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URGENT OPINION ON THE DRAFT LAW NO. 381 OF 17 DECEMBER 2024 "ON AMENDMENTS TO CERTAIN NORMATIVE ACTS ON THE EFFECTIVE COMBAT AGAINST THE PHENOMENON OF ELECTORAL CORRUPTION AND RELATED ASPECTS"

MOLDOVA

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Draft Law No. 381 "On Amendments to Certain Normative Acts on the Effective Combat Against the Phenomenon of Electoral Corruption and Related Aspects" (Draft Law) was developed in response to concerns about electoral fraud during the 2024 presidential elections and national referendum, as well as the November 2024 judgement of the Constitutional Court. It amends several laws, including provisions to tackle "electoral corruption" related to national security, imposing harsher penalties for electoral fraud, simplifying the suspension of so-called "extremist groups", and tightening regulations on political party registration and activities, donations, and financial reporting during elections. It also touches on broader principles related to anti-corruption, particularly in the context of elections. As stated in the Explanatory Note, with this, the Draft Law aims to strengthen legal mechanisms to combat "electoral corruption", address issues of voter manipulation identified during the 2024 presidential election, enhance the legislative framework to prevent such problems in future elections, ensure the separation of religious organizations from the electoral process, and equip authorities with more effective tools to tackle illicit actions.

While acknowledging the importance of institutional efforts to address issues pertaining to criminal activities that target election process and that may undermine free expression of the will of the people, their political participation, and democratic development in overall, certain provisions of the Draft Law have the potential to unduly impact upon the exercise of human rights and fundamental freedoms, rule of law principles, and democratic legitimacy, in general.

Key concerns include the suspension or dissolution of organizations, including religious groups, when deemed entirely or partially "extremist", with limited safeguards and an insufficiently clear legal framework, as well as vague terminology and ambiguous criteria for what constitutes "extremism" or "extremist materials", which also risks to result in suppression of legitimate journalistic activities and dissenting views. In this respect, ODIHR also refers to its 2019 ODIHR Opinion on the Law on Countering Extremist Activity, which highlights the inherent deficiencies and vague definitions in such type of legislation, ultimately calling into question the necessity of relevant legislative provisions of this Law, as well as their compliance with international standards.

Draft amendments also prohibit the registration, establishment, and activities of so-called "successor" parties to those declared unconstitutional, with a declared aim to prevent parties associated to criminal structures to continue operations under new banners. While there may be legitimate grounds to ban a political party which is a "successor" of a party declared unconstitutional, the proposed criteria are overly broad and vague, risk collective punishment based on association, undermine legal certainty and political pluralism, and impose disproportionate restrictions on political participation contrary to international standards, particularly the principles of individualized responsibility, proportionality, and the presumption of lawful activities for political parties. Amendments concerning the suspension and dissolution of political parties also raise significant concerns, especially the removal of crucial guarantees such as prior warnings and opportunities for corrective action, the expedited suspension procedures on broad and vague grounds and without hearings, including during electoral campaigns, and the absence of effective remedies or appeal mechanisms.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to enhance the provisions of the Draft Law in accordance with international standards and good practices:

A. To ensure that the suspension or banning of associations is strictly a measure of last resort, applied only in cases involving activities that constitute criminal offences, and only where such offences are clearly defined and in full compliance with international human rights standards, ensuring that "extremism" is clearly linked to violence or criminal activity – defined in accordance with international standards, to prevent arbitrary or overly broad application; [para. 35]

B. To reconsider the Draft Law provisions, such as Draft Article 7 of the Law on Countering Extremist Activities and draft amendment to Article 17 (4) of the Audio-visual Media Services Code, to avoid a risk of prohibitions to be misused to illegitimately obstruct the work of independent media and journalists; [para. 44]

C. To clearly provide for, or refer to, procedures that guarantee effective legal redress, including the possibility to appeal any court decision suspending or dissolving an association, with suspensive effect, while ensuring that appeals should be heard by an independent and impartial tribunal and that the process should not result in automatic suspension; [para. 51]

D. To review and revise the Draft Law to avoid vague, overbroad, or disproportionate restrictions on political party formation and activities, while ensuring that grounds for refusing registration should be limited only to convincing and compelling reasons, clearly stated in law and based on objective criteria and that ineligibility to register a political party should be strictly limited to those who have genuinely threatened the Constitution or democratic order through their actions or expressions, and/or actively pursued the (illegal) goals of the unconstitutional parties, as recognized in a final court decision, with authorities required to provide sufficient evidence of active involvement in unlawful activities linked to the political party; [para. 63]

E. To reconsider entirely the involvement of the Security and Information Service (SIS) in the party registration process or at the very least, to safeguard political neutrality, the legal framework should establish clear, narrowly defined the type and the procedure of submitting information which should be strictly limited to national security concerns; [para. 69]

F. To apply suspension of a party only for the most serious violations proven in a court of law, and to introduce a range of lesser sanctions for less severe violations, and the suspension of a political party's activities during elections should be applied only in exceptional circumstances when no less drastic measures are justified; [paras. 84 and 86]

G. To amend the provisions to ensure that the dissolution of a political party is a last-resort measure, with sanction being proportionate to the seriousness of the offence. The exceptional circumstances for dissolution should be narrowly defined, aligning with strict standards of legality, subsidiarity, and proportionality; [para. 91]

H. To implement clear, standardized valuation methods for non-monetary donations to ensure transparency and prevent inflated reporting. This would help enforce donation ceilings effectively and safeguard against misuse or manipulation of in-kind contributions; [para. 96]

I. To revise the relevant provision to explicitly allow for spontaneous gatherings without the need for prior notification, [para. 105] and

J. To clearly stipulate that surveillance must be based on concrete evidence, pursue a legitimate aim, and comply with the principles of legality, necessity, and proportionality, along with judicial oversight and full transparency [para. 115].

These and additional Recommendations, are included throughout the text of this Urgent Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 28 March 2025, the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") received a request from the Deputy Speaker of the Parliament of Moldova sent for a legal review of the Draft Law No. 381 of 17 December 2024 "On Amendments to Certain Normative Acts on the Effective Combat Against the Phenomenon of Electoral Corruption and Related Aspects" (hereinafter "Draft Law").
2. On 4 April 2025, ODIHR responded to this request, confirming the Office's readiness to prepare an analysis of the compliance of the Draft Law with international human rights standards and OSCE human dimension commitments. Given the short timeline, ODIHR decided to prepare an Urgent Opinion, which does not provide a detailed analysis of all the provisions and issues of the Draft Law, but primarily centers on the most critical concerns surrounding so-called "extremism", the regulation of political parties, electoral irregularities, and the imposition of sanctions, particularly where these sanctions are linked to "election corruption" and misconduct. The absence of comments on certain provisions of the Draft Law should not be interpreted as an endorsement of these provisions. On 24-25 April 2025, an ODIHR delegation, Ms. Tamara Otiashvili, Senior Legal Expert in Human Rights and Democratic Governance, and Mr. Goran Petrov, ODIHR Election Adviser, traveled to Moldova in order to meet with key stakeholders, including parliamentary parties and the Legal Committee in Parliament, Central Election Commission, Audio-visual Council, the Supreme Court, the Ministry of Justice, other governmental institutions, non-governmental organizations and international development partners.
3. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

II. SCOPE OF THE URGENT OPINION

4. This Urgent Opinion focuses exclusively on the Draft Law submitted for review, which includes amendments to eight laws[2] and covers a range of legal provisions aimed at combating "electoral corruption" and related concerns.[3] Thus limited, the Urgent Opinion

1 See especially the *1990 OSCE Copenhagen Document*, para. 7.6., whereby the OSCE participating States committed to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations 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*." See also 1998 *Oslo Ministerial Declaration*, MC.DOC/1/98, stating: "*Expression should be given to support for the enhancement of OSCE electoral assistance work and the strengthening of internal procedures to devise remedies against infringements of electoral rules, with the participating States invited to provide the ODIHR in a timely fashion with draft electoral laws and draft amendments to these laws for review so that possible comments can be taken into account in the legislative process*"; and *1999 Istanbul Document* which states: *"… appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments*"..

2 This includes: the Law on Special Investigative Activity (Law No. 59/2012); the Criminal Code (Law No. 985-XV); the Law on Countering Extremist Activity (Law No. 54/2003); the Criminal Procedure Code (Law No. 122/2003); the Law on Political Parties (Law No. 294/2007); the Contravention Code (Law No. 218/2008); the Electoral Code (Law No. 325/2022); and the Audiovisual Media Services Code (Law No. 174/2018).

3 These include measures to counter "extremism" and assess its implications for the rights to freedom of association and expression, the exercise of political rights through association, as well as the imposition of sanctions for election-related violations, including criminal offences and the use of special investigative powers.

does not constitute a full and comprehensive review of the laws that the Draft Law seeks to amend nor of the entire electoral legal framework.

5. The Urgent Opinion raises key issues and indicates areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements rather than on the positive aspects of the Draft Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.

6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[4] (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[5] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

7. This Urgent Opinion is based on an unofficial English translation of the Draft Law. Errors from translation may result. Should the Urgent Opinion be translated in another language, the English version shall prevail.

8. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Moldova in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

9. This Urgent Opinion has been prepared in consideration of applicable international human rights and democratic governance obligations, as well as the OSCE human dimension commitments. The Draft Law addresses issues related to anti-corruption, particularly in the context of elections, as well as extremism, and also includes amendments concerning political parties and broader principles of democratic legitimacy in relation to elections. Some of these measures, particularly those provisions concerning extremism and political parties, have the potential to unduly impact upon the exercise of human rights and fundamental freedoms, including the rights to freedom of association and expression. Accordingly, the analysis presented herein is grounded in the relevant international obligations and standards pertaining to these issues.

10. The United Nations (UN) International Covenant on Civil and Political Rights (ICCPR)[6] enshrines several human rights that are of relevance in the context of the Urgent Opinion, including the rights to freedom of religion or belief (Article 18), to participate in public affairs (Article 25), equality before the law and to be free from discrimination (Articles 2 and 26), to freedoms of expression, peaceful assembly and association (Articles 19, 21 and 22 respectively), and the right to respect for private and family life (Article 17), among others. According to the ICCPR, interferences with these rights can only be

4 See *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Moldova acceded to this Convention on 1 July 1994.
5 See *OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04* (2004), para. 32.
6 See *UN International Covenant on Civil and Political Rights* (ICCPR), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Moldova acceded to the ICCPR on 26 January 1993.

justified if they are prescribed by law, pursue a legitimate aim, are necessary in a democratic society and non-discriminatory. Article 2 also ensures that rights recognized in the ICCPR will be respected without discrimination and be available to everyone within the territory, along with the right to an effective remedy.

11. In addition to international human rights instruments, the United Nations Convention against Corruption (UNCAC) is also a legally binding document of relevance, particularly in the context of elections. Pursuant to its Article 5 (1), each State Party is obliged to "*develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability*." The UNCAC specifically addresses preventive measures aimed at curbing corruption in public life. In this respect, Article 7(4) calls on States Parties to *"endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest,"* in accordance with the fundamental principles of their national legal systems. In the context of elections, this obligation supports the implementation of transparent campaign financing, merit-based selection of candidates, and mechanisms that safeguard against the undue influence of vested interests. Furthermore, Article 8 underscores the importance of promoting integrity, honesty, and responsibility among public officials (paragraph 1) and encourages the application of codes or standards of conduct for the proper and ethical performance of public functions (paragraph 2). These provisions are particularly pertinent in ensuring the credibility, fairness, and accountability of electoral processes.

12. The European Convention on Human Rights (ECHR) sets standards regarding the rights to freedoms of expression, peaceful assembly and of association (Articles 10 and 11), to respect for private and family life (Article 8), protection of property (Protocol no. 1 to the ECHR) as well as prohibits discrimination on any ground (Article 14 and Protocol no. 12 to the ECHR, signed though not ratified by the Republic of Moldova).[7] The Council of Europe's Criminal Law Convention on Corruption is also of relevance to the issues covered by this Urgent Opinion.[8]

13. Other applicable standards can be found in recommendations of the UN, Council of Europe and OSCE bodies and institutions. At the international level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service, and the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW") General Recommendation No 23: Political and Public Life. The most recent, CEDAW Recommendation No. 40 establishes a global roadmap to achieve fifty-fifty gender parity in decision-making systems.[9]

14. The OSCE human dimension commitments on democratic institutions, specifically paragraph 12.1 of the 1990 OSCE Copenhagen Document, recognize that "*a vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions*." Paragraph 7.6 commits OSCE participating States to "*respect the right of individuals and groups to*

7 See *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) entered into force on 3 September 1953. The Republic of Moldova ratified the ECHR on 12 September 1997 and it has signed, though not ratified Protocol no. 12 on 4 November 2000.

8 See Council of Europe, *Criminal Law Convention on Corruption*, adopted on 27 January 1999. Georgia ratified the Convention on 14 January 2004.

9 See the CEDAW *General recommendation No. 40 (2024*) on the equal and inclusive representation of women in decision-making systems.

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." In addition, participating States have committed to protect the right to freedom of association (paragraph 9.3) and the freedom of assembly (paragraph 9.2). The Copenhagen Document also places strong emphasis on electoral integrity. Paragraph 7.4 obliges States to ensure that "*votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public.*" Paragraph 7.3 highlights the right of citizens to "*take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes*."

15. Other standards specific to election can be found in the Venice Commission's Code of Good Practice in Electoral Matters.[10] With respect to recommendations on anti-corruption agencies or authorities, the Jakarta Statement on Principles for Anti-Corruption Agencies (hereinafter "Jakarta Principles"),[11] its 2020 Colombo Commentary[12] and the Anti-Corruption Authority Standards and Ten Guiding Principles against Corruption of the European Partners against Corruption,[13] an independent forum for practitioners aiming to prevent and combat corruption, are useful reference documents.

