



**Organization for Security and Co-operation in Europe  
Office for Democratic Institutions and Human Rights**

**Information Submitted to the  
Office of the United Nations High Commissioner for Human  
Rights  
as a Stakeholder in the  
Universal Periodic Review of the Republic of Moldova**

**Warsaw, 15 July 2021**



## **OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process**

**Participating State:** Republic of Moldova (Moldova)

**UPR Working Group Session and Date of Review:** 40<sup>th</sup> Session, January/February

### **Background**

1. Moldova has been a participating State in the Organization for Security and Co-operation in Europe (OSCE) since 1992 and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.<sup>1</sup>
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Moldova, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, rule of law, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE-Area.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Moldova and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Moldova.

### **Legislation reviewed by ODIHR**

4. Upon request by authorities of an OSCE participating State, an OSCE field operation or another OSCE institution, the OSCE/ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards.<sup>2</sup> In 2016-2021, the following legal opinions (on topics other than elections) that contain relevant recommendations were issued on legislation or draft legislation of Moldova:

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<sup>1</sup> OSCE Office for Democratic Institutions and Human Rights, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, <http://www.osce.org/odihr/elections/76894> and *Compendium of OSCE Human Dimension Commitments: Volume 2, Chronological Compilation (third edition)*, 2011, <http://www.osce.org/odihr/76895>; OSCE Summit Meeting, Astana 2010, *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010, <http://www.osce.org/cio/74985?download=true>

<sup>2</sup> The legal reviews and opinions, often produced in co-operation with the Council of Europe’s Commission for Democracy through Law (Venice Commission), are available at [www.legislationline.org](http://www.legislationline.org). Basic information about the constitutional system and human dimension-related legislation of Hungary is also available in English on [www.legislationline.org](http://www.legislationline.org).

*Opinion on the Law on Countering Extremist Activity of the Republic of Moldova*<sup>3</sup>

5. This Opinion on the Law on Countering Extremist Activity of the Republic of Moldova (the Opinion and Law respectively) was requested by the Ministry of Justice of Moldova on 30 October 2018 to assess the compatibility of the Law on Countering Extremist Activity with international human rights standards. The law dates from 2003 and was last amended in 2016.<sup>4</sup>
  
6. The OSCE/ODIHR Opinion recommended:
  - to repeal or substantially revise broad and imprecise definitions, such as “extremism”, “extremist activity”, “extremist organizations” or “extremist materials”, as this could lead to arbitrary application of the law;
  - to revise provision (article 6 (1)) on banning of an organisation for behaviours constituting a so-called “extremist activity” and to ensure that a suspension or ban of an organization is a means of last resort that may only be imposed in case of activities that constitute criminal offences. Such criminal offences must be defined in compliance with international standards; and
  - to repeal or substantially revise the provision (article 7) establishing criminal liability for media publishing “extremist material”, as well as the provisions (articles 10 (6) and 12 (3)) that can extend criminal liability to a wide range of persons for “extremist” activities; this can have a chilling effect on participation in associations and may interfere with the enjoyment of the freedom of association and expression by individuals or civil society organizations. The vague definitions on what constitutes “extremism” in the law can hamper the dissemination of information to the public, and are consequently incompatible with article 10 of the European Convention on Human Rights (ECHR).<sup>5</sup>

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<sup>3</sup> OSCE/ODIHR Opinion on the Law on Countering Extremist Activity of the Republic of Moldova, 30 December 2019

<sup>4</sup> For relevant OSCE Commitments and Guidelines see also: OSCE, Permanent Council Decision No. 1063 and See e.g., ODIHR, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters within a Human Rights Framework, September 2018, pp. 21 and 31; and OSCE, Preventing Terrorism and Countering Violent extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach (2014), Sub-Section 2.3.1.

<sup>5</sup> See for example the European Court of Human Rights *Jersild v. Denmark* [GC] (Application no. 15890/89, judgment of 23 September 1994), pars 35-37, where Denmark was found to have breached Article 10 ECHR for prosecuting a journalist for “aiding and abetting” an extremist organization, simply for conducting an interview with the organization,. See also European Court of Human Rights *Cumpana and Mazare v. Romania* [GC] (Application no. 33348/96, judgment of 17 December 2004).

