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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

The functioning of democratic institutions in Moldova: follow-up to Resolution 1666 (2009)

Information note by the co-rapporteurs on their fact-finding visit to Chisinau (10 June 2009)¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 22 June 2009.

I. Introduction

1. In accordance with Resolution 1666 (2009) on the functioning of democratic institutions in Moldova, we went to Chisinau on 10 June 2009 to obtain information about recent political developments and the implementation of the resolution. During our visit we met representatives of the Moldovan Communist Party and of the parliamentary opposition parties, the Liberal Party, the Liberal Democratic Party and the "Moldova Nostra" Alliance. We also spoke to the representatives of non-parliamentary parties who are still members of the Moldovan parliamentary delegation to the Assembly and will be so until such time as a new delegation has been appointed, namely Mr Vlad Cubreacov and Mr Dimitru Diacov, and to the outgoing Speaker of the Parliament, Mr Marian Lupu. Lastly, we talked to the Prosecutor General during an unscheduled visit to Chisinau Prison No. 13, during which we visited, in their cells, two of the seven people who were arrested after the events on 7 and 8 April and were still in prison at the time of our visit, Mr Stati and Mr Marinescu.

2. In addition to the official meetings, we talked to representatives of the human rights organisations that closely monitored events after the elections, and to accredited representatives of the diplomatic and international community in Chisinau. In particular we had meetings with the Head of the OSCE Mission in Moldova and with senior officials of the Office of the EU Special Representative and the Embassy of Lithuania.

3. Unfortunately, we did not have an opportunity to meet the outgoing President of the Republic, Mr Voronin, who cancelled our meeting on the very day we arrived in Chisinau. We regret that the meeting did not take place.

4. We should like to thank the Moldovan parliamentary delegation to the Assembly for the good organisation of the visit, which took place at a particularly troubled and politically important time for the country, since Parliament was sitting on the very day of our visit to appoint a new Prime Minister. We also thank the Special Representative of the Secretary General of the Council of Europe, Mr Ristovski, and his team for their help with organising some of the meetings that were held in the margins of the official programme.

5. This note contains factual information given to us during and immediately after the visit and a few observations on the preliminary conclusions from our visit. We shall deal with the implementation of Resolution 1666 (2009) at greater length in a subsequent report, which we are going to prepare after the new parliamentary elections scheduled for 29 July 2009.

II. Main political developments since the adoption of Resolution 1666 (2009)

6. Once the election results had been certified by the Constitutional Court on 22 April 2009, Parliament was lawfully constituted and met for a first sitting on 12 May to elect the Speaker of the Parliament. The current President of the Republic, Mr Voronin, was elected to this post. Until Parliament was dissolved, on 16 June 2009, Mr Voronin therefore held both offices at the same time. Does Moldovan legislation allow the office of President of the Republic to be combined with parliamentary office? The opposition parties sent a letter to the Constitutional Court asking it to rule on the matter. The Constitutional Court did not take a stand, on the grounds that the formal procedure had not been complied with.

7. The first round of the election of the President of the Republic was scheduled for 20 May. Two candidates were put forward by the Moldovan Communist Party: Ms Zinaida Grecean, outgoing Prime Minister, and Mr Stanislav Groppa, a well-known neurosurgeon. The election did not produce a result because Ms Grecean received only 60 votes, whereas the majority needed to be elected is 61 votes. The members of the opposition parties did not take part in the vote. The second round of the election was to have taken place on 28 May, but was postponed till 3 June, officially because of the Ascension holiday. Again, there were two candidates standing for election: Ms Zinaida Grecean, outgoing Prime Minister, and Mr Andrei Neguta, Ambassador of the Republic of Moldova to Russia, both put forward by the Moldovan Communist Party. Again, at the close of the vote, neither candidate had obtained the required majority of 61 votes as the opposition did not take part in the vote. The President then declared that "the requisite conditions for the dissolution of Parliament [had] been met". He specified, however, that he did not intend to dissolve Parliament until a new Government had been appointed. This government would run the day-to-day affairs of the country until a new Parliament had been formed. It would take a number of emergency measures to deal with the situation, by decree, under a law authorising it to do so.