16. Lastly, the stability of electoral law is a key element of credibility of the electoral process, *"which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections."*[14] Accordingly, the fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law – or the old system should apply to the next election – at least if it takes place within the coming year.[15] Changes in the legal framework too close to the election may also adversely affect electoral preparations, leaving the implementing authorities insufficient time to plan and adjust their activities. At the same time, the principle of stability[16] of electoral law should not be invoked to maintain a situation contrary to international electoral standards, to prevent amendments in accordance with these standards based on consensus between government and opposition and on broad public consultations, or to prevent the implementation of decisions by national constitutional courts or supreme courts with equivalent jurisdiction, international courts or of recommendations by international organisations.[17]

10 See Venice Commission, *Code of Good Practice in Electoral Matters*, II.2.b. See also *Revised Interpretative Declaration on the Stability of the Electoral Law*, CDL-AD(2024)027.
11 See Jakarta *Statement* on Principles for Anti-Corruption Agencies, Jakarta, 26-27 November 2012.
12 See Colombo *Commentary* on the Jakarta Statement on Principles for Anti-corruption Agencies.
13 See European Partners Against Corruption/ European Contact-Point Network Against Corruption, *Anti-Corruption Authority (Aca) Standards, Annex*, page 11.
14 See Venice Commission, *Code of Good Practice in Electoral Matters*, II.2.b. See also *Revised Interpretative Declaration on the Stability of the Electoral Law*, CDL-AD(2024)027.
15 *Ibid.* Venice Commission, *Code of Good Practice in Electoral Matters*, II.2.b. See also *Revised Interpretative Declaration on the Stability of the Electoral Law*, CDL-AD(2024)027.
16 See Venice Commission, *Revised Interpretative Declaration on the Stability of Electoral Law.*
17 See Venice Commission, *Revised Interpretative Declaration on the Stability of the Electoral Law*, CDL-AD(2024)027, Part II.B.2.

1.1. Standards and Commitments Related to Political Parties

17. Political parties are essential in the democratic process and foundational to a pluralist society. They should be regulated in a manner that supports the rights to freedom of association and expression, as well as genuine and democratic elections. These rights are fundamental to the proper functioning of a democratic society.[18] To fulfil their core functions, political parties need appropriate funding both during and between election periods. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the ICCPR, which protect the rights to freedom of expression and opinion and the right to freedom of association, respectively. Article 25 ensures the right of every citizen to participate in public affairs without unreasonable restrictions.[19] International obligations on financing political parties and election campaigns are also found in Article 7 paragraph 3 of the UNCAC.[20]

18. At the Council of Europe (CoE) level, Article 11 of the ECHR sets standards regarding the right to freedom of association, protecting political parties and their members as special types of associations.[21] Furthermore, the right to freedom of opinion and expression under Article 10 of the ECHR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR[22] are also relevant when reviewing legislation on political parties. The case law of the European Court of Human Rights (ECtHR) provides additional guidance for CoE Member States on ensuring that laws and policies governing political parties comply with the rights and freedoms guaranteed by the ECHR.[23]

19. According to paragraph 7.6 of the 1990 OSCE Copenhagen Document, OSCE participating States committed to *"respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations 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."*[24] Other OSCE commitments relevant to political party regulation under the Copenhagen Document include the protection of the freedom of association (paragraph 9.3), the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4). Additionally, Ministerial Council Decision 7/09 on women's participation in political and public life is of interest.[25]

20. These standards and commitments are supplemented by various guidance and recommendations from the UN, the CoE and the OSCE. At the international level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service

18 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020), para. 17

19 See *International Covenant on Civil and Political Rights* adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Moldova acceded to the ICCPR on 26 January 1993.

20 See *UN Convention against Corruption*, adopted by the General Assembly on 31 October 2003, by resolution 58/4. The Convention entered into effect on 14 December 2005. Article 7(3) of the UNCAC requires that "*each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties*". See also the *Additional Protocol to the Criminal Law Convention on Corruption*, adopted on 15 May 2003, ratified by the Republic of Moldova on 22 August 2007, which entered into force on 1 December 2007.

21 See the *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms* entered into force on 3 September 1953.

22 The Republic of Moldova ratified the *First Protocol to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms* (ETS No. 9) on 12 September 1997.

23 See in particular, *Caselaw Guide on Article 11 of the ECHR* (as of 31 August 2024).

24 See the *1990 OSCE Copenhagen Document*.

25 See the *OSCE Ministerial Council Decision 7/09*, 2 December 2009, Women's participation in political and public life.

interpreting state obligations under Article 25 of the ICCPR.[26] The ensuing recommendations will also refer, as appropriate, to other non-binding documents that provide further detailed guidance. These include the ODIHR and Venice Commission *Joint Guidelines on Political Party Regulation*[27] (hereinafter "Guidelines"), the ODIHR and Venice Commission *Joint Guidelines on Freedom of Association*,[28] the CoE Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns (hereinafter "CoE Committee of Ministers' Recommendation Rec(2003)4"), as well as the Parliamentary Assembly of the CoE Recommendation 1516(2001) on financing of political parties[29] are useful references.

1.2. Standards and Commitments Related to So-Called "Extremism"

21. There is no consensus at the international level on a normative definition of extremism.[30] It is noted that in the context of the Shanghai Cooperation Organization, to which only a limited number of states are members,[31] two conventions contain some definitions of extremism: while the *Shanghai Convention on Combating Terrorism, Separatism, and Extremism* (2001),[32] requires violence as an essential element of the definition,[33] the 2017 *Convention to Combat Extremism* no longer necessarily requires violent acts but refers more broadly to "violent and other unconstitutional actions" when defining extremism.[34]

22. ODIHR and other international bodies have previously raised concerns pertaining to "*extremism*"/"*extremist*" as a legal concept and the vagueness of such a term, particularly in the context of criminal legislation. Indeed, it has been reiterated by the UN Special Rapporteur and the ECtHR that freedom of expression protects all forms of ideas, information or opinions, including those that "*offend, shock or disturb*" the State or any part of the population,[35] even "*deeply offensive*" speech.[36] While the right to freedom of expression may in very limited cases be restricted, any such restrictions must strictly conform with the requirements of international human rights standards.[37] Simply holding

26 See the *UN Human Rights Committee General Comment 25*: The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7.
27 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation* (2nd edition, 2020).
28 See the ODIHR and the Venice Commission *Joint Guidelines on Freedom of Association* (2015).
29 See *the Council of Europe Committee of Ministers, Recommendation Rec(2003)4* to member states On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, adopted on 8 April 2003. See also *Parliamentary Assembly of the Council of Europe, Recommendation 1516(2001)* on financing of political parties, adopted by the Standing Committee, acting on behalf of the Assembly, on 22 May 2001.
30 See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereinafter "UN Special Rapporteur on counter-terrorism"), *2015 Thematic Report*, A/HRC/31/65, 22 February 2016, pars 11 and 21, noting that *"[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an 'elusive concept'"*.
31 Moldova is not a member of the Shanghai Cooperation Organization.
32 Moldova is not a State Party to this Convention.
33 Article 1 of the Shanghai Convention on Combating Terrorism, Separatism, and Extremism defines "*extremism*" as "*an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties*".
34 Shanghai Cooperation Organization, *Convention of the Shanghai Cooperation Organization to Combat Extremism* (Astana, 9 June 2017); Moldova is not a State Party to this Convention. Article 2.1 (2) of the Convention defines "*extremism*" as: "*ideology and practices aimed at resolving political, social, racial, national and religious conflicts through violent and other unconstitutional actions*".
35 See UN Special Rapporteur on counter-terrorism, *2015 Thematic Report*, A/HRC/31/65, 22 February 2016, para. 38. See also e.g., European Court of Human Rights, *Handyside v. United Kingdom* (Application no. 5493/72, judgment of 7 December 1976); and *Bodrožić v. Serbia* (Application no. 32550/05, judgment of 23 June 2009), paras. 46 and 56.
36 See 2011 CCPR General Comment no. 34, paras. 11 and 38.
37 See Article 19 (3) of ICCPR, which states that the right to freedom of expression may "be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals". See also Article 20 of the ICCPR as well as Article 4 of the UN International Convention on the Elimination of All Forms of Racial Discrimination, Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, and UN *Security Council resolution 1624(2005)*. Under Article 20 of the ICCPR,

or peacefully expressing views that are considered "*radical*" or "*extreme*" under any definition should never be prohibited or criminalized, unless such views are linked to violence or criminal activity.[38] Certain forms of expression would only be seen as threatening national security when the following three criteria are met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.[39] Consequently, Moldova is under no international obligation to take measures to counter "extremism" *per se* and, as a result, all such measures cannot trace their legitimacy back to international law. On the contrary, the possibility to peacefully pursue a political, or any other, agenda – even where different from the objectives of the government and considered to be "extreme" – must be protected.

23. Generally speaking, actions or behaviour sometimes defined as "*extremist*" do not necessarily, in themselves, constitute a threat to society if they are not connected to violence or other criminal acts, such as incitement to hatred, inciting or condoning criminal activity and/or violence, as legally defined in compliance with international human rights law. At the same time, actions involving violence, as a rule, are generally covered by criminal legislation. Article 20 (2) of the ICCPR states that *"[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*".

24. At the OSCE level, with the 2008 Ministerial Council Decision on "Further Promoting the OSCE's Action in Countering Terrorism", the OSCE participating States committed to countering violent extremism and radicalization leading to terrorism (VERLT).[40] These commitments have been reaffirmed, in particular, in the *2012 OSCE Consolidated Framework for the Fight Against Terrorism* and the *2015 Ministerial Declaration on "Preventing and Countering Violent Extremism And Radicalization that lead to Terrorism"*.[41] ODIHR also refers to its *2019 ODIHR Opinion on the Law on Countering Extremist Activity of the Republic of Moldova*, which highlights the inherent deficiencies and vague definitions in the legal framework governing so-called "extremist activity" in the Republic of Moldova, ultimately calling into question the necessity of its very existence.[42]

States are required to have legal prohibitions for certain forms of expression ("any propaganda for war" and "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", see below). However, as the UN Human Rights Committee has noted, every case in which the State restricts freedom of expression, including those covered by Article 20, must be in strict conformity with the requirements of Article 19 ICCPR, see *op. cit.* footnote **Error! Bookmark not defined.**, pars 50-52 (2011 CCPR General Comment no. 34).

38 See ODIHR *Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach* (2014), page 42, which states that "[s]imply holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, should not be considered crimes".

39 See UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (hereinafter "the International Mandate-holders on Freedom of Expression"), *2016 Joint Declaration on Freedom of Expression and Countering Violent Extremism*, 3 May 2016, par 2 (d); *and Principle 6* of the *Johannesburg Principles on Freedom of Expression and National Security* (1995), adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg and endorsed by the UN Special Rapporteur on freedom of opinion and expression. See also the UN Secretary General, *Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, A/63/337, 28 August 2008, par 62.

40 See OSCE Ministerial Council, *"Further Promoting the OSCE's Action in Countering Terrorism"*, MC.DEC/10/08, 5 December 2008.

41 See OSCE, *Permanent Council Decision No. 1063*, PC.DEC/1063, 7 December 2012; and OSCE, *Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism*, MC.DOC/4/15, 4 December 2015.

42 See also the *amicus curiae* brief of the Venice Commission for the Constitutional Court of the Republic of Moldova on the clarity of provisions combating extremist activities (CDL-AD(2022)027).

2. ANALYSIS AND RECOMMENDATIONS

2.1. Background

25. The Draft Law No. 381 "On Amendments to Certain Normative Acts on the Effective Combat Against the Phenomenon of Electoral Corruption and Related Aspects", was developed in response to parliamentary hearings concerning electoral fraud alleged during the 2024 presidential elections and the national referendum, as well as the findings of the Constitutional Court reflected in Decision No. 25 of 28 November 2024,[43] which confirmed the results of the presidential election. The initiative was prepared within the parliamentary framework, with the involvement of the Ministry of Justice and based on proposals from key institutions responsible for combating "electoral corruption." The Draft Law also responds to the Constitutional Court's request for Parliament to enhance existing legal mechanisms in line with the Court's reasoning in Decision No. 25/2024. The Court underscored that attempts to electoral fraud undermine the foundation of democratic elections, corrupt the principle of fair political competition, and violate citizens' right to a free and secret vote. It also noted serious concerns over the participation of religious organizations in election campaigning, in direct conflict with the constitutional principle of separation between church and state.

26. The Draft Law was submitted for examination and approval by the plenary of the Parliament on 17 December 2024.[44] The Draft Law was passed in the first reading on the same day. Prior to the second reading, several amendments were submitted, mainly by MPs from the ruling party. During the visit, ODIHR experts were informed that the second reading would take place on 30 April.

27. The Draft Law seeks to amend eight laws. Most notably, it aims to expand the Law on Special Investigative Activity (Law No. 59/2012) to allow such types of investigations outside criminal proceedings in cases of "electoral corruption" tied to national security. The proposed amendments to the Criminal Code (Law No. 985-XV) impose harsher penalties for electoral fraud, with prison terms of four to seven years and corporate liability measures that allow for the banning or dissolution of complicit legal entities. The draft amendments to the Law on Countering Extremist Activity (Law No. 54/2003) aim to simplify the suspension or dissolution of "extremist" groups and media outlets, with the Ministry of Justice managing a new centralized register of such organizations. The proposed changes to the Criminal Procedure Code (Law No. 122/2003) introduce strict deadlines for investigating and trying "electoral corruption" cases and limit procedural delays to ensure swift resolution. The Law on Political Parties (Law No. 294/2007) would be amended to mandate controls by several state institutions prior to registration of a political party and allow for the immediate suspension of party activity in serious cases, including during elections. The proposed amendments to the Contravention Code (Law No. 218/2008) add penalties for voter coercion tactics, unauthorized campaigning by religious or non-profit groups, and unnotified transport to political events. The Draft Law also seeks to introduce changes to the Electoral Code (Law No. 325/2022) tightening regulations on donations, banning contributions from entities with tax debts and requiring pre-approved campaign expenditures and stricter financial reporting. Finally, the Audiovisual Media Services Code (Law no. 174/2018) would be amended to prohibit the

43 See the Constitutional Court *Decision on the confirmation of the election results and the validation of the mandate of the President* (in Romanian).

44 See *Draft Law* for the Amendment of Certain Legislative Acts (Effective Combating of Electoral Corruption and Related Aspects). Some proposed amendments to the Law on Political Pates have also been introduced in March 2025, which are also analyzed in this Urgent Opinion given the importance of the issue in the current context, as informed by the public authorities.

broadcasting or retransmission of audiovisual programs originating from "*states that are waging illegal and unjustified wars of aggression against other states, as established and condemned by the Parliament's resolutions or by laws on the Republic of Moldova's accession to international sanctions*".

2.2. Provisions Pertaining to "Extremist Activities"

2.2.1. Implications on the Right to Freedom of Association

28. Draft Article 6 (1) of the Law on Countering Extremist Activities prohibits the operation of public, religious, or other organizations whose aims or activities involve so-called "extremist activities". If signs of "extremism" are found in any part of such an organization, it may be forcibly dissolved by a court decision, initiated by the Ministry of Justice or the Prosecutor General. The Court of Appeal handles such cases and must rule within three months (Article 6 (2)). During proceedings, the Court may suspend the organization's activities if "*such measure is necessary in a democratic society*" (Article 6 (3)). Before ordering dissolution, the Court may also grant the organization up to one month to address and correct the alleged violations (Article 6 (4)).

