in the first round.

and Maia Sandu, nominated by the Party “Action and Solidarity”⁹⁸. The order of appearance in the ballot paper for the second round was according to the number of votes received in the first round.

The CEC established the final results of the first round of elections by its Decision No. 516, of 2 November 2016. According to this decision, the turnout was 50.95%, while the CEC official website showed the turnout at 49.18%⁹⁹. The data presented by the CEC about the voter turnout was based on information processed by the SAES “Elections” and the discrepancy was due to the fact that the CEC only took into account 15,097 of the voters who were included in the supplementary lists because they had no official domicile registration. In the reported turnout figure, the CEC decided not to include the remaining number of 102,031 voters reflected on the supplementary lists, since they remain in the main voters’ list. In addition, the data on the results for the first round, presented on the CEC website¹⁰⁰, lacks clear information on the true percentage of votes that the running candidates have gathered, since the calculation is based on total number of valid votes instead of total number of ballots cast, as the Electoral Code provides¹⁰¹.

The information presented on the CEC website about preliminary results, especially about the voter turnout and number of votes needed for a candidate to be elected in the first round, could be considered to have been misleading for the public. Both these figures play a crucial role in presidential elections. Participation of no less than one third of the total number of voters included in the voter list is required for the elections to be considered valid, while gathering at least half of the votes of voters participating in elections is required for a candidate to be elected.

According to the processed, data after the second round of Presidential Elections of 13 November 2016, the CEC stated that the elected candidate was Igor Dodon. He received the highest number of votes in the second round - 834,081 votes - while Maia Sandu received 766,593 votes.

The CEC published the election results from all precincts on its website thus increasing the transparency of the tabulation process. Promo-LEX nonpartisan observers carried out parallel vote tabulation in both rounds of elections collecting results from all polling stations in the country and its PVT results matched the CEC preliminary data in the second round with insignificant difference.

On 21 November 2016, the CEC submitted the protocol on the tabulation of the Presidential Elections and the Report on the final results of the Presidential Elections to the Constitutional Court, to confirm the election results and the validation of the mandate of the new President of the Republic of Moldova. On 13 December 2016, the candidate Maia Sandu lodged a complaint with the Constitutional Court, challenging the Decision of the Central Electoral Commission and asking the Constitutional Court to cancel the second round of election¹⁰².

⁹⁸ 549,152 votes in the first round.

⁹⁹ www.cec.md/r/procese-verbale/prezidentiale2016/.

¹⁰⁰ Ibid.

¹⁰¹ Article 109, paragraph 1.

¹⁰² The arguments brought in front of the Constitutional Court were: “a) voting rights suppression of citizens domiciled outside the country, caused by the lack of voting ballots and poor conduct of the voting process by public

After hearing the representatives of the CEC and of the two candidates, the Constitutional Court found that the violations pointed out by the candidate Maia Sandu did not represent “a phenomenon capable of changing the voters' will, meaning a modification in the assignment of the mandate¹⁰³” and has, thus, rejected the request of the candidate and confirmed the results of the presidential elections, validating the mandate of Igor Dodon as President of the Republic of Moldova. In considering the case, the Court has taken into consideration also the findings of international¹⁰⁴ and domestic¹⁰⁵ observers.

However, the Constitutional Court has acknowledged legal shortcomings and highlighted the necessity to re-examine the entire electoral legislation, issuing six addresses to the Parliament, in order to provide for “the organization of democratic, fair and transparent elections¹⁰⁶”.

XV. RECOMMENDATIONS

Based on observations and analysis of the election process, ENEMO presents the following recommendations for improving the election legislation and the electoral process in general:

Improvement and harmonization of election legislation

The legal framework could benefit from a comprehensive review to eliminate inconsistencies, loopholes and ambiguities well in advance of elections, through open and inclusive consultations with all election stakeholders, including experts and civil society, to provide for improved and harmonized electoral legislation.