8. The new Government, with Ms Zinaida Grecean as Prime Minister, was appointed on 10 June, the very day of our visit to Chisinau. The Government is on the whole the same as before. On 16 June 2009, however, the President of the Republic, Mr Voronin, appointed Mr Iurie Rosca, former Deputy Speaker of

Parliament and leader of the Popular Christian Democratic Party, to the post of Deputy Prime Minister. Mr Rosca's responsibilities extend to what are called the "Ministries of force": he will, in the new Government, supervise the actions of the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice, the Centre for combating Economic Crime and Corruption, Customs and the Border Police.

9. After the law providing the necessary authorisation had been passed and amendments to the Electoral Code had been adopted on 15 June 2009 (see below), Parliament was dissolved by the President of the Republic on 16 June. The decree dissolving it came into force on the day of its adoption, and parliamentary elections were scheduled for 29 July 2009.

10. The resignation of Mr Lupu from the Moldovan Communist Party on 10 June 2009 was another significant political event of the post-electoral period. Mr Diacov, leader of the Democratic Party, then suggested that Mr Lupu take over from him as leader of the party. The Democratic Party is shortly to hold an extraordinary party conference to elect Mr Lupu as its leader. Moreover, Mr Lupu will be at the top of the Democratic Party list in the next parliamentary elections.

III. Preparation of the elections on 29 July 2009: adoption of amendments to the Electoral Code

11. During our visit to Chisinau, we were informed that three proposals for amendments to the Electoral Code were being discussed. The first, prepared by the Central Election Commission, was designed to harmonise the various election campaign time limits, introducing an obligation to hold elections within 45 days of the dissolution of Parliament. Accordingly, the campaign will last less than the regular 60 days provided for in the Electoral Code. The second proposal, drawn up by the members of the Moldovan Communist Party, was also designed to harmonise time limits, but provided in addition for a lowering of the election threshold from 6 to 5 % and a reduction of the turnout threshold from 50% plus one vote to 33% plus one vote. The third proposal, prepared by the opposition parties, was designed to bring about a more comprehensive review of the Electoral Code in order to respond to all the concerns expressed by the Venice Commission and the OSCE/ODIHR on the occasion of the previous elections. In the end, it was the second proposal (the one prepared by the Moldovan Communist Party) that was chosen and, on 16 June 2009, Parliament adopted amendments to the Electoral Code. On the occasion of the elections on 29 July 2009, the election threshold will therefore be 5% and the turnout threshold will be reduced to 33 % of the electorate plus one vote.

12. As a rule, and in accordance with the Venice Commission's Code of Good Practice in Electoral Matters, we are not in favour of making changes to the legislation shortly before elections, particularly in the case of an early election. However, the above-mentioned changes, adopted on 16 June by 59 votes out of 101 - the opposition did not take part in the vote - are a step in the right direction and are in keeping with the recommendations of the Venice Commission and the Assembly (Resolution 1666 (2009)). We therefore call on the authorities to apply these positive changes scrupulously in order to give the various political forces a greater chance of being represented in Parliament, and thus foster democratic pluralism.

13. Moreover, we consider that there is a need to establish a climate conducive to the free expression of the will of the Moldovan people on the occasion of the new ballot, in order to avoid a repeat of the post-electoral incidents. In this respect, we specified in our statement to the press on 17 June that two issues were crucial to the satisfactory organisation of elections:

- voters' registers: these had been contested because they were not up to date when the election took place on 5 April: some voters were added to supplementary registers, which were open to contestation, and were indeed contested, by election observers. It is necessary, as a priority, to make all the necessary changes before the new ballot takes place.

- voting by Moldovan electors living abroad: according to official information, there are over 500,000 Moldovans living abroad. Other sources suggest that the figure could in fact be appreciably higher. We regret that the question of voting arrangements for these citizens has not been settled. We suggested that appropriate measures be taken to provide the electors concerned with effective means of exercising their right to vote.