29. The rights to freedom of association and to freedom of expression are guaranteed by Article 22 of the ICCPR and Article 11 of the ECHR for the former and Article 19 of the ICCPR and Article 10 of the ECHR for the latter. OSCE participating States have also committed to "*ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations"* (Copenhagen Document, 1990) and to *"enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms"* (Istanbul Document, 1999). As also noted in the ODIHR-Venice Commission Joint Guidelines on Freedom of Association, the legal drafters must bear in mind that the rights to freedom of expression and to freedom of association entitle associations to pursue objectives or conduct activities that are not always congruent with the opinions and beliefs of the majority or run precisely counter to them,[45] including those that may be considered as "extreme". This includes imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution[46] or legislation by, for example, asserting a minority consciousness,[47] calling for regional autonomy, or even requesting secession of part of the country's territory.[48]

30. Any restriction on the rights to freedom of association and expression must be compatible with the strict three-part test set out in, respectively, Article 22 of the ICCPR and Article 11 (2) of the ECHR, and Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR. This test requires any restriction to be provided by law (requirement of legality), to be in pursuit of one or more of the legitimate aims listed exhaustively in the respective

45 See ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2015), para. 182. See also ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 72, which states "a political party's application for registration should not be denied on the basis of a party constitution that espouses ideas, which are unpopular or offensive".

46 See ECtHR, *Refah Partisi (The Welfare Party) et al. v. Turkey [GC]*, no. 41340/98 & 3 others, 13 February 2003.

47 See ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgement of 10 July 1998), pars 44-45.

48 See ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Applications nos. 29221/95 and 29225/95, judgment of 2 October 2001), para. 97, which states that "*the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. […] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."*

treaty/convention,[49] to be necessary in a democratic society and to respect the principle of proportionality (which *inter alia* presupposes that any imposed restriction should represent the least intrusive measure among all those possible means effective enough to achieve the designated objective).[50] In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR[51]). Any restriction shall always be narrowly construed and applied. Moreover, any prohibition or dissolution of an association shall always be a measure of last resort and shall never be used to address minor infractions.[52] It might be only justified when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law.[53] In addition, *"[a]ll restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied."*[54]

31. It is acknowledged that the Court of Appeals should only decide on the suspension of the activities of such "extremist" organizations if such measures are "necessary in the democratic society" (proposed Article 6 (3)). While the provision refers to one of the requirement of the above-mentioned three-part test, concerns persist as to whether the offence set out in Article 6 meets all the requirements of legality, legitimacy and necessity and proportionality ("necessary in a democratic society"). In this respect, ODIHR hereby refers to its 2019 ODIHR Opinion Law on Countering Extremist Activity of the Republic of Moldova, in which it concludes that the 2003 Law on Countering Extremism contains broad and imprecise terminology, particularly insofar as the "basic notions" defined by the Law – such as the definitions of "extremism", "extremist activity", "extremist organizations" or "extremist materials" – are concerned, thereby giving too wide discretion to those tasked with its implementation, thus potentially leading to arbitrary application/interpretation.[55] Although the Law has been amended in 2022,[56] assessment provided in the 2019 Opinion still remain relevant. More specifically, the use of vague and imprecise terminology in defining "extremist activities" ultimately creates a significant risk of arbitrary dissolution. This is particularly concerning given the expansive scope of the prohibition, which may encompass a wide range of organizations, from religious communities to political parties.[57] There should be a presumption in favour of the lawfulness of an association's objectives, goals, and activities.[58] This implies that, unless proven otherwise, the state must assume that an association has been lawfully established and that its purposes and operations are legitimate. Measures against an association or its members should only be taken when the provisions of its founding

49 For Article 22 (2) of the ICCPR, these are national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. For Article 11 (2) of the ECHR, the aims are: the protection of public health or morals, and the protection of the rights and freedoms of others. For Article 19 (3) ICCPR: *(a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals*"; For Article 10(2) ECHR: "*in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*."

50 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, Principle 10 and para. 113.

51 The Republic of Moldova has signed on 4 November 2000 the Protocol no. 12 to the ECHR but has not yet ratified it. Though not legally binding on the Republic of Moldova, in principle, pursuant to Article 18 of the Vienna Convention on the Law of Treaties (to which the Republic of Moldova became a State Party on 26 January 1993 by accession), "*a state is obliged to refrain from acts which would defeat the purpose of a treaty when […] it has signed the treaty*". Hence, following the signature of the Protocol no. 12 to the ECHR, the Republic of Moldova should not be adopting legislation that would be in flagrant contradiction with the provisions of the Protocol, thus defeating its very purpose of this Convention and being in violation of Article 18 of the Vienna Convention on the Law of Treaties.

52 See ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2015), para. 35.

53 *Ibid. Guidelines on Freedom of Association*, para. 35.

54 *Ibid. Guidelines on Freedom of Association*, Principle 10.

55 See ODIHR, *Opinion on the Law on Countering Extremist Activity of the Republic of Moldova*, 2019, para. 10 and Sub-Section IV.2.

56 See *the Law*.

57 In the *Opinion on the Law on Countering Extremist Activity of the Republic of Moldova*, ODIHR recommended to should substantially revise its definitions and other substantive provisions to ensure that it fully complies with fundamental human rights principles.

58 See ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2015), Principle 1 and paras. 68-70.

documents, are clearly unlawful, particularly when their aims and objectives are in direct conflict with international human rights standards.[59]

32. Regarding the reference to "extremist activities" specifically, it must be emphasized that there is no consensus at the international level on a normative definition of "extremism"/"extremist".[60] As noted by ODIHR, *"the vagueness of such terms may allow States to adopt highly intrusive, disproportionate and discriminatory measures, as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, with so called "extremism" charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrests, detention, torture and other ill-treatment […]."*[61]

33. In addition, as also noted in the 2019 ODIHR Opinion, the explicit inclusion of "religious organizations" within the scope of draft Article 6 raises serious concerns regarding compliance with Article 9 of the ECHR and Article 18 of the ICCPR, both of which safeguard the right to freedom of religion or belief. Indeed, by singling out "religious organizations" in relation to vaguely defined "extremism", this runs counter to the principle underlined by OSCE participating States that "terrorism and violent extremism cannot and should not be associated with any race, ethnicity, nationality or religion".[62]

34. Proposed Article 10 (6) of the Law provides that *"persons responsible for setting up, managing or organising of the activity of an extremist organization, persons that adhere to and participate as members of an extremist organization, or those that are responsible for the preparation, dissemination and unlawful storage of extremist materials shall be held responsible criminally".* This provision may cover a very wide range of persons, from the founders, to the members or those only taking part in certain activities of an organization since the term "adhere" is rather vague. As such behaviours may trigger criminal liability, to comply with Article 15 of the ICCPR and Article 7 of the ECHR, the said offences must be defined in precise and unambiguous language, so that the law is reasonably foreseeable in its application and consequences.[63] An offence must be clearly enough defined in law that "*the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable*".[64] All the essential elements of the offence – the individual conduct concerned and the intent – therefore need to be clearly stipulated in law. Given the broad and vague definition of so-called "extremist activities", an individual may not even realize that s/he is adhering or participating in an "extremist organization". Moreover, given its broad scope and the potential to trigger criminal liability, such provision may as a consequence have a chilling effect on people to get involved with civil society organizations, on their founders and members and serve as a deterrent to people taking an active role in organizations in general.

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59 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 68, 88 and 181.

60 See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *2015 Thematic Report*, A/HRC/31/65, 22 February 2016, paras. 11 and 21, noting *that "[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an 'elusive concept"*. See *also ODIHR Interim Joint Opinion on the Draft Law of the Kyrgyz Republic on the Mass Media*, para. 34.

61 See ODIHR and OSCE RFoM *Joint Legal analysis of the draft law on mass media of the Republic of Uzbekistan*, pp. 18-19. See also ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Uzbekistan "On Freedom Of Conscience And Religious Organizations*", 12 October 2020, para.30.

62 See e.g., OSCE, *Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism*, MC.DOC/4/15, 4 December 2015.

63 See ECtHR, *Sunday Times v. UK*, 26 April 1979, para.49: "*the law should be … formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail*."

64 See ECtHR, *Kokkinakis v. Greece*, Application no. 14307/88, 25 May 1993, para. 52.

35. **It is recommended that the Draft Law be amended to ensure that the suspension or banning of associations is a measure of last resort, applied only in cases involving activities that constitute criminal offences, and only where such offences are clearly defined and in full compliance with international human rights standards. The definition of "extremism" should be substantially revised as underlined in the 2019 ODIHR Opinion on the Law on Countering Extremist Activity,[65] in particular by ensuring a clear link of such activity to violence or criminal activity – defined in accordance with international standards – to prevent arbitrary or overly broad application.**

2.2.2. Implications on the Right to Freedom of Expression

36. Draft Article 7 of the Law on Countering Extremist Activities addresses the liability of media outlets for disseminating so-called "extremist materials" or promoting "extremist activities". It prohibits the distribution of such content through mass media. If a media outlet is found to have broadcasted "extremist material" or engaged in "extremist activities", the court, upon request from the competent state authority or the Prosecutor General, may suspend its operations for up to one year (Article 7 (2)). If further "extremist activity" is detected within 12 months after the suspension period ends, the court may order the permanent closure of the outlet (Article 7 (3)). These cases fall under the jurisdiction of the Court of Appeal, which must rule within three months (Article 7 (4)). Additionally, Court of Appeal may order preventive measures such as halting the publication or circulation of specific media content. A court decision can also authorize the confiscation of any unsold "extremist" media materials from distribution or storage sites (Article 7 (5) and (6)).

37. Changes are also proposed to amend Article 17 (4) of the Audio-visual Media Services Code, which would prohibit broadcasting and retransmitting "*audiovisual programs originating from states waging illegal and unjustified wars of aggression against other states, as established and condemned by the Parliament's resolutions or by laws on the Republic of Moldova's accession to international sanctions*."[66]

38. Article 10 of the ECHR guarantees individuals the right to "*receive [...] information and ideas without interference by public authorities and regardless of frontiers.*" Articles 19 and 25 of the ICCPR also entail the right of the media to access information regarding public affairs, as well as the right for individuals to receive media output.[67]

39. Restrictions of freedom of expression applicable to the media shall be compliant with international standards and should not be broader in scope than those of a general nature, applicable to everyone. Limitations formulated in vague and overbroad terms will not satisfy the ICCPR and ECHR requirement that restrictions need to be "prescribed by law", meaning that legal provisions need to be formulated with sufficient precision and foreseeability. In this respect, as underlined above, certain terms used in Draft Article 7

65 See ODIHR, *Opinion on the Law on Countering Extremist Activity of the Republic of Moldova*, 2019, Recommendation B in particular (and paras. 23-35), which recommends, throughout the Law: "*to refer to 'violent extremist activity' and amend the definition of 'extremism' in Article 1 of the Law as well as all other definitions in the Law containing references to "extremism"/"extremist" and its manifestation as follows: focus solely on violent actions or behaviours; remove the reference to vague terms such as "radical", "degrading national dignity" and "propaganda of the exceptional nature […] of citizens on the basis of their race, nationality etc.; specify that the wording "inciting to carrying out acts of violence" should address expression that is intended to incite imminent violence, is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; reconsider the reference to the symbols and emblems of so-called 'other extremist organizations'*."

66 The Audiovisual Agency informed the experts during the visit that it had issued a negative *opinion* on the draft amendments and requested that they not be adopted

67 See *UN Human Rights Committee, General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, 12 September 2011, para. 18.

of the Law on Countering Extremist Activities, such as "disseminate extremist material" or "facts denoting extremism" are inherently vague and broad, could make the application of this provision unpredictable and potentially subject to arbitrary interpretation. As noted by ODIHR and the OSCE Representative on Freedom of the Media in several of their Joint Opinions on media laws, "*the vagueness of such terms [as "extremism"/"extremist"] may allow States to adopt highly intrusive, disproportionate and discriminatory measures, as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, with so-called "extremism" charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrests, detention, torture and other ill-treatment […].*"[68]

40. Similarly, the broad and potentially vague language, such as referencing "illegal and unjustified wars of aggression" and acts "condemned by Parliament's resolutions", could allow for subjective or politically motivated interpretations. This creates a risk of overreach, where legitimate journalistic or media content or dissenting viewpoints might be unduly restricted. Without clear definitions, procedural safeguards, and independent oversight, the amendment could infringe upon media pluralism and the right to freedom of expression and access to information, key principles upheld by international human rights standards.[69] In addition to not being compliant with the requirement of legality provided in Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR, as the grounds for suspension are overly broad and vague, and hence not foreseeable, this provision does not comply with the principle of proportionality, according to which the sanction should be balanced against the severity of the violation. The requirement of proportional responses to the violations is a requirement of international human rights law, which has been emphasized in multiple judgments of the ECtHR and other international human rights institutions.[70] In this respect, the suspension and termination of mass media should be treated as a sanction of last resort and proportionate to the violations that were committed.[71]

41. The risk of being suspended on the basis of vague and broad provisions may create a chilling effect on freedom of expression, leading media to refrain from engaging in independent and critical reporting and also undermining the role of the media as public watchdogs.[72] As noted by the Venice Commission, the mere threat of heavy sanctions may have a chilling effect on journalists and media outlets, especially where the sanctions are imposed for violations of vague requirements.[73]

42. Moreover, the right to freedom of expression protects all forms of ideas, information or opinions, including those that "offend, shock or disturb" the State or any part of the

68 See e.g., ODIHR-OSCE Representative on Freedom of the Media (RFoM), *Joint Opinion on the Draft Information Code of the Republic of Uzbekistan* (2024), Sub-Section 5.1.6; *Interim Joint Opinion on the Draft Law of the Kyrgyz Republic on the Mass Media (as of 13 May 2023)*, para. 34; see also *Joint legal analysis of the draft law on mass media of the Republic of Uzbekistan*, OSCE/ODIHR and OSCE/RFoM, November 2021, pp. 18-19. See also *Joint Opinion on the Draft Law of Uzbekistan "On Freedom Of Conscience And Religious Organizations*, OSCE/ODIHR and Venice Commission, 12 October2020, para. 30.

69 See *UN Human Rights Committee, General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, 12 September 2011, para. 46.

70 See, for example, UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 11. See also *Times Newspapers Ltd v. the United Kingdom*, nos. 3002/03 and 23676/03, 10 March 2009, para. 47; and *Tolstoy Miloslavsky v. the United Kingdom*, no.18139/91, 13 July 1995, para.49. See also

71 See e.g., ODIHR-OSCE Representative on Freedom of the Media (RFoM), *Joint Opinion on the Draft Information Code of the Republic of Uzbekistan* (2024), para. 93; *Interim Joint Opinion on the Draft Law of the Kyrgyz Republic on the Mass Media (as of 13 May 2023)*, para. 70.