Provision to allow students to vote in polling stations in the place of their stay should be considered to be included in the Electoral Code for presidential elections, as such opportunity is already provided by the Code for the parliamentary elections.

authorities; b) organised transportation and corrupting of voters from the left bank of Nistru river; c) involvement of representatives of the Orthodox Church of Moldova in the electoral campaign; d) multiple voting; e) defamatory publications spread by representatives of the opposing electoral candidate, Igor Dodon; f) media outlets favouring the opposing electoral candidate”. Judgment of the Constitutional Court on the results of the Presidential Elections in the Republic of Moldova, cit.

¹⁰³ Ibid.

¹⁰⁴ The International Election Observation Mission consisting of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Parliamentary Assembly of the OSCE (PA OSCE), Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP); and The Election Observation Mission of the European Network of Election Monitoring Organizations (ENEMO).

¹⁰⁵ Election Observation Mission organized by The NGO "Promo-LEX;" and the NGO "Moldovan Institute for Human Rights" (IDOM) on the exercise of voting rights of people with disabilities.

¹⁰⁶ Judgment of the Constitutional Court on the results of the Presidential Elections in the Republic of Moldova. cit.

The Criminal Code should be amended to criminalize vote buying in the presidential elections in a similar way that it is already provided for parliamentary elections, local elections and referenda.

The question of constitutionality of the age criterion for eligible presidential candidates could be examined in light of the 2000 constitutional change from 35 years to 40 years and its 2016 Constitutional Court reversal. The 10-year residence requirement for eligibility could be also reviewed.

Collection of support signatures and verification system

Consideration could be given to review requirements for collection of supporting signatures, including lowering the number required, allowing voters to support multiple candidates, and application of consistent verification procedures to ensure equal opportunities for all candidates.

The legislation should not have one single quota for collecting signatures from each of the administrative territory units, as the density of population varies. The system of support signatures could be revised to allow Moldovan citizens staying abroad to sign in support of presidential candidates.

The legislation should be changed, so that the last day for submission of signatures in support of candidates for CEC verification shall not overlap with official dates for commencing the campaign.

Legal and institutional mechanisms regulating the media

The legal framework regulating media should be revised, in order to ensure impartiality and independence of the media by political and business interests, as well as prevent concentration of ownership, to improve pluralism of opinions. The legal framework for the media could include new provisions that would fully regulate the conduct of internet media, which is an increasingly powerful medium in Moldova.

Gender discriminatory, sexist and homophobic speech should be clearly identified and punishable in the legal framework. The CEC and media monitoring agencies should show sensitivity and promptly intervene if such cases arise, by sanctioning the perpetrators.

A more functional and efficient mechanism for the monitoring of the media conduct during electoral campaigns should be established. This mechanism should ensure a more frequent examination of the media conduct during campaign periods, as well as swift and proportional to the gravity of violation sanctioning mechanisms, in order to prevent distortion of public perception by biased media coverage of the campaign.

Election complaints and appeals

The complaint procedures should be simplified and structured, to enable voters understand and defend their rights. Consideration should be given to revising the Electoral Code to provide a

systematic and simple framework for complaints and appeals that ensures all mechanisms for legal redress in one hierarchical and clear structure.

It is advisory to develop clear guidelines for issuing warning to candidates on which violations can lead to sanctions levied on candidates and what these sanctions are. The Contravention Code should be reviewed to prescribe an exhaustive list of violations and respective sanctions, which should be proportionate and dissuasive.

Adjudication of Election Day complaints and appeals should be scrutinized and revised to eliminate loopholes and ambiguities.

All decisions should be fully justifiable and indicate available remedies. The election management bodies should refrain from unduly refusing their jurisdiction to review election related complaints.

Campaign finance oversight

The oversight of campaign finance could be further enhanced. Consideration could be given to introduce appropriate oversight mechanisms, which would allow the overseeing institution full and unimpeded access to all information regarding contestants' campaign-related resources and foresee clearly regulated mechanisms for cooperation with other authorities. Verification, oversight and enforcement mechanisms should be examined and strengthened.