14. We are well aware that it will be very difficult to solve these two problems permanently before the election on 29 July. This will be the priority of the next Parliament and Government. We consider, however, that a number of practical measures could be taken before election day in order to avoid a repeat of the incidents that marred the elections on 5 April. We call on the competent Moldovan authorities, and in particular the Central Election Commission, to shoulder their responsibilities to the full and ensure that the voters' registers used for the elections on 5 April have been brought up to date and made public so that the necessary checks can be carried out. We would also have preferred the Moldovan authorities to introduce

arrangements enabling electors living abroad to vote without having to travel to polling stations set up in diplomatic offices and consulates, by, for instance, allowing postal voting.

15. We also expressed a keen desire to see the election campaign take place under the best possible conditions, in accordance with European standards, particularly with regard to access to the media. The arrangements for pre-election debates on state television prior to the elections on 5 April do not seem to have had the desired effect: airtime was apportioned in such a way that all the political parties received each two free minutes of airtime on state television, which is clearly inadequate. In addition, the extremely high cost of paid airtime (€450 a minute) considerably restricted the opportunity for the political forces to express themselves fully on television. The principle of selecting speakers by drawing lots does not seem to have had the desired effect either. Political parties should have the opportunity to hold a proper debate with one another in order to put across their ideas, programmes and messages to voters.

16. For our part, we shall carefully observe the election on 29 July 2009. We recommend that the Bureau of the Assembly arrange for a strong presence of the Assembly in the field on election day.

IV. Implementation of Resolution 1666 (2009) on the functioning of democratic institutions in Moldova

17. We broached this question at all our official meetings and when we met representatives of human rights organisations. Admittedly, recent political events, the failure of the presidential election and the dissolution of Parliament have meant that the authorities have not had the opportunity to take specific measures to comply with all the concrete recommendations issued by the Assembly in its Resolution 1666 (2009). We consider, however, that a number of measures could still have been taken to address the Assembly's concerns as regards human rights. We shall, in this information note, make a few preliminary observations on the implementation of the Assembly's priority recommendations, as set out in paragraph 10 of Resolution 1666 (2009). We reserve the right to make more detailed observations on progress with the implementation of Resolution 1666 (2009) in a later report, which we shall prepare after the elections on 29 July 2009.

18. As regards recognition of *the legal force of the decision of the Constitutional Court* confirming the results of the elections of 5 April (paragraph 10.1.), we welcome the fact that all the political forces seem to have taken a constructive attitude. The opposition has not boycotted parliamentary sittings, even though it has not actively participated in the proceedings. The opposition parties have lodged several complaints with the Central Election Commission and with the competent courts concerning irregularities in electoral procedure. Under Moldovan law, once the results of the elections have been referred to the Constitutional Court, it is for the latter to examine election-related complaints. Incidentally, the Constitutional Court did not order additional checks in response to complaints lodged, with supporting evidence, by the opposition parties before declaring the election results valid on 22 April. According to the final report by the OSCE/ODIHR Election Observation Mission, this represented a missed opportunity to rebuild the electorate's confidence in the election process. In this connection, we endorse the recommendations in the final report of the OSCE/ODIHR concerning election-related complaints and call on the authorities to establish a clear definition of the respective responsibilities of the Central Election Commission and the courts when it comes to examining complaints in order to avoid overlapping responsibilities and duplication.

19. According to the information at our disposal, no application concerning violations of the right to vote has, to date, been lodged with the European Court of Human Rights.

20. We welcome the fact that, since Resolution 1666 (2009) was adopted, no instances of violence have been reported. In this respect, all the political players seem to be following the Assembly's recommendation and defending their interests by democratic political means (paragraph 10.2.).

21. We are, however, concerned about information sent to us by certain non-governmental organisations, which seem to have been the target of pressure from the authorities and of a negative campaign seeking to designate those specifically responsible for the events on 7 and 8 April. Before any accusation is made, *an independent, transparent and credible inquiry into the post-electoral events* should be carried out (paragraph 10.3.).