72 See European Court of Human Rights, *Giniewski v. France*, no 64016/00, 31 January 2006, para. 55.

73 See e.g., Venice Commission, *Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary*, CDL-AD(2015)015-e, 22 June 2015, para. 38.

population,[74] and even "deeply offensive" speech,[75] even if those views or opinions relate to politically controversial and sensitive topics.[76] The UN Human Rights Committee makes clear that states' responsibilities to protect journalists and those who perform the function of journalism are not restricted to full-time professional journalists or to those to whom officials have granted recognition or favour, but also to other actors who engage in forms of self-publication in print, online, or elsewhere.[77] Similarly, at the CoE level, the term "journalist" is understood as any natural or legal person who is regularly or professionally engaged in collecting and disseminating information to the public via any means of mass communication.[78] This allows for a broader understanding of persons who engage in journalistic work for the purpose of protecting them against infringement of their freedom of opinion and expression as enshrined in Article 19 of the ICCPR and Article 10 of the ECHR.[79]

43. Given the fundamental role of journalists – broadly understood – and of the media, the widest possible scope of protection should be afforded to the media. In this respect, the rights of the media and journalists must be upheld in such a way that public authorities respect their ability to report on matters of public interest, even when doing so involves unpopular ideas, so long as they operate within the bounds of responsible journalism and adhere to its professional standards and principles.[80]

44. **To reconsider the Article 7 of the Draft Law and some of its overly broad provisions to sure that legislative provision cannot be used or abused to obstruct the legitimate work of media and journalists.**

2.2.3. Right to Legal Redress

45. As provided by international obligations and OSCE commitments, strong procedural guarantees are necessary, to ensure everyone's right to *"effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity*, [including] *the possibility for judicial review of such […] decisions."*[81] Both draft Articles 6 and 7 of the Law on Countering Extremist Activities fall short of meeting international obligations regarding effective legal remedies.

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74 See Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *2015 Thematic Report*, A/HRC/31/65, 22 February 2016, para. 38. See also ECtHR, *Handyside v. United Kingdom*, no. 5493/72, 7 December 1976, para. 49; and *Bodrožić v. Serbia*, no. 32550/05, 23 June 2009, paras. 46 and 56.

75 See *General Comment no. 34* on Article 19, paras. 11 and 38.

76 See ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, 2 October 2001, para. 97, which states that *"the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. […] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."*

77 See the *General Comment No. 34* on Article 19 of the ICCPR, UN Human Rights Committee, CCPR/C/GC/34, para. 44.

78 See the *Recommendation No. R (2000) 7*, CoE Committee of Ministers, 8 March 2000, under "definitions". See also, *Recommendation CM/REC(2011)/7* on a new notion of media, CoE Committee of Ministers, 21 September 2011.

79 See *Guide on Article 10 of the European Convention on Human Rights*. See among many other authorities, ECtHR, *Wingrove v. the United Kingdom*, no. 17419/9025, 25 November 1996, para. 58, Reports 1996-V; *Ceylan v. Turkey* [GC], no. 23556/94, 8 July 1999, para. 34, ECHR 1999-IV; and *Animal Defenders International v. United Kingdom* [GC], no. 48876/08, 22 April 2013, para 102.

80 See ODIHR, *Urgent Comments on the Draft Criminal Offences against Honour and Reputation in the Republika Srpska* (11 May 2023), para. 31. See also Venice Commission, *Opinion on Legislation of Defamation on Italy*, CDL-AD(2013)038, para. 81.

81 To ensure the right to an effective remedy, it is imperative that judicial procedures, including appeal and review, fully comply with international fair trial standards, as enshrined in Article 14 of the *ICCPR* and elaborated in *General Comment No. 32* of the UN Human Rights Committee and in Article 6 of the ECHR and relevant caselaw of the ECtHR (see Guide on ECtHR caselaw on Article 6 of the ECHR as of August 2024). Furthermore, such procedures must be timely, accessible, and affordable, consistent with the obligations under Article 2(3) of the *ICCPR* and the Basic Principles on the Independence of the Judiciary. See also *OSCE 1990 Copenhagen Document*, particularly paragraphs 5.10 to 5.18, which reaffirm the right to a fair and public hearing by a competent, independent, and impartial tribunal, and emphasize due process guarantees, including the presumption of innocence, access to legal counsel, and the right to appeal.

46. As a general comment, the draft amendments to the Law on Countering Extremist Activities suggest that the Court of Appeals should be allowed to provisionally suspend an "extremist" organization's activities from the moment an application is filed by the Ministry of Justice or Prosecutor General, pending a final decision. The scope of discretion of these authorities for suspension (which can subsequently lead to termination) is even broader. The responsible authorities, such as the General Prosecutor's Office or the Ministry of Justice, are no longer required to issue prior notifications to public, religious, or other organizations, informing them of the need to "cease extremist activities" or providing a deadline for compliance. Instead, authorities may now directly petition the courts for the suspension or termination of an organization's activities without any preliminary warning.

47. The Joint Guidelines underline that suspension and dissolution of associations should only be applied in exceptional circumstances of very serious misconduct, as a measure of last resort.[82] Such sanctions should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles and may never be used as a tool to reproach or stifle its establishment and operations.[83] Associations should not be dissolved owing to minor infringements, or of other infringements that may be easily rectified. In addition, associations should be provided with adequate warning about the alleged violation and be given ample opportunity to correct infringements and minor infractions, particularly if they are of an administrative nature.[84]

48. The suppression of the preliminary warning significantly undermines due process, as associations, including media outlets, are no longer granted the opportunity to correct a potential error or misunderstanding before facing serious legal consequences. This is particularly concerning in cases where the alleged "extremist activity" may have resulted from a naïve mistake or lack of awareness, rather than intentional wrongdoing. Denying associations and media outlets a chance to rectify such issues prior to suspension or termination removes an essential safeguard against disproportionate and unjustified state action.

49. In addition, the three-month period allotted for the court to examine a petition for dissolution of an association (Article 6 (3)) and of a media outlet (Article 7 (4)) is long, particularly if the activities of the said association are suspended during this time (Article 6(3)). Such a prolonged suspension effectively freezes the organization's operations during that time, especially since this measure may result in the suspension of all activities of the organization in question, including legitimate activities until potential liability would be established, thereby amounting to a *de facto* infringement of the right to freedom of association and expression.

50. Moreover, the draft Article 6 (4) states that the court *"may offer an opportunity to remedy the violations alleged in the application for enforced dissolution."* This also implies that the court is authorized to act without requiring prior warnings or formal notifications to the organizations involved before deciding on its enforced dissolution. It is crucial that any decision to suspend, prohibit, or dissolve an association be subject to review or appeal by an independent and impartial tribunal.[85] As underlined in the Joint ODIHR and

82 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, paras. 234 and 239.
83 *Ibid*., paras. 239 and 252.
84 *Ibid*. *Joint Guidelines on Freedom of Association*, para. 253.
85 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, para. 116. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of*

Venice Commission Guidelines on Freedom of Association, *"[a]ny appeal against or challenge to a decision to prohibit or dissolve an association or to suspend its activities should normally temporarily suspend the effect of the decision, meaning that the decision should not be enforced until the appeal or challenge is decided. This avoids the creation of a fait accompli, since the freezing of accounts and suspension of activities would extinguish the association in practice before the appeal had been heard. This should not apply to cases where there exists exceptionally strong evidence of a crime having been committed by an association."* [86] The wording of the draft Article 6 (4) suggests that the association is only potentially granted an opportunity to respond within a one-month period at the court's discretion. Such possibility is not granted to media at all under the current draft amendments. This conditional and discretionary approach does not guarantee the association's right to appeal a dissolution decision, thereby conflicting with international obligations concerning the right to effective legal redress.

51. **It is recommended that the Draft Law be amended to clearly provide for, or refer to, procedures that guarantee effective legal redress, including the possibility to appeal any court decision suspending or dissolving an association, with suspensive effect. Right to appeal should be provided in all cases and such appeals should be heard by an independent and impartial tribunal. The process should not result in automatic suspension, and must fully respect due process guarantees, as enshrined in Article 14 of the ICCPR and Article 6 of the ECHR.**

2.3. Provisions Pertaining to Political Parties

52. As already noted, any restriction on the right to freedom of association must be in conformity with the specific permissible grounds of limitations set out in relevant international human rights instruments. This means that it should be justified by reasons of national security or public safety, public order (or prevention of disorder or crime in Article 11(2) of the ECHR), and the protection of public health or morals or the protection of the rights and freedoms of others (Articles 22(2) of the ICCPR and 11(2) of the ECHR). As noted in paragraph 34 of the Joint ODIHR and Venice Commission Guidelines on Freedom of Association, *"[t]he scope of these legitimate aims shall be narrowly interpreted.*"[87] In addition, such limitations must be prescribed by law, meaning that the law concerned must be precise, certain and foreseeable, and must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.[88] They must also be necessary in a democratic society and non-discriminatory.

53. In some landmark decisions, the ECtHR has expressly extended the right to free association to political parties, a form of association essential to the proper functioning of democracy, and emphasized the necessity of political pluralism in democratic societies.[89] The ECtHR also held that, *"[i]n view of the role played by political parties,*

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associations and holding of peaceful assemblies), UN Doc. A/HRC/23/39, 24 April 2013, which states in para. 81 that *"(c) To ensure that a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review".*

86 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, para. 120.

87 See also Principle 1 of the Joint ODIHR and Venice Commission *Guidelines on Freedom of Association* which includes the presumption in favour of the lawful formation, objectives and activities of associations and states that *"[a]ny action against an association and/or its members may only be taken where the articles of its founding instrument (including charters, statutes and by-laws) are unambiguously unlawful, or where specific illegal activities have been undertaken."* In addition, Principle 2 states that the State has the positive obligation to respect and facilitate the exercise of the freedom of association.

88 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 47 and 48.

89 See, for example, ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998; *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998.

any measure taken against them affects both freedom of association and, consequently democracy in the State concerned".[90] This has led the Court to conclude that, "*the exceptions set out in Article 11 [of the ECHR] are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association*."[91]

54. Moreover, the legal drafters should recognize that freedom of expression and association protects the right of associations to pursue objectives that may be unpopular or contrary to majority views.[92] This includes imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution or legislation by, for example, asserting a minority consciousness,[93] calling for regional autonomy, or even requesting secession of part of the country's territory.[94] There should be a presumption in favour of the lawfulness of the objectives, goals and activities of an association and of a political party.[95] The state should presume an association or a political party, their objectives and activities, are lawful unless proven otherwise. Action against associations or political parties or their members should only occur when their founding documents clearly and unambiguously violate international human rights standards. If the state is authorized to reject a political party, then a clear legal basis should be provided in the legislation, with an explicit and limited number of justifiable grounds compatible with international human rights standards; only convincing and compelling reasons can justify limitations on the freedom of association of political parties, and such limitations must be construed strictly, must be prescribed by law, necessary in a democratic society, and proportionate in measure.[96] Ultimately, the ECtHR case law on the issue of proscribed political parties or political associations stress that such interferences must be in pursuit of ensuring pluralism and the proper functioning of democracy.[97]

2.3.1. Prohibition of Successor Parties

55. In March 2025, new amendments to the Draft Law were proposed by several MPs from the ruling party, including changes to Article 3 of the Law on Political Parties, with the aim of introducing a legal prohibition on the registration, establishment, and activities of parties that are "successors" of a party declared unconstitutional.[98] Given the importance of the issue in the current context, as communicated to ODIHR by the public authorities, ODIHR considered it useful to analyze these proposed amendments related to so-called

90 See ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016, para. 64.
91 See ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 46.
92 See ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2015), para. 182. See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2010), para. 72, where it is stated that "*a political party's application for registration should not be denied on the basis of a party constitution that espouses ideas, which are unpopular or offensive*"; and ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC] (Application nos. 41340/98, 41342/98. 41343/98 and 41344/98, judgment of 13 February 2003).
93 ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgement of 10 July 1998), pars 44-45.
94 ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Applications nos. 29221/95 and 29225/95, judgment of 2 October 2001), par 97, which states that "*the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. […] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means*."
95 See ODIHR-Venice Commission, *Guidelines on Freedom of Association*, para.68. See also *Joint Guidelines on Political Party Regulation*, Principle 1.
96 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 36-38 and 87.
97 See ECtHR, *Caselaw Guide on Article 11 of the ECHR* (as of 31 August 2024).
98 See the *Draft Amendment*.

"successor" parties in the present Urgent Opinion, to inform the ongoing discussions on the Draft Law and beyond.

56. More specifically, new proposed Article 3(1^1) introduced in March 2025 defines a political party as a "successor" of a party that was declared unconstitutional "*if it ensures the achievement of the objectives of the party declared unconstitutional or provides support to individuals who played an active role in the activities for which the political party was declared unconstitutional and who threaten the sovereignty, independence, territorial integrity, national security, public order, the rule of law, and public safety."* To determine so, the following considerations are taken into account:

a) ties between central members or representatives of a political party and a party declared unconstitutional, or with individuals involved in the banned party's activities;

b) the successor party promotes the banned party's programs, ideology, or the interests of its key figures;

c) admitting former members of the banned party to carry on its political goals; substantial similarities with the attributes of the political party declared unconstitutional;

e) substantial similarities in the mode of coordination, organization, and functioning with that of the political party declared unconstitutional;

f) running as candidates individuals involved in the activities that led to the former party's unconstitutionality;

g) funding from sources linked to the banned party for current or campaign-related activities;

h) political events organized in support of the party or its candidates by affiliates of the banned party;

i) voter bribery conducted by individuals associated with the banned party to benefit the new one or its candidates;

j) the party or its candidates receive various types of support from persons connected to the banned party or under sanctions for related activities.

57. The Explanatory Note justifies the proposed amendments by referencing the 2023 ban of the Șor Party, after which several new political entities emerged, appearing to continue to operate under the Șor's leadership, with the same agenda, and tactics. It further elaborates that the purpose is to provide state institutions with a legal basis to prevent such successor entities from being registered or to restrict their activities, if already operational. ODIHR and the Venice Commission, in connection with such ban, have previously opined that *"the decision of the Constitutional Court declaring the Şor Party unconstitutional was very detailed and pointed to particular acts, committed by particular persons, as grounds for the declaration of unconstitutionality. Thus, this decision could provide a basis for an individualised approach for the persons affected by the restriction. However, the criteria set in the amendments for imposing the limitation on the right to stand are not always adequately legally defined."*[99] The ODIHR and the

99 See ODIHR and Venice Commission *Joint Follow up Opinion on the amendments to the electoral legislation and other related laws on ineligibility of persons connected to political parties declared unconstitutional*. See also ECtHR, *Advisory opinion* on the assessment, under Article 3 of Protocol No. 1 to the Convention, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings, Request no. P16-2020-002 by the Lithuanian Supreme Administrative Court, 8 April 2022.