Third party campaigning, in-kind contributions, financing through political parties and information for identification of donors should be regulated and publicly available for better transparency of campaign sources and expenditures. Final financial statements of electoral funds should be submitted after Election Day, to include payments of candidate representatives.

Consideration could be given to proper training to increase campaign finance oversight capacity. In addition, the CEC must be supported with means and resources to effectively oversee campaign finance.

Central Election Commission

In order to further promote public confidence in the electoral process, the election administration should focus on issues of transparency and impartiality. One of the ways of ensuring this is to take a pro-active approach in addressing problems arising during the election process, especially in the areas vaguely or not regulated by the legislation.

The main aspects in transparency of the decision making process is timely provision of information to the public, provision of information in a complete and efficient format, including publication of CEC members' voting on decisions, and information on number of votes needed for a candidate to become a president in the first round of elections.

To ensure effectiveness, consistency and transparency in election dispute resolution, the CEC could consider enhancing its supervisory role over lower level bodies and provide clear guidance

on complaint forms to simplify procedures. In addition, the CEC should gather and account about complaints at lower level election management bodies.

Additional action is required to ensure that the secrecy of the vote is uniformly respected, requiring design and proper positioning of polling booths. Requirement for voters to fold the ballot paper inside the polling booth may improve the secrecy of the vote.

The CEC should also simplify the procedure for accreditation of international observers and reduce the number of days taken for review of the applications for accreditation.

The process of organizing voting in prisons needs special attention. There should be the possibility to establish special polling station in prisons, if the number of voters registered exceeds certain minimal number, to ensure that voters in prisons have access to voter information and are guaranteed the secrecy and integrity of the vote.

The organization, location and size of premises for the transfer of materials and tabulation at the District Election Councils should be considered from the point of view of transparency and open, unhindered access to observers.

The electronic system for preliminary results should be improved to reflect properly the voter turnout and percentage of votes gathered by candidates.

State Voter Registry and SAES Elections

An important aspect which might be addressed by the CEC is the update of the voter records through the complex three-step system of State Civil Registry, State Voter Registry and SAES Elections, which could be examined through accuracy tests, particularly about inclusion of deceased persons. Improved systems for database updates should be developed.

Operation of SAES “Elections” on Election Day could be further improved, especially the data entry process of election results should be subject of multiple checks by election officials, both at PEB and DEC level, against the final PEB paper results protocols.

The status of SAES “Elections” operators should be defined, to ensure impartiality, in a similar way as it is for members of election commissions.

Trainings of election commissions

It is important to make a deeper analysis of the shortcomings during the previous elections and focus on solutions with regard to complaint handling and detailed instructions on specific areas, such as sealing of the ballot boxes, storage of ballot papers, issuing ballots in case of spoilt ballots, uniform requirements for posted information at the polling stations, right sequence of counting procedures, etc.

Training sessions for members of the election management bodies should include special modules on the way DEC and PEB members should anticipate and fulfill the needs of persons with disabilities during the electoral process.

Voting rights of persons with disabilities

There is a need to develop and put into action a comprehensive and efficient strategy for the inclusion of persons living with disabilities in the electoral process, to ensure that all citizens can exercise the right to cast their vote freely and independently. All public institutions should undertake necessary steps, ahead of the start of an electoral cycle, to ensure needed facilities for persons with disabilities to access polling stations and vote independently.

Out-of-country voting

There is a need for reconsideration of the process of establishment of out-of-country polling stations (number and locations) with more flexible ways to inform and identify interest of Moldovan voters abroad to exercise their voting rights. The maximum number of three thousand ballots per polling station should also be reconsidered.

In addition, the possibility to vote with expired passports abroad should be discussed, to find a solution that would respect the relevant laws.

ABOUT ENEMO

The European Network of Election Monitoring Organizations (ENEMO) is an international network of 23 leading non-profit, non-partisan and non-governmental organizations from 18 countries of Central and Eastern Europe and Central Asia, including three European Union countries, founded on 29 September 2001.