*Interim Opinion on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Offices of the Republic of Moldova (as of September 2019)*<sup>6</sup>

7. The Interim Opinion on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Offices of the Republic of Moldova (as of September 2019) (the "Draft Law") was requested by the Minister of Justice of Moldova on 18 September 2019 and on 3 October 2019 following amendments to the Draft Law, with particular focus on the extra-judiciary mechanism for evaluating key judges' and prosecutors' positions and amendments concerning the Superior Council of Magistracy).
8. While acknowledging that every state has the right to reform its judicial system, and extraordinary measures may be necessary and justified on an exceptional basis, for instance to remedy an extremely high level of corruption and incompetence among judges, or where there had been considerable political influence on judicial appointments in previous periods, it is important:
  - to ensure that the judicial reform process does not undermine the independence of the judiciary and be in compliance with applicable international rule of law and human rights standards and OSCE commitments, especially when it concerns an extensive change of the competence and composition of the highest judicial authority and the careers of key judicial and prosecutorial office-holders;
  - to ensure that the reform is based on a proper comprehensive impact assessment to identify structural deficiencies in the existing judicial system, and evaluate legislative options before suggesting such an extreme measure as re-evaluation. Reform processes should be conducted according to clear and objective criteria and by entities having all the characteristics of an impartial and independent tribunal; and
  - to consider using ordinary mechanisms and procedures of judicial accountability as the starting point, except if it is demonstrated that they are themselves so compromised that they cannot play their role.

*Joint Opinion on the Legal Framework of the Republic of Moldova Governing the Funding of Political Parties and Electoral Campaigns*<sup>7</sup>

9. On 14 September 2017, Mr. Cesar Florin Preda, Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly, requested an Opinion of the Council of Europe's European Commission for Democracy through Law ("Venice Commission") on the legal framework governing the funding of political parties and campaigns, as well as the recent amendments to the electoral legislation of the Republic of Moldova. On 15 September 2017, the Secretary of the Venice Commission confirmed the Venice Commission's readiness to carry out such an assessment and proposed, as a first step, that the Venice Commission jointly with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) prepare the Opinion.

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<sup>6</sup> Interim Opinion on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Offices of the Republic of Moldova (as of September 2019), 16 October 2019

<sup>7</sup> Joint Opinion on the Legal Framework of the Republic of Moldova Governing the Funding of Political Parties and Electoral Campaigns, 11 December 2017

10. The following main recommendations were presented:

- to significantly enhance supervision and enforcement of the rules on party and campaign financing. The Central Election Commission, or other assigned body, should be given sufficient resources for financial auditing, to initiate investigations of possible irregularities, and for co-ordination with law enforcement bodies; and
- to clarify in the legislation whether administrative or criminal sanctions for infringements of party and campaign financing rules may also be issued towards legal entities (i.e. the parties themselves, not only individual members or leaders).

### **Election-related activities**

11. Most recently, not including the current observation of the 11 July 2021 early parliamentary elections, ODIHR deployed a Limited Election Observation Mission (LEOM) for the 1 and 15 November 2020 presidential election.
12. For the 11 July 2021 early parliamentary elections, following an official invitation from the authorities of Moldova, and in accordance with its mandate, ODIHR has deployed an Election Observation Mission (EOM). They will also assess how prior ODIHR election related recommendations have been considered.