Venice Commission also recommended establishing clear criteria and an effective individual assessment mechanism to restrict the right to be elected only for those party members or officials whose conduct or statements have endangered the Constitution and democratic order, or who have actively pursued the unlawful objectives of unconstitutional parties. They further emphasized the importance of ensuring full procedural safeguards in this process, including providing a well-reasoned decision and access to judicial review.[100]

58. While there may be legitimate grounds to ban a political party which is a "successor" of a party declared unconstitutional, in case of clearly established strong connection between the banned party and a "successor", [101] there is a risk that the terms such as "ties", "support", and "substantial similarities", "affiliates", "individuals associated", etc., can be applied broadly, potentially allowing for subjective interpretation and arbitrary application of the law. This opens the door for potentially politically motivated restrictions and undermines legal certainty, contrary to the requirement that any "*[r]estrictions must be clearly and narrowly defined in law to prevent misuse or arbitrary application"* and the principle that *"[t]he right to form a political party is protected unless there is a clear, imminent threat to democracy."* [102]

59. Another major concern is the notion of "guilt by association", whereby political parties can be denied registration or dissolved based solely on the past affiliations or activities of individual members, even if those individuals are not charged, convicted or have previously served sentences related to electoral malfeasance that led to a party being declared as unconstitutional. This undermines the individual nature of legal responsibility. As provided by the Joint Guidelines, "*[p]olitical pluralism requires that former members of banned parties be allowed to reintegrate unless individually responsible for criminal acts."*[103] Moreover, as also underlined in the 2023 Joint ODIHR-Venice Commission Follow-up Opinion, restrictions affecting a large group of persons, making them collectively responsible for the illegitimate activities of the party they belong(ed) to, lacks individualization and goes against the principle of proportionality, in addition to creating risks of arbitrariness.[104]

60. In addition, the proposed criteria, such as "similarities in ideology" or receiving "support" from individuals under sanctions, are rather vague, subjective, susceptible to political manipulation and selective enforcement**,** which may endanger political pluralism.[105] If the past activities of certain politicians broadly disqualify them from exercising the right to association or holding elected office, it should be up to the voters to make this determination themselves by choosing not to vote for these politicians in future elections, should they choose to run again. In this respect, such restriction may

100 See *Joint Opinion* on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional; *Joint amicus curiae* brief on the ineligibility of persons connected to political parties declared unconstitutional, and *Joint Follow-up Opinion* to the Joint Opinion on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional.

101 See, for example, *Herribatasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04).*

102 See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 43 and 99. See also *ICCPR* Article 22(2)**.** See also *United Communist Party of Turkey v. Turkey* [GC], where the ECtHR stated that banning a political party must meet a pressing social need and be proportionate to a legitimate aim.

103 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para 100. UN Human Rights Committee, *General Comment No. 25* (1996) also provides that States must ensure that the grounds for disqualification from public life are objective and reasonable, and not based on political opinions or affiliations.

104 See ODIHR-Venice Commission, *2023 Joint Follow-up Opinion to the Joint Opinion on Amendments to the Electoral Code and Other Related Laws Concerning Ineligibility of Persons Connected to Political Parties Declared Unconstitutional*, para. 59.

105 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 19 and 95. See also ODIHR *Preliminary Opinion on the Law on Political Parties of Mongolia*, para. 43.

also trigger a discriminatory effect, based on political opinion, contrary to international standards.[106]

61. The proposed amendments on "successor" party also impose disproportionate restrictions on political participation by allowing bans based on indirect or ideological links to previously outlawed parties, even without a clear or imminent threat to democratic order. This is inconsistent with the principle that prohibition or dissolution of political parties must be a measure of last resort**,** used only in extreme cases involving serious, imminent threats for democracy.[107] As underlined in the Joint Guidelines, the overall examination of whether prohibition of a political party is justified "*must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the act and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of 'a democratic society'.*" [108]

62. Finally, the proposed amendments do not reflect the fundamental principle of presumption of lawful objectives and activities for new parties, effectively placing the burden of proof on them to demonstrate their innocence.[109] As provided by the Joint Guidelines, *"a political party should not be held liable for the actions of its former members or predecessors unless there is continuity in illegal conduct."*[110]

63. In light of the foregoing, should the proposed amendments be retained, **it is strongly recommended to avoid the use of vague and overbroad provisions, which may lead to disproportionate restrictions on the formation and activities of new political parties. Grounds for refusing registration should be limited only to convincing and compelling reasons, clearly stated in law and based on objective criteria**. **Ineligibility to register a political party should be strictly limited to those who have genuinely threatened the Constitution or democratic order through their actions, have same political leadership and/or actively pursued the same illegal (both from a national and international law point of view) goals of the unconstitutional parties, as recognized in a final court decision. Any such prohibition should be a result of a due process, based on sufficient, clear and relevant evidence, as well as individualized assessment. Authorities must be able to demonstrate that individuals who were actively involved in unconstitutional activities, i.e., that they have individually contributed to the illegitimate acts attributed to the political party that led to the declaration of unconstitutionality, are linked to the "successor" political party.**

106 See ICCPR, Articles 2(1) and 26; see also paragraph 7.6 of the *1990 OSCE Copenhagen Document*, which states that "*Participating States will respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations 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.*" See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 134.

107 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 117 and 120, and references therein.

108 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 117 and 120, and references therein.

109 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 50 and references therein. See also UN Human Rights Committee, *General Comment No. 22* (1996) provide that "*States must refrain from interfering with this right unless absolutely necessary, and such interference must be based on individual conduct—not general assumptions*."

110 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 97.

2.3.2. Registration of a Political Party

64. The new registration requirements for political parties under the proposed amendments to Article 8 of the Law on Political Parties involve a more rigorous verification process.

65. According to draft Article 8 (1) (d), the registration application must include a list of signatures, which shall be accompanied by a sworn statement by the person who drew it up attesting the authenticity of the signatures, under the penalty provided for in Article 352 of the Penal Code. In order to issue a decision on the registration of the political party, the Public Services Agency (PSA) shall consult the complete set of documents with the following public authorities: (a) the Constitutional Court, to determine whether the party's constitutive acts comply with the Constitution; (b) the Ministry of Justice, to assess whether the party's regulations comply with the law and other normative acts; and (c) the Security and Information Service (SIS), which shall inform whether the party's activities may violate the provisions of Article 3 (1) and (5), if such risks are identified (Article 8 (2^1)). These Opinions must be submitted by the consulted authorities within 30 days from the date the political party submits the required documents (Article 8 (2^2)). As per draft Article 8 (3), the PSA shall adopt a decision to register or refuse the registration of the political party within 15 days from receiving the last opinion from the authorities.

66. Not all OSCE participating States require the registration of political parties; however, it is acknowledged that political parties may obtain certain legal privileges, based on their legal status, that are not available to other associations.[111] Where registration as a political party is required to take part in elections or to obtain certain benefits, substantive registration requirements and procedural steps for registration should be reasonable and not burdensome. Such registration requirements should be carefully drafted to achieve legitimate aims, but not overly restrictive, in line with Article 22(2) ICCPR and Article 11(2) ECHR, read in the light of Article 3 of Protocol No. 1 to the ECHR.[112]

67. Requiring a sworn statement to ensure the authenticity of signatures can help prevent fraud and foster public trust. However, it places a disproportionate burden of accountability on the organizer, who may face penalties even for erroneous submissions made unknowingly. This is particularly concerning as the current provisions do not allow for the correction of a detected error, even if it was an unintentional oversight. As recommended in the Joint Guidelines on Political Party Regulation, "*in case of technical omissions or minor infringements of registration requirements, the political party should be given reasonable time in which to rectify the failure*".[113] **To better align with the principle of proportionality, the Draft Law should be amended to provide an opportunity for correction in such cases. If the issue persists, it would be more proportionate to apply administrative sanctions or corrective measures, rather than resorting to criminal liability.**

68. It is acknowledged that states have the right to oversee political parties and that the law should empower oversight agencies to investigate and address potential violations. However, bodies responsible for supervising political parties must avoid excessive control over party activities and should restrict their investigations to cases where there is evidence of wrongdoing by a specific party.[114] The ECtHR raised particular concern about political parties being liable to inspections by the authorities under threat of dissolution. The ECtHR, in one case, could not recognize any justification for such

111 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 85.
112 *Ibid*, para. 86.
113 *Ibid*, para. 87.
114 *Ibid*, paras. 268 and 269

intrusive measures subjecting political parties to frequent and comprehensive checks and a constant threat of dissolution on formal grounds.[115]

69. In this respect, while acknowledging the requirement for the PSA to consult the Constitutional Court when deciding on the registration of a political party, we note a potential conflict of interest arising from the Constitutional Court's dual role in both providing an opinion on the compliance of constitutive acts with the Constitution and adjudicating the constitutionality of political parties. In addition, the involvement of the Security and Information Service (SIS) in providing an opinion on registration of individual parties, raises a concern about potential lack of political neutrality and the risk of overreach, particularly if the legal criteria the SIS relies in its assessments are vague or overly broad. Without clear, transparent standards and a mechanism to challenge these findings, there is potential for arbitrary and subjective decisions. As underlined in the Joint Guidelines, *"[w]hichever body is tasked with registration, it should be non-partisan in nature and meet requirements of independence and impartiality*".[116] Regulatory authorities must remain neutral and objective in overseeing political party registration and activities, which is challenging if the monitoring body is part of the executive, as it may be influenced by political factors. It is thus crucial that this monitoring body and entities involved in the registration process be non-partisan, impartial and independent from the government or ministers who may have a vested interest in undermining political rivals.[117] **The involvement of the SIS in the party registration process should be reconsidered entirely or at the very least, to safeguard political neutrality, the legal framework should establish clear, narrowly defined criteria for the assessments, strictly limited to national security concerns. Likewise, the involvement of the Constitutional Court should be reconsidered due to the potential conflict of interest.**

70. Additionally, the registration timeline is open-ended, as the 15-day period for the PSA to decide on party registration only begins after all opinions are received, which may allow for significant delays if any consulted authority is slow to respond. Long procedures for consideration of the party registration are at odds with the principles requiring substantive registration requirements and procedural steps for registration to be reasonable, and not overly restrictive and burdensome.[118] Furthermore, it should be noted that the Draft Law does not foresee the procedure to be followed in cases where the consulted institutions provide conflicting opinions, which may add to further delays. **To avoid undue delays, a maximum overall timeframe for the registration process could be introduced, regardless of the timing of individual opinions from consulted authorities; alternatively, clear deadlines should be imposed on respective authorities for the submission of their opinions, with the registration process allowed to proceed in the absence of such opinions within the deadline.**

71. The Draft Law does not provide political parties with an opportunity to challenge or dispute the content of the opinions issued by the consulted institutions, which raises concerns regarding transparency, accountability, and adherence to due process principles. Parties should have the right to appeal decisions by relevant state bodies involved in the registration process to a competent, independent and impartial tribunal; authorities

115 See ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para. 115. See also *ODIHR and Venice Commission Joint Opinion on the Law on Political Parties of Azerbaijan*, para. 58.
116 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 267.
117 See e.g., Venice Commission, *Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan*, CDL-AD(2011)046, paras 38 and 39.
118 See also ODIHR *Preliminary Opinion on the Law on Political Parties of Mongolia*, para. 44

should in all cases be held accountable for their decisions.[119] **Therefore, parties should be granted the right to be informed of the opinions and findings of the consulted institutions and to contest them through an independent and impartial mechanism.**

72. In addition, some new amendments introduced in March 2025 would supplement Article 7 (2) with the requirement that, upon joining a political party, individuals must submit a written declaration stating whether they are members of any other political party. While this provision aims to enhance transparency and prevent dual membership, and ultimately their affiliation with "banned parties", it raises concerns regarding the right to freedom of association. The Joint Guidelines underline that *"[i]t should be possible to support the registration of more than one party, and legislation should not limit a citizen or other individual to signing a supporting list for only one party. Any limitation of this right is too easily abused and can lead to the disqualification of parties that in good faith believed that they had fulfilled the requirements for sufficient signatures."*[120] Freedom of association is a fundamental right that should not be unduly restricted by legislation mandating exclusive affiliation with a single political party, unless a compelling justification is provided. Particularly in contexts where sub-national or local parties exist and political competition is decentralized, individuals should be free to associate with more than one party in order to fully exercise their democratic rights.[121] **While political parties may choose to prohibit dual party membership in their internal rules, such restrictions should not be imposed by law.**

2.3.3. Requirement to Maintain a Register

73. Some of the proposed amendments introduced in March 2025 would introduce a new Article 7[1] establishing a mandatory Register of Party Members for all political parties in the Republic of Moldova. According to draft paragraph (1), this register must be organized according to the party's territorial structures and kept permanently updated. As specified in draft paragraph (2), the register must include the following personal data for each party member: full name, date of birth, state identification number, declared residence, date of entry into the register, and the date of suspension or termination of membership. Initial entries must be recorded within seven days of the party's official registration, and any subsequent updates, such as membership acquisition, suspension, or termination, must be made within three working days of the change. The responsibility for maintaining this register lies with the party's central executive bodies, which are accountable for ensuring the accuracy and completeness of the data, as well as for timely submission.

74. The regulation of registers of party members needs to be approached with great care and consideration given the sensitivity of personal data revealing the political opinions of individuals.[122] As underlined on several occasions by ODIHR and the Venice Commission, in principle, the list of party members is an internal document of the party and should not to be made publicly available.[123] In addition, it must be emphasized that the right to privacy applies to an association, including a political party, and its members

119 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 267.
120 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 96.
121 *Ibid*, para. 150.
122 See e.g., ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Ukraine on Political Parties*, CDL-AD(2021)003, para. 77, which states that "*[i]nformation on the membership of a political party is also protected by the right to privacy, as such information provides direct insights into the political opinions of individuals",* and refers in this context to ECtHR, *Catt v. the United Kingdom*, no. 43514/15, 24 January 2019, para. 112, stressing that personal data revealing political opinion falls among the special categories of sensitive data attracting a heightened level of protection.
123 See also ODIHR and Venice Commission, *Joint Opinion on the Law on Political Parties of Azerbaijan*, CDL-AD(2023)007, para. 100. See also ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, para. 231.

and the state should respect data protection principles and the right to associational privacy.[124] Practice varies greatly across OSCE participating States regarding the regulation of party registers but any such example needs to be considered in light of the broader national, political, institutional and legal framework, as well as country context and culture. Some countries do not require any register of party members,[125] while others provide for public access to list of party members[126] or require to regularly submit an updated list of members to public authorities but the list is not public or may be accessed but only upon request.[127] Of note, regarding the obligation for a party to provide the state with lists of its members, the Joint Guidelines underline that this requirement would appear to be an overly intrusive measure that is not compatible with the principles of necessity and proportionality.