ENEMO seeks to promote civil society organizations' involvement in societies with democracies in transition and other non-democratic forms of governing, towards improvement of electoral processes, greater transparency of the governments and their accountability to the citizens, and respect of basic human rights and freedoms. To achieve this aim, ENEMO works independently or in cooperation with its member organizations.

The main activity of ENEMO consists in assessing electoral processes and the political environment by deploying international election observation missions, and offering accurate and impartial observation reports. ENEMO's observation missions use international benchmarks and standards for democratic elections and the host country's legal framework to evaluate the electoral process. ENEMO and all of its member organizations have endorsed the 2005 Declaration of Principles for International Election Observation and the Declaration of Global Principles for Non-partisan Election Observation and Monitoring by Citizen Organizations. Each ENEMO observer signs the Code of Conduct for International Election Observers.

To date, ENEMO has organized 23 international election observation missions to seven countries¹⁰⁷. ENEMO member organizations have monitored more than 200 national elections and trained more than 200,000 observers.

**The English version of this Report is the only official document.
An unofficial translation is available in Romanian.*

¹⁰⁷ Albania (2005 parliamentary elections); Georgia (2008 early presidential elections); Kazakhstan (2005 presidential elections); Kosovo (2009 municipal elections; 2010 parliamentary elections, 2013 municipal elections); Kyrgyzstan (2005 presidential elections; 2005 parliamentary elections; 2007 early parliamentary elections; 2009 presidential elections, and 2010 parliamentary elections); Moldova (2009 parliamentary elections and 2016 presidential elections); Ukraine (2004 presidential elections; 2006 parliamentary elections; 2006 mayoral elections in three municipalities; 2007 parliamentary elections; 2010 presidential elections, 2012 parliamentary elections, 2013 repeat parliamentary elections in 5 districts, 2014 early presidential elections, 2014 early parliamentary elections, and 2015 local elections).

ANNEX: Official Election Results

FIRST ROUND – 30 OCTOBER

a) Number of voters included in the voters' lists	2.812.566
b) Number of voters included in the supplementary lists	117.128
c) Number of voters who received ballots	1.440.830
d) Number of voters who took part in voting	1.440.733
e) Difference between the number of received ballot papers and the number of voters who participated in voting	97
f) Number of invalid ballot papers	22.215
g) Number of votes given for each candidate:	
GHIMPU Mihai, Liberal Party	25.490
LEANCĂ Iurie, Political Party "The European People's Party of Moldova"	44.065
CIUBAȘENCO Dumitru, Political Party "Our Party"	85.466
SANDU Maia, Political Party "Action and Solidarity Party"	549.152
DODON Igor, Political Party "Party of Socialists of the Republic of Moldova"	680.550
RADU Silvia, independent candidate	5.276
LAGUTA Maia, independent candidate	10.712
GUȚU Ana, Political Party "The Right"	2.453
GHILEȚCHI Valeriu, independent candidate	15.354
h) Total number of valid votes cast	1.418.518
i) Number of printed ballot papers	3.131.947
j) Number of unused and canceled ballot papers (including ballot papers which were wrongly filled and canceled)	1.691.117

SECOND ROUND – 13 NOVEMBER

a) Number of voters included in the voters' lists	2.810.057
b) Number of voters included in the supplementary lists	209.438
c) Number of voters who received ballots	1.614.067
d) Number of voters who took part in voting	1.614.023
e) Difference between the number of received ballot papers and the number of voters who participated in voting	44
f) Number of invalid ballot papers	13.349
g) Number of votes given for each candidate:	
DODON Igor, Political Party "Party of Socialists of the Republic of Moldova"	834.081
SANDU Maia, Political Party "Action and Solidarity Party"	766.593
h) Total number of valid votes cast	1.600.674
i) Number of printed ballot papers	3.164.549
j) Number of unused and canceled ballot papers (including ballot papers which were wrongly filled and canceled)	1.550.482