#### *Presidential election, 1 and 15 November 2020*

13. Following an invitation from the authorities of the Republic of Moldova and based on the recommendation of a Needs Assessment Mission (NAM) conducted from 17 to 21 August 2020, ODIHR deployed an Election Observation Mission for the 1 November 2020 presidential election. However, due to the extraordinary circumstances caused by the COVID-19 pandemic and the resulting travel restrictions throughout the OSCE region, ODIHR decided to change the format of the deployed observation activity to a Limited Election Observation Mission (LEOM). The electoral process was assessed for compliance with OSCE commitments, other international obligations and standards for democratic elections, and with national legislation.
14. The Statement of Preliminary Findings and Conclusions issued on 2 November concluded that “the presidential election was organized professionally, despite challenges posed by the COVID-19 pandemic and legislative gaps that undermined the effectiveness of the campaign finance oversight and election-dispute resolution. In a competitive campaign, voters had distinct political alternatives to choose from, although allegations of vote-buying persisted throughout the process. While political polarization and control of media remain of concern, contestants were covered mostly in a balanced manner which helped voters to make an informed choice. On election day, allegations over organized transportation of voters led to road-blockages and tensions which interfered with the voters’ freedom of movement and access to polling stations. In the limited number of polling stations observed, procedures were generally followed, but inadequate voting premises at times led to overcrowding.”
15. As none of the candidates achieved the required number of votes to be elected in the first round, the second round was held on 15 November 2020 between Maia Sandu and the

incumbent president Igor Dodon. The Statement of Preliminary Findings and Conclusions issued on 16 November 2020 concluded that “voters had a choice between political alternatives and the fundamental freedoms of assembly and expression continued to be respected. However, negative and divisive campaigning and polarizing media coverage marred the campaign environment and degraded the quality of information available to voters. Claims of financial irregularities were left without an adequate response, reiterating the lack of effective campaign finance oversight. In the limited number of polling stations visited, the process was orderly and procedures were largely followed despite queues and occasional overcrowding. Timely information on the voting and its results was provided by the election administration, enhancing transparency of the process.”<sup>8</sup>

16. In its Final Report on the 1 and 15 November 2020 presidential election ODIHR, within its mandate, made these priority recommendations:<sup>9</sup>

- to consider a comprehensive review of the electoral legal framework to eliminate remaining gaps and inconsistencies and ambiguities, and to address ODIHR and Council of Europe recommendations;
- to revise the electoral law to address the issue of organized transportation of voters in connection with vote-buying while duly safeguarding the freedom of movement;
- to clarify in the law provisions on preventing the misuse of administrative resources, including on ensuring neutrality of the civil service, participation of officials in campaigns, and safeguarding public-sector employees from any undue influence, and ensure the rules are enforced. to further strengthen and regulate the legal framework for campaign financing on candidates’ own contributions and the limits of donations from political parties, valuation of in-kind contributions and the involvement of third-parties in the election campaigns;
- to simplify the regulations related to eligibility for donations by individuals to protect political pluralism;
- to revise the framework for campaign finance oversight to provide for an effective mechanism of monitoring incomes and expenditures and verifying the completeness and accuracy of reporting. The CEC should be equipped with adequate resources and capacities including rules and procedures for meaningful oversight;
- to harmonize the relevant provisions of the Election and the Administrative Codes to provide for clear avenues and appropriate deadlines for timely resolution of all election-related disputes by the election administration and courts;
- to ensure adequate protection of voters’ personal data throughout the whole electoral period and ensure that voters are able to cast their votes free of any undue influence; and
- to ensure secrecy of the vote by allocating adequate premises for polling stations which meet the established minimum standards.

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<sup>8</sup> The full ODIHR LEOM Final report on 1 and 15 November 2020 presidential election is available at: <https://www.osce.org/files/f/documents/1/5/479972.pdf>

<sup>9</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.

*Electoral Follow-up in the Republic of Moldova*

17. Final reports include recommendations and as such are treated as a central element of any follow-up process. In view of the above-mentioned, ODIHR was planning to undertake a visit to Chisinau to present the final report of the ODIHR Limited Election Observation Mission (LEOM) for the 1 and 15 November presidential election. The purpose of the visit was to discuss the findings and recommendations offered in the ODIHR LEOM final report, to identify areas for further co-operation, and to determine specific steps that can be undertaken by various stakeholders to bring election-related legislation and practices in closer conformity with OSCE commitments. The follow-up visit, however, was suspended due to the deployment of the ODIHR EOM for the 11 July early parliamentary elections.