75. Further, political parties should control their own internal procedures. State control over political parties should remain at a minimum, and should be limited to what is necessary in a democratic society. As provided by the Guidelines, *"[l]egal regulation of internal party functions, where applied, must be narrowly construed so as to respect the principle of party autonomy and not to unduly interfere with the right of parties as free associations to manage their own internal affairs.*" In this respect, any political or other excessive state control over activities of political parties, such as membership, operation of territorial branches and subdivisions, should be avoided. Likewise, it should primarily be up to the political party and its members, and not to the public authorities, to ensure that the relevant formalities are observed in the manner specified by laws. So, while some kind of state regulation of the inner workings of political parties may be introduced, it is acceptable, in principle, that state interference is limited to, *"requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and candidates."* [128]

76. In addition, while maintaining internal membership records is a standard practice for parties, mandatory submission of detailed personal data to state authorities raises concerns regarding data privacy. It is envisaged that the Register is made available to the Ministry of Justice. ODIHR and the Venice Commission have on several occasions raised concerns when the authority handling the personal data related to political party registration or membership and/or exercising oversight over such data was not meeting requirements of independence and impartiality.[129] Furthermore, requirements to maintain

124 *Ibid.* paras. 164 and 228 of *ODIHR and Venice Commission Joint Guidelines on Freedom of Association*.

125 In the Netherlands, political parties receive extra subsidies from the state on the basis of the number of members; there is no general register and reported membership by parties is checked by independent accountants on the basis of the payment of membership dues.

126 See example of *Estonia*, where the information (on name, birth date and date the person became member of the party) is public with access to information about previous members of a party (i.e. people that left the party or died) also being possible with a request made to the Register. If a citizen leaves a party, then the said party has the obligation to report to the Register about it, so his/her name is struck from the Register.

127 See e.g., in **Lithuania** parties are obliged to submit to the Minister of Justice (MoJ) an updated list of members every year (no later than 1st of March and 1st of October – Art. 9 of the Law on Political Parties), the list being non-public though any citizen may check through an information system whether s/he is a member of a political party, and may after informing the party, directly write to the MoJ to be deleted from the list of party members if s/he no longer wishes to be a member of the party. In **Latvia**, there is also an obligation of parties to yearly (March 1st) submit an up-to-date list of members to the *Register* but only information about the number of members per party can be found online, though the members' list (with just name and surname) is publicly accessible in the digital Register by looking in with the e-ID card or e-Bank if a fee (around €4 per party-year list) is paid. In **Romania**, political parties need to submit a list with the name and surname, date of birth, address, type of ID (series and number), personal numerical code and the signature, accompanied by an affidavit of the person who prepared the list, certifying the authenticity of the signatures, under a penalty provided in the Criminal Code (Art. 292); the list need to be updated each pre-electoral year (by 31st December of that year) but is not *available online*, but only the number of members as well as the names of the members that form part of directive organs in each of the party branches.

128 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para 155.

129 See e.g., ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para 267, which states "*Whichever body is tasked with registration, it should be non-partisan in nature and meet requirements of independence and impartiality*"; and para. 270, which states "*In order to ensure transparency and to increase their independence, legislation shall specifically define how relevant*

a Register of Party Members could potentially infringe upon individuals' rights if not carefully balanced with personal data protection and privacy standards, with special safeguards – beyond the existing legal framework concerning personal data protection – since the data revealing political opinions of individuals are especially sensitive.[130] The processing of personal data revealing political opinions entails severe risks of voter discrimination, potentially leading to voter suppression and intimidation, while the knowledge of who may have, and have not, supported a governing party could also affect the provision of government services.[131] Furthermore, this new obligation is particularly concerning when read together with proposed amendments on sanctions that provide that failure to submit the data from the Register to public authorities within the prescribed deadline (Article 21.1[1]) may result in the limitation of a party's activities, a sanction that is both severe and disproportionate to the administrative nature of the obligation (see also Sub-Section 2.3.4).

77. In light of the foregoing, while the requirement for political parties to set up, maintain and update a Register of Party Members, may not necessarily, in itself, be unlawful and illegitimate, the requirement of making such a list available to the public is overly intrusive and disproportionate.[132] **It is thus recommended that the requirement to establish and maintain a Register of Party Members be reconsidered. If such a practice is pursued, it should remain voluntary decision of a party, without excessive sanctions for non-compliance, and the scope of information included should be carefully assessed to ensure compliance with personal data protection and privacy obligations.**

state oversight bodies are appointed". See also e.g., ODIHR and Venice Commission, *Joint Opinion on the Law on Political Parties of Azerbaijan*, CDL-AD(2023)007, para. 100.

130 See Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 108), 28 January 1981, ratified by the Republic of Moldova on 28 February 2008, especially Article 6, which states: *"[p]ersonal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards*"; and *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223), signed by the Republic of Moldova on 9 February 2023, although not yet ratified, which further specifies that the automatic processing of such sensitive data "*shall only be allowed where appropriate safeguards are enshrined in law, complementing those of [the] Convention*", which shall "*guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination*" (proposed new Article 6(1) and (2) of the Convention). The Explanatory Report to the Protocol further provides examples of the types of additional safeguards that could be considered alone or in combination regarding the handling of such sensitive data, including the data subject's explicit consent, a law covering the intended purpose and means of the processing or indicating the exceptional cases where processing such data would be permitted, a professional secrecy obligation, measures following a risk analysis; a particular and qualified organizational or technical security measure (see *Explanatory Report – CETS 223 – Automatic Processing of Personal Data (Amending Protocol)*, 10 October 2018, para. 56). See also Committee of the Convention for the protection of individuals with regard to the automatic processing of personal data (Convention 108), *Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns* (2021), paras. 4.2.4 and 4.3.5.

131 See e.g., Committee of the Convention for the protection of individuals with regard to the automatic processing of personal data (Convention 108), *Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns* (2021), para. 4.2.4.

132 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 154, which states: "*political parties should control their own internal procedures, […] the requirement for the party to provide the state with lists of its members, would appear to be an overly intrusive measure that is not compatible with the principles of necessity and proportionality*." See also Venice Commission, *Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues*, Guideline C. See also ODIHR, *Note on International and Regional Standards Applicable to Certain Issues relating to Political Party Reform in Ukraine* (2023), paras. 18-20; ODIHR-Venice Commission, *Joint Opinion on the draft law on political parties of Ukraine*, CDL-AD(2021)003, para. 77, which refers in this context to ECtHR, *Catt v. the United Kingdom*, no. 43514/15, 24 January 2019, para. 112, stressing that personal data revealing political opinion falls among the special categories of sensitive data attracting a heightened level of *protection*. See also e.g., Committee of the Convention for the protection of individuals with regard to the automatic processing of personal data (Convention 108), *Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns* (2021), para. 4.2.4, underlining the sensitivity of the processing of personal data related to political opinion, noting that it entails severe risks of voter discrimination, potentially leading to voter suppression and intimidation, while the knowledge of who may have, and have not, supported a governing party could also affect the provision of government services.

2.3.4. Suspension/Limiting Party Activities

78. Currently, a political party may have its activity suspended[133] for up to one year by a court decision at the request of the Ministry of Justice, if its "*actions cause serious damage to political pluralism or fundamental democratic principles*" (Article 21 (1)) or in case of non-submission of the report on financial management within the deadline (Article 21 (1^1)). The Draft Law removes the obligation for the Ministry of Justice to grant a maximum period of one month for the party to take corrective measures. The application to the court must be examined within 3 months. In urgent cases, where the violation is serious and there is a risk of "irreparable harm", the Ministry of Justice may request as an interim measure a temporary restriction of the party's activity during the proceedings. In this case, the Ministry must provide arguments demonstrating the severity of the violations and the imminent risk of irreparable consequences if the party's activities continue (draft Article 21 (3)). The court must rule on this request within 24 hours, without hearing the parties, though it may later hold a hearing on merits if it deems necessary.[134] While Article 21 (8) of the existing Law provides that *"[t]he activity of the political party may not be limited during the electoral campaign in which it participates"*, the Draft Law would introduce an exception "*in cases where the limitation of the activity of the political party is justified for committing serious violations of the law, as provided in [Article 21 (3)]*".

79. While it is undisputed that there should be consequences if a party violates relevant laws and regulations, it is essential that these sanctions remain objective and proportionate to the specific violation.[135] To uphold the principle of proportionality, a range of sanctions should be available, allowing for the adjustment of penalties according to the severity of the violation.[136] Strict considerations of proportionality must be applied when determining whether the suspension of a political party for a certain period of time is justified. This requirement is not merely dictated by the seriousness of the restriction on the freedom of association which such measures imply, but also by the democratic principle of political pluralism, of which the state is the ultimate guarantor.[137] In principle, sanctions amounting to the effective suspension of activities – even if less intrusive than termination – should be of an exceptional nature, only applied where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles, not minor infringements.[138] Moreover, adequate warning should be provided about the alleged violation and ample opportunity should be given to correct

133 According to Article 21 (5) of the Law, *"[d]uring the period of limitation of the activity of the political party, it is forbidden to found the mass media, to organize meetings, rallies, demonstrations, pickets and other public actions, to use all types of bank deposits, except for the cases when settlements with contractors are necessary, settlements related to the fulfillment of individual employment contracts, settlements for the reparation of damages caused by the actions of the political party, settlements for the payment of taxes, fees and fines."*

134 The second version of the amendments to Article 21 of Political Parties Law introduced in March 2025 expands on the conditions under which the Ministry of Justice may request the court to limit the activity of a political party, even without completing prior procedural steps. More specifically, proposed Article 21 (3) would allow for the limitation of a political party's activity for up to 12 months if its governing body fails to comply with the Ministry's requirements. The Ministry of Justice can request this limitation within 5 days after the deadline expires, and the Court of Appeal must decide the case within 3 months. Newly proposed Article (31) further outlines circumstances under which a party's activities may be restricted immediately, if "*threatening the sovereignty, independence, territorial integrity, national security, public order public safety, accompanied by actions: undermining electoral processes; disinformation campaigns, incitement to hatred, propaganda of military aggression, extremist content, terrorist-related content, or content that otherwise presents a threat to national security; large-scale voter bribery; illegal financing or the unlawful provision of services or material goods to the political party or its electoral competitors; money laundering activities or the systematic and illegal introduction of financial resources for the party's current or electoral activities, as well as actions involving the planning, coordination, or support of violent actions*."

135 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 272.

136 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 272 and 273.

137 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 110. See also ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC], no. 19392/92, 30 January 1998, para. 44.

138 See ODIHR and the Venice Commission *Joint Guidelines on Freedom of Association* (2015), paras. 239 and 253.

infringements and minor infractions, particularly if they are of an administrative nature.[139]

80. In this respect, the removal of the Ministry of Justice's prior warning to allow a party to take corrective measures is concerning. In addition, the possibility to suspend the party activities for the mere non-submission of the report on financial management within the deadline appears excessive. Other less restrictive sanctions could be envisaged instead, such as the partial or total suspension or loss of public funding.

81. Moreover, the other grounds for suspension ("*actions cause serious damage to political pluralism or fundamental democratic principles*") – unless there is a consistent jurisprudential interpretation of such a ground – is overly broad and may cover a wide range of actions. The lack of a clear, precise definition opens the door for arbitrary interpretation and application, potentially leading to political bias or misuse.

82. The provision allowing for the suspension of a political party's activity as an interim measure during the proceedings based on "serious violations" and "irreparable harm", also raises concerns due to the vagueness of these terms. The fact that such interim measures may be decided without hearing the parties is especially concerning. Article 6 of the ECHR provides that *"[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*." Similar provisions are found in Article 10 of the Universal Declaration of Human Rights (UDHR) and Article 14 of the ICCPR. Paragraph 5.10 of the 1990 OSCE Copenhagen Document commits participating States to ensure that, "*everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity*." This includes the right to have one's case heard publicly and expeditiously by an independent and impartial tribunal, as well as the right to equal access to judicial proceedings. To ensure due process and avoid risk of abuse of the procedure, **the party should have the right to appeal the interim suspension before an independent and impartial tribunal, under an expedited procedure, especially during electoral campaigns, and the right to participate in the hearing should be guaranteed.** While the Draft Law submitted for review does not include such a possibility, one of the amendments introduced in March 2025 envisages the right of a party to participate in a hearing to defend the case, opportunity to eliminate grounds which resulted in restricting the activity, as well as the right to appeal decision with the Supreme Court, which should decide within 5 days (proposed Article 21 (3^6) of the March 2025 amendments). **While the deadlines may be reasonable outside of election periods, cases should be resolved through an expedited procedure after elections are announced, to avoid restricting a party's ability to participate.**

83. While states have a legitimate right to introduce effective measures protecting national security and sovereignty, independence, territorial integrity, national security, public order public safety, there may be concerns regarding the introduction of new provisions resulting in suspending the activities of the party, including their participation in elections, before the violations are proven and established by a court of law. Moreover, the proposed exception authorizing suspension of party activities during the electoral campaign in which a party participates – on the basis of overly broad and vague grounds, is particularly concerning. In this context, any restrictions to the right to stand for election should be prescribed by law, pursue a legitimate aim, be justifiable based on objective,

139 See ODIHR and the Venice Commission *Joint Guidelines on Freedom of Association* (2015), para. 253.

reasonable and non-discriminatory criteria, be proportionate, with sufficient procedural safeguards afforded to the individual to protect against arbitrariness.[140]

84. Especially concerning is the lack of a warning mechanism, without any provisions for redress following suspension, such approach fails to ensure adherence to the principle of proportionality, which is vital to ensuring that any restriction on the freedom of association is "necessary in a democratic society". **Suspending the activities of a political party is an exceptional measure and should only be imposed in the most serious cases and if other less invasive measures have proven ineffective.**[141] **It is recommended that suspension be applied only for the most serious violations, proven in a court of law, and that a range of lesser sanctions be introduced for less severe violations.**

85. Additionally, the expedited nature of the process, including the 24-hour decision on interim suspension without a hearing (draft Article 21 (3)), further amplifies concerns about the potential for decisions made without proper due process. Once the reasons for suspension are resolved, the political party must notify the Ministry of Justice, which is required to apply to the Court of Appeal within 5 days to lift the restriction (Article 21 (6)). The court must then rule within 15 days. In contrast, draft Article 21 (2) grants the Court three months to decide on the case.

86. While timely and effective dispute resolution is crucial for safeguarding the right to freedom of association, this three-months timeline combined with the possibility of suspension even during the electoral campaign in case of serious violations that may cause irreparable harm, appears excessive and could undermine a party's ability to participate in elections. The delay raises concerns about compliance with international standards, which emphasize the need for swift and fair processes, particularly when the right to political participation is at stake.[142] **It is essential that political parties are guaranteed due process, including a reasonable timeframe to respond and the opportunity to present a defense. At the same time, the proceedings should not be so prolonged as to effectively undermine their ability to participate in the political process, especially if the timeline falls during the election period. The suspension of a political party's activities during elections should be applied only in exceptional circumstances when no less drastic measures are justified, with effective means of redress and the possibility to appeal the suspension through an expedited procedure, while ensuring the right to participate in the respective court hearing.**

2.3.5. Dissolution of a Party

87. Draft Article 22 (2) provides the possibility for the Ministry of Justice to seek interim suspension of a political party during the procedure of dissolution of a party on the grounds that, within one year from the final decision of the Chisinau Court of Appeal limiting the party's activity, the party committed similar actions (Article 22 (2) (b)), or

140 See United Nations. Human Rights Committee. CCPR/C/21/Rev.1/Add.7. 27 August 1996. General Comment 25, para. 15.

141 See ODIHR and Venice Commission *Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia*, CDL-AD(2016)038, para 51. See also ODIHR and Venice Commission *Joint Opinion on the Law on Political Parties of Azerbaijan*.

142 To ensure the right to an effective remedy, it is imperative that judicial procedures, including appeal and review, fully comply with international fair trial standards, as enshrined in Article 14 of the *ICCPR* and elaborated in *General Comment No. 32* of the UN Human Rights Committee. Furthermore, such procedures must be timely, accessible, and affordable, consistent with the obligations under Article 2(3) of the *ICCPR* and the Basic Principles on the Independence of the Judiciary. See also *OSCE 1990 Copenhagen Document*, particularly paragraphs 5.10 to 5.18, which reaffirm the right to a fair and public hearing by a competent, independent, and impartial tribunal, and emphasize due process guarantees, including the presumption of innocence, access to legal counsel, and the right to appeal.

when its political objectives were pursued through illicit means or acts of violence (Article 22 (2) (d)).[143] Article 22 (2) does not envisage any warning prior to initiating the dissolution.

88. As already noted, dissolution of a party is a measure of last resort that can only be justified in the case of parties which advocate the use of violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution.[144] It should be used with utmost restraint, when it is clear that the party really represents a danger to the free and democratic political order or to the rights of individuals and where other, less radical measures could not prevent the said danger.[145] The law should define narrowly formulated criteria specifying the exceptional circumstances under which the dissolution of political parties is permitted, such as in case of use or call for violence, which constitute a serious and imminent threat to civil peace or fundamental democratic principles.[146] The ECtHR has repeatedly held that provided that they do not harm democracy itself, a party's programme, its critical views on the country's constitutional and legal order or even shocking and unacceptable views or words by party leaders and/or members should not automatically be regarded as a threat to public policy or to the territorial integrity of a country that justifies a prohibition or dissolution.[147] In the absence of evidence of undemocratic intentions in the party's programme or activities, drastic measures taken in respect of political parties have led the ECtHR to find violations of Article 11 of the ECHR.[148]

89. ODIHR acknowledges the *rationale* behind the proposed amendments, which stem from allegations, including some that have been substantiated, of activities endangering the sovereignty of the Republic of Moldova. However, the competence of state authorities to dissolve a political party should concern only exceptional circumstances, must be narrowly tailored and should be applied only in extreme cases, which means authorities must show that there are no other means to achieve the stated aims that would interfere less seriously with the right of freedom of association.[149]

90. To uphold the principle of proportionality, a range of sanctions should be available to ensure that the punishment matches the severity of the violation. When addressing non-compliance with laws, states should make use of a broad spectrum of available sanctions which are limited in scope and dissuasive in nature.[150] Only when the legitimate aim

143 Proposed amendments to Article 22 (2) introduced in March 2025 would allow the dissolution of a political party through a court decision initiated by the Ministry of Justice, either on its own initiative or at the request of various state bodies (the Ministry of Internal Affairs, The Prosecutor General's Office, the Information and Security Service, the Central Electoral Commission, the Public Services Agency), if certain grounds are met, including (1) the commission of actions similar to those previously sanctioned, or if the party's activities fall under the newly added Article 3(11), which targets so-called "successor" parties to those declared unconstitutional.

144 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 117 and 120, and references therein. See also ODIHR-Venice Commission, *Joint Opinion on the Draft Law on Political Parties in Azerbaijan*, CDL-AD(2023)007, para. 94.

145 See Venice Commission, *Guidelines on Prohibition and Dissolution of political parties and analogous measures*, CDLINF(99)15, pp. 3-4; Venice Commission, *Opinion on the proposed Amendment to the Law on Parties and other SocioPolitical Organisations of the Republic of Moldova*, CDL-AD(2003)008, para. 10

146 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 109, 114 and 120. See also ODIHR-Venice Commission *Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols*.

147 See ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey*v [GC], no. 23885/94, 8 December 1999. ECtHR, *Tourkiki Enosi Xanthis and Others v. Greece*, no. 26698/05, 29 September 2008.

148 See e.g., ECtHR, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, 3 February 2005; and *Tsonev v. Bulgaria*, no. 45963/99, 13 April 2006.

149 See Venice Commission *Amicus Curiae Brief* on Constitutional Court Decision on Declaring a Political Party Unconstitutional. See also ECtHR, *Socialist Party and others v. Turkey*, no. 21237/93, 25 May 1998, para. 47.

150 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 274.

pursued cannot be reached using less restrictive means of regulation, dissolution may be applied as an instrument of last resort.[151]

91. **It is recommended to review and amend the provisions of the Draft Law to envisage a broader range of available sanctions while ensuring that applicable sanctions are proportionate and allow for a certain level of flexibility based on the seriousness of the offence. The exceptional circumstances under which a party may be dissolved should be more narrowly and precisely formulated, ensuring it is a measure of last resort that aligns with strict standards of legality, subsidiarity, and proportionality.**

92. In addition, due process and fair trial standards should apply to the cases of judicial proceedings involving political parties. This has been confirmed by a number of ECtHR rulings, which found, that the domestic courts had not afforded the applicant party sufficient guarantees against arbitrariness in the proceedings leading to its disqualification from participating in the elections.[152] Pursuant to OSCE commitments and international obligations, everyone has the right to "*effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity*"[153] and legislation needs to provide for "*the possibility for judicial review of such regulations and decisions*".[154] **It is recommended that any proceedings to limit the activities or dissolve a political party be conducted in full compliance with the principles of procedural fairness, ensuring that the party is given a meaningful opportunity to respond to and rebut the claims made by state authorities.**

93. Draft Article 22[1] proposed in the March 2025 amendments envisages *ex officio* deletion of a political party from the register for non-compliance with financial reporting obligations for two consecutive years. The *ex officio* removal of the political party would be carried out by decision of the Public Services Agency, at the request of the Central Electoral Commission or other interested parties. The draft provision does not provide for a warning, nor a possibility to appeal such removal. While deregistration for failure to submit financial reports exists in some jurisdictions, it is generally applied after other sanctions have been imposed and due process has been followed. **Legislation may include instead measures such as administrative warnings, fines, forfeiture, suspension or loss of public funding, compliance notices, deregistration, and/or criminal penalties.**

2.4. Financing of Initiative Groups and Electoral Campaigns

94. Proposed amendments to Article 53 of the Electoral Code provide that *"donations in the form of property, goods, services provided free of charge or under more advantageous conditions than the commercial or market value count towards the limit of the overall national ceiling of the financial means that should be transferred to the 'Electoral Fund' or 'For the initiative group'."*

151 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 225 and 274. The principle of last resort is also reflected in the Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe (PACE), which states in paragraph 11 that, "*a political party should be banned or dissolved only as a last resort" and "in accordance with the procedures which provide all the necessary guarantees to a fair trial*." See also ODIHR recent Opinions, for example, *Opinion on the Act on Political Parties of Poland*, and *Preliminary Opinion on the Law on Political Parties of Mongolia*.

152 See ECtHR, *Political Party "Patria" and others v. the Republic of Moldova*, nos. 5113/15, 4 November 2020, para. 38.

153 See Paragraph 5.10 of the *1990 OSCE Copenhagen Document*.

154 Under Article 2.3(a) of the *ICCPR* States obligated themselves *"[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity*."

95. In general, limits on the amount individuals and legal entities may donate annually are intended to reduce the risk of illicit funding and the undue purchase of political influence. The lower the donation ceiling, the more a political party must rely on a broader and more diverse base of private donors to finance its activities. This helps mitigate the influence of small but wealthy interest groups, reduces the potential for distortion of the political process, and promotes broader political participation. In this respect the inclusion of such free of charge or less than market value services could be justified as it further regulates in-kind donations. As provided by the Guidelines, *"this type of support should follow the same rules and be subject to the same restrictions as financial donations. For that purpose, the monetary value of in-kind donations should be determined based on market price and should be listed in funding reports."*[155] However, while it may create risks of hidden funding circumventing existing limitations, services voluntarily provided by those who would not normally expect to be paid might be regarded as individual political activity rather than as political contributions, so such distinction should be made. Bearing in mind that the funding is a form of political participation and that it is appropriate for parties/initiative groups to seek private financial contributions, within the prescribed limits, **the applicable rules governing voluntary activities and their evaluation could be more clearly specified in the Draft Law.** A distinction might be drawn between services for which a volunteer would not be paid in the regular course of his or her business and those for which the volunteer would be paid if the service were provided to other clients. [156]

96. In addition, the inclusion of non-monetary donations requires clear mechanisms for their valuation. Determining the commercial or market value of donated goods or services can be subjective, and if not properly regulated, this could lead to potential manipulation or misreporting. An unclear valuation process might allow for inflated values of in-kind donations, thereby circumventing the intent of the national ceiling on contributions**. It is recommended to implement clear, standardized valuation methods for non-monetary donations to ensure transparency and prevent inflated reporting. This would help enforce donation ceilings effectively and safeguard against misuse or manipulation of in-kind contributions.**

97. Proposed amendments to Article 54(d) prohibits donation by a legal person "*who, at the time of making the donation, have outstanding debts to the state budget, the state social insurance budget, or to the mandatory health insurance funds greater than one average monthly salary in the economy."* Such prohibition can prevent undue influence and ensure financial integrity in the political process. However, to ensure effective implementation, it should be clarified how electoral authorities will verify in real time whether a donor has outstanding debts exceeding the set threshold. Without a clear, efficient mechanism for data-sharing between election and relevant authorities, the rule may prove difficult to enforce, potentially leading to unequal application or loopholes. **It is recommended to establish a formal cooperation mechanism between electoral authorities and relevant financial and tax institutions to ensure timely access to up-to-date information on donors' outstanding debts, while ensuring compliance with international and regional personal data protection standards. This would support effective enforcement and promote transparency and fairness in political financing.**

155 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 216.
156 *Ibid*, para. 217. See also ODIHR *Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns*, paras. 71 and 72, and *Opinion on the Act on Political Parties of Poland*, para. 57.

98. Electoral competitors, referendum participants and initiative groups shall not be entitled to use and benefit from property, goods, or services of any kind, offered for a fee, without advance payment (draft Article 54(6)(g)), and in the case of initiative groups, receive financial means into the 'Electoral Fund' account after the completion of the signature collection process (draft Article 54(6)(f)). Prohibiting the goods or services on credit may disproportionately impact smaller or newer political actors who may lack upfront funds but rely on credit arrangements to engage in the political process. Additionally, restricting initiative groups from receiving funds after the signature collection period could hinder their ability to settle legitimate debts or fulfil campaign-related obligations. This is particularly relevant given the proposed new Article 56 (14), which requires prior approval from the Central Electoral Commission (or electoral district council) for cash collection and/or transfer operations into the "Electoral Fund" or "Intended for the initiative group". **Instead, maximum transparency regarding credits (and loans), and their timely payment should be required to ensure the independence of the initiative groups involved in the said transactions.** According to ODIHR-Venice Commission Joint Guidelines on Political Party Regulation, in some states, political parties are required to provide information concerning outstanding loans, the corresponding awarding entity, the amount granted, the interest rate, and the period of repayment.[157]

99. The amendment made to Article 56 (15) is technical and only strengthens the Central Election Commission's (or district) oversight role by ensuring it retains clear authority over the post-election financial closure process, thereby enhancing transparency and accountability in line with international good practices.

2.5. Amendments to the Contravention Code

100. Proposed amendments to the Contravention Code (Law No. 218/2008) introduce a range of new sanctions. The amendment to Article 49 adds "video recording" to the previously prohibited action of "photographing" of a ballot. The aim is to prevent coercion or vote-buying where voters are pressured to document their vote for a specific candidate. It reinforces voter secrecy, as also affirmed by Article 6 of the Election Code, by criminalizing both photo and video evidence of ballots as distinct violations. This represents a positive amendment that strengthens electoral integrity by aligning domestic law with international standards on the secrecy of the vote.[158]

101. A new Article 51[1] is introduced to penalize the collection of signatures in support of a candidate by unauthorized individuals. Individuals are fined between 60 to 90 conventional units, while officials face fines of 90 to 180 units. While this measure is a welcome step toward reducing the potential for fraud and ensuring greater accountability in the electoral process, its practical application remains uncertain. The Election Code stipulates that initiative groups are responsible for collecting signatures but does not clearly define who qualifies as "unauthorized." **This lack of clarity may hinder enforcement and leave room for legal ambiguity.**

102. Article 52 was amended to extend restrictions on the start of electoral campaign. Now, such activities are also banned not only on voting day but throughout the electoral period leading up to the official campaign. This change regulates the official campaign period

157 *Ibid*, para. 260.
158 Paragraph 7.4 of the *1990 OSCE Copenhagen Document*, calls for votes to be cast by secret ballot or equivalent free voting procedures, and Article 21(3) of the *Universal Declaration of Human Rights*, which guarantees that genuine elections be held by secret vote reflecting the will of the people.

as well as aims to uphold the principle of equal campaign opportunities and subsequently equitable reporting of campaign expenditures, which is positive.

103. The amendment also prohibits campaigning by non-commercial organizations, unions, religious representatives, and unregistered entities, even inside places of worship. Penalties are scaled as follows: individuals (100–200 units), officials (200–400 units), and legal entities (500–800 units). The Constitutional Court of Moldova has flagged repeated electoral violations by religious groups, including campaigning for candidates. In its 2024 decision, the Court reminded Parliament that the Constitution mandates a clear separation between church and state and called for enforcement to prevent religious interference in elections. This provision appears to aim at preventing indirect campaigning and the undue influence of powerful societal actors, including religious institutions and organized groups, thereby reinforcing the principle of a level playing field in elections. However, the breadth of the restriction raises concerns from the perspective of fundamental rights, particularly freedoms of expression, association, and religion or belief. According to the Guidelines, limitations on campaign activities must be narrowly tailored, clearly defined in law, and necessary in a democratic society.[159] **A blanket ban on participation from these groups, especially without detailed definitions or exceptions, risks being overly broad and may inadvertently stifle legitimate political discourse and civic engagement.**

104. Two new paragraphs are proposed to be added to Article 67. The first penalizes the organization of public meetings and events that violate the conditions of prior official declarations, with fines between 30 and 60 conventional units. The second targets the transport of participants to political meetings without proper notification, with heavy fines for individuals (120–300 conventional units) and legal entities (350–500 conventional units), along with the potential suspension of the organizer's right to carry out certain activities for up to a year.

105. At the outset, it should be emphasized that any notification requirement for an assembly constitutes a *de facto* interference with the right to freedom of peaceful assembly. As such, it must be prescribed by law, pursue a legitimate aim, and be necessary, proportionate, and non-discriminatory.[160] Furthermore, imposing a notification requirement may effectively eliminate the possibility of spontaneous assemblies. As recommended in the Guidelines on Freedom of Peaceful Assembly, *"spontaneous assemblies should, by their very nature, be exempted from any notification requirements."*[161] Similarly, the UN Human Rights Committee has stated that *"[n]otification must not be required for spontaneous assemblies for which there is not enough time to provide notice."*[162] **It is therefore recommended to revise the relevant provision to explicitly allow for spontaneous gatherings without the need for prior notification.**

106. In line with the intention to strengthen the integrity of the electoral process, the prohibition of transportation of participants to political meetings without notice is a crucial measure. However, it is important to consider exceptions that would accommodate persons with disabilities, ensuring that such measures do not inadvertently

159 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras. 44-45, 92.
160 See *Guidelines on Freedom of Peaceful Assembly*, para. 25.
161 *Ibid.*, para. 114. The *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/20/27, 21 May 2012, para. 91 recommends that, *"[s]pontaneous assemblies should be recognized in law, and exempted from prior notification."*
162 See UN HRC, *General Comment No. 37 (2020)* on the right of peaceful assembly (article 21), para. 72.

exclude or hinder their participation in the electoral process.[163] **It is recommended to make such adjustment.**

2.6. Criminal Sanctions

107. The amendments to the Criminal Code No. 985 introduce stricter penalties for "electoral corruption" and related offenses committed within organized criminal groups or criminal organizations. Specifically, Article 181 would be modified by adding the word "Promissory" at the beginning of paragraph (1) and supplementing it with paragraph (12). This new paragraph establishes that acts of "electoral corruption" committed in the context of an organized criminal group or criminal organization are punishable by a fine between 1,350 and 1,850 conventional units, or imprisonment for 4 to 7 years. Legal entities involved will face fines from 9,000 to 11,000 conventional units, with potential activity restrictions for up to 5 years or liquidation of the legal entity. Additionally, Article 182 is amended by adding paragraph (3), which states that acts of "electoral corruption" (offering or giving money, goods, services, or other benefits to determine voters or supporters to exercise or not exercise their electoral rights, including in regional elections) committed in the context of organized criminal groups or criminal organizations are punishable by fines from 1,150 to 1,850 conventional units, imprisonment from 3 to 7 years, and legal entities will face fines from 7,000 to 9,000 conventional units with potential activity restrictions or liquidation for up to 5 years.

108. In accordance with international human rights standards, any criminal offence should such a criminal offence exist, must comply with the principles of legal certainty, foreseeability and specificity of criminal law.[164] Penalties must be commensurate with the gravity of the crime committed, be proportionate and effective. As also provided by the EU approach to Criminal Law *"whereas in view of its being able by its very nature to restrict certain human rights and fundamental freedoms of suspected, accused or convicted persons, in addition to the possible stigmatising effect of criminal investigations, and taking into account that excessive use of criminal legislation leads to a decline in efficiency, criminal law must be applied as a measure of last resort (ultima ratio) addressing clearly defined and delimited conduct, which cannot be addressed effectively by less severe measures and which causes significant damage to society or individuals…"*[165]

109. The contemplated sanctions appear to be generally proportionate, considering the severity of vote buying and its potential impact on the integrity of the electoral process. The introduction of higher fines and longer prison sentences for offenses committed within organized criminal groups or criminal organizations may be justified to reflect the seriousness of such crimes. However, the proportionality of the sanctions would ultimately depend on how they are applied in practice and whether they result in a deterrent effect that meets the objectives of preventing electoral manipulation. Overly broad or ill-defined definitions of criminal offences may facilitate arbitrary application of criminal law and procedures, which, along with disproportionate sanctions, may have undue consequences for the enjoyment of rights.

163 See Articles 1, 12 and 29 of the *CRPD*. See also Paragraph 9.4 of the *2013 CRPD Committee's Communication No. 4/2011*.
164 See ECtHR, *Rohlena v. the Czech Republic*, no. 59552, 27 January 2015, paras. 78-79; and CCPR, *General Comment No. 29* on States of Emergency (Article 4 of the ICCPR), CCPR/C/21/Rev.1/Add. 11 (2001), para 7.
165 See European Parliament, Resolution of 22 May 2012 on an *EU approach to criminal law* (2010/2310(INI)), European Parliament, P7_TA(2012)0208, Point I.

110. In addition, the imposition of fines on legal entities is appropriate as it holds both individuals and corporate entities accountable for their involvement in corrupt practices. However, the liquidation of a legal entity might seem disproportionate if the crime is committed by a single individual, as it could unfairly impact the entire organization. **In this respect, careful consideration is necessary to establish a direct link between the organization itself and the criminal act.**[166] **This would ensure that the punishment is aligned with the level of responsibility the organization bears.**

111. The amendments to the Criminal Procedure Code focus on expediting the judicial process for cases related to "electoral corruption", including crimes committed under Articles 181, 181[1], and 182 of the Criminal Code, and improving overall trial efficiency. According to revised Article 20, investigations for such cases must be completed as soon as possible but not later than 4 months, with trials at the first instance to be concluded within 3 months and appeals within 2 months. Additionally, decisions regarding the connection of cases and civil liability recognition can now be separately appealed. **The specified timeframe is a positive step, ensuring timely adjudication and minimizing delays in the judicial process. For clarity, unless it is a translation error, the adjudication times for each instance should total the overall time for the entire process.**

112. Proposed amendments to Article 322 and 351 also aim to ensure that there are no delays in adjudicating of the case. Trials involving multiple lawyers cannot be delayed if at least one lawyer is present, and absences must be justified within 3 days (previously 5 days). Furthermore, first hearings in these cases must occur within 20 days of case distribution, with consecutive scheduling of hearings and continuous examination, prioritizing these cases over others. While these reforms aim for timely resolution and enhance efficiency, they must be balanced with the need to uphold fair trial standards as outlined in international instruments, ensuring that defendants have adequate time and opportunity to prepare their defense, access legal counsel, and present their case in a manner that respects their fundamental rights.[167] More specifically, while the amendments aim to expedite trials by requiring hearings within 20 days and limiting delays due to lawyer absences, it is crucial that defendants are given adequate time to prepare their defense. **The legal drafters should therefore consider extending the proposed deadline of 20 days.**

2.7. Use of Special Investigative Powers

113. The proposed amendment to Article 19 of the Law No. 59/2002 on Special Investigative Activity establishes an additional legal basis for conducting special investigative measures outside of criminal proceedings. Accordingly, when there are suspicions of an imminent threat to national security (in addition to imminent threats of attack against the person, public health, property, public order and security which was already provided for), special investigative measures may be authorized independently of a criminal case.

166 Generally, the emerging approach for addressing corporate liability in international and regional instruments is, beyond the requirement to act *for the benefit of the legal entity*, to have the criminal offence being committed either (i) by a person acting in the name of or on the behalf of the legal entity, or (ii) by a person in a management or supervisory position using his/her authority, or (iii) by directors, officers, employees or agents of the legal entity when the lack of adequate control or supervision by a person in a leading position or the legal entity more generally rendered the commission of the criminal offence possible (lack of due diligence or mechanisms to prevent the commission of crimes). See e.g., *2008 USIP-ICHR-OHCHR-UNODC Model Criminal Code*, p. 72. See also *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (2005), paras. 247-251.

167 See Article 14 of the *ICCPR* and Article 6 of the *ECHR*. Fair trial standards are also relevant to the exercise of the right to an effective remedy (Article 2(3) of the ICCPR and Article 13 of the ECHR. See also *General Comment 32* (2007), para 58; *Czernin v the Czech Republic, HRC Communication 823/1998*, UN Doc CCPR/C/83/D/823/1998 (2005), para 7.5; and *Singarasa v Sri Lanka, HRC Communication 1033/2001, UN Doc CCPR/C/81/D/1033/2001* (2004), para 7.4.

In line with the same regulatory intent, the Draft Law also proposes the repeal of Article 27(3). This change would allow the measures set out in Article 27(1), to be ordered and carried out in a broader range of situations, provided they are proportionate and pursue a legitimate aim. The Explanatory Note argues that the National Security Strategy, approved by Parliament Decision No. 391/2023, identified multiple threats to national security. Therefore, the proposed amendment would also apply to cases of "electoral corruption" falling within this context.

114. According to Article 27, the special investigative measures include communication interception, computer data access, postal surveillance, financial tracking, and undercover operations, each requiring different levels of authorization depending on their intrusiveness. The use of such measures must comply with the right to privacy under Article 17 of the ICCPR and Article 8 of the ECHR. The ECtHR has established minimum safeguards to prevent abuse, requiring that statutory laws clearly define when and how such measures may be used.[168] At the same time, the ECtHR also emphasized that *"[i]n view of the risk of abuse intrinsic to any system of secret surveillance, such measures must be based on a law that is particularly precise" and that "[i]t is essential to have clear, detailed rules on the subject."*[169] These include specifying the types of offenses that justify surveillance, identifying who may be targeted, setting time limits, regulating data handling and protection procedures, outlining conditions for data sharing, and establishing rules for erasing or destroying intercepted data.[170]

115. While this Urgent Opinion does not analyse these measures in detail, it is important to view them through the lens of their implications when applied under the justification of "national security".[171] The ECtHR has not explicitly defined "national security," but its case law has gradually clarified its legitimate scope. The wording of Article 8 expressly allows interferences in private life in the interests of national security, for the economic well-being of the country, public safety or for the prevention of disorder or crime. However, the fact that the ECHR, by necessity sets out very general grounds does not mean that the national legislator should not attempt to obtain a higher degree of precision and legal certainty. In this respect, *"there must be concrete facts indicating the criminal offence/security-threatening conduct, and the investigators must have "probable cause", "reasonable suspicion" or satisfy some similar test."*[172] It is therefore important that such surveillance activities pursue a legitimate aim and are carried out with due regard to the principles of legality, necessity and proportionality, while being subject to judicial control, and that the state ensures the utmost transparency about the legal basis, scope and modalities of such measures and methods.[173] **It is recommended that the law clearly stipulates that surveillance must be based on concrete evidence, pursue a legitimate aim, and comply with principles of legality, necessity, and proportionality, with judicial oversight and full transparency.**

168 See ECtHR, *Klass and Others v. Germany* (Application no. 5029/71, judgment of 1978), para. 48.
169 See ECtHR, *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (Application no. 62540/00, judgment 28 June 2007), par 75. See also *ODIHR Opinion on the Draft Concept on the Reform of the Security Service of Ukraine*, para. 57.
170 See ECtHR, *Weber and Saravia v. Germany* (Application no. 54934/00, decision of 29 June 2006), para. 95; and *Zakharov v. Russia* [GC] (Application no. 47143/06, judgment of 3 December 2015), para. 231. See also *UN Special Rapporteur on the protection and promotion of human rights while countering terrorism* (UN SRCT), *Compilation of Good Practices on Legal and Institutional Frameworks and Measures that Ensure Respect for Human Rights by Intelligence Agencies while Countering Terrorism, including on their Oversight* (2010), Practice 21.
171 See *the Rule of Law checklist*, II.F.2; and the following item under the European Court of Human Rights' Knowledge sharing platform – and its content: *Surveillance measures*.
172 See *Venice Commission Report on the Democratic Oversight of Signals Intelligence Agencies*, para. 38.
173 See UN Special Rapporteur on freedom of opinion and expression, *2013 Report*, pars 91-92, which notes how important it is for States to be transparent about the use and scope of communications surveillance techniques and powers, particularly in relation to internet service providers. See also op. cit. footnote 5, Principle 10.E (2013 Tshwane Principles).

3. PROCEDURE FOR ADOPTING THE DRAFT LAW

116. The importance of open, transparent and inclusive lawmaking process throughout the development and adoption of the Draft Law should be highlighted. In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure.[174] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*".[175] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages[176].

117. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case all political parties as well as civil society organizations. Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft legislation throughout the legislative process.[177] Interlocutors met during the visit expressed concern that greater efforts should have been made to ensure a more inclusive process, including the timely dissemination of the Draft Amendments.

118. In light of the above, **the public authorities are encouraged to ensure that any amendments to the Draft Law and electoral legal framework in general are preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate**. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before Parliament. As a principle, accelerated legislative procedure should not be used to pass such types of legislation. As an important element of good lawmaking, a consistent monitoring and evaluation system on the implementation of legislation should also be put in place that would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[178]

119. Moreover, ODIHR and Venice Commission have consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and 3) the political commitment to fully implement such legislation in good

174 See *1990 OSCE Copenhagen Document*, para. 5.8.
175 See *1991 OSCE Moscow Document*, para. 18.1.
176 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also *Venice Commission, Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.
177 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), paras. 169-170.
178 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).

faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.[179]

120. Lastly, the Draft Law at times uses gender neutral terminology when referencing a person as *"persoană"*. However in other instances, it does not reflect gender-inclusive forms, by instead using both masculine and feminine ("*membri și membre*" or "*candidați și candidate*"), and instead relies predominantly on masculine defaults ("*membru"*, "*președinte"*, *"vicepreședinte"*, *"candidat")* which is inconsistent with established international good practice.[180] **It is recommended that, whenever possible, the reference to post-holders or certain categories of individuals be adapted to use a gender-neutral word, whenever possible. Alternatively, the plural form of the respective noun could be used instead of the singular ("they").**

[END OF TEXT]

179 See for example ODIHR and Venice Commission *Joint Opinion* on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional , para. 20.

180 See, among others, ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 133; *Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective* (2020), paras. 105-107. See also See *UN Guidelines for Gender-Inclusive Language* in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context; and *UN Disability-Inclusive Communications Guidelines*, March 2022.