22. It would seem that no action has been taken in this last respect to date. As we said in our report on the functioning of democratic institutions in Moldova (Doc. 11878), the President of the Republic, Mr Voronin, appointed a commission on 21 April 2009 to carry out an enquiry into the events on 7 and 8 April. The commission was to comprise several ministers, members of parliament and representatives of the media and civil society. Representatives of the opposition were not invited to participate in the Commission. To our

knowledge, the commission has not yet produced a report. The establishment of this Commission does not appear to respond adequately to the Assembly recommendations, as *an independent, transparent and credible inquiry into the post-electoral events* (10.3) can be carried out only by a body bringing together representatives of all the political forces, whose members have been chosen transparently and on the basis of criteria that are public knowledge. We expect such a body to be set up after the forthcoming parliamentary elections.

23. During our visit we spoke to a group of representatives of human rights organisations and to the Prosecutor General of the Republic of Moldova to discuss the action taken on the Assembly's recommendation that an *"independent investigation into all the ... allegations of human rights violations"* be carried out (paragraphs 7 et 10.3.). According to the information received, all the people who were arrested following the events on 7 and 8 April have now been released, with the exception of seven prisoners who are the subject of criminal investigations. We therefore came to prison n°13 to visit these detainees. During our short visit, we saw Mr Stati and Mr Marinescu who assured us that they had not been ill-treated by the police or by prison officers. Both had indeed had access to legal aid, but they were unable to tell us when exactly they had had the right to talk to a lawyer after being transferred to Moldovan territory (Mr Stati and Mr Marinescu were arrested in Ukraine and subsequently extradited to Moldova). The Prosecutor General informed us that on the very day of our visit, one of the remaining prisoners, Mr Mocanu, had been removed from prison and placed under "house arrest". We have since been informed that two further prisoners have left prison: on 10 June in the evening, Mr Matasaru was placed under "house arrest" and, on 18 June, Mr Stati was also removed from prison and placed under "house arrest". We welcome these positive developments regarding these three prisoners. We are of the opinion, in this connection, that, in accordance with Article 5 of the European Convention on Human Rights and the case law of the Strasbourg Court, the authorities should consider using other provisional measures than imprisonment in the case of the four remaining prisoners, who are subject to criminal investigations and do not represent a real danger to public order. We, however, also note that there is a need for prudence on all sides when formulating what may be hasty accusations, as long as they have not been substantiated.

24. That said, the human rights organisations informed us that they were in the process of setting up a database on possible cases of violence and ill-treatment perpetrated by the police after the events on 7 and 8 April 2009. According to information received, experts from non-governmental organisations interviewed a number of witnesses of violence and ill-treatment. The exact figures on arrests which were made during the events of 7-8 April are not known yet, but, according to the information we are receiving, there would be several hundreds of people who were arrested by the police. According to Amnesty International, Moldovan human rights organisations (in particular, "Memoria", "PromoLex", Institute for Human Rights, "CreDO" and some others) have documented testimonies of some 150 people who have indicated that they were victims of violence and ill-treatment. We were informed that the Prosecutor General's Office has instituted criminal investigations in some 70 cases at the request of victims. We call on the Prosecutor General's Office to take all appropriate measures to investigate all documented cases of violence and ill-treatment perpetrated by the police. For our part, we shall closely monitor developments in this respect.

25. After the failure of the presidential elections and the dissolution of Parliament, it would seem difficult to engage in *an inclusive political dialogue with a wide participation of extra-parliamentary forces and civil society in order to develop [a] vision for the country's future, on the basis of democratic principles and European integration ... subscribed to* (paragraph 10.5.). This is a task that will fall to the Parliament elected following the election on 29 July. On the other hand, we consider that, given the current situation, the new parliamentary elections are consistent with the democratic process and the country's institutions. This is an opportunity to restore voters' confidence and help to implement the Assembly's recommendation that *all the political forces in the country engage in a constructive political dialogue* (paragraph 10.4.). We therefore call on the authorities and the opposition parties to shoulder their political responsibilities to the full during the election campaign and the election itself. We hope that the ballot on 29 July will help consolidate the Moldovan pluralist political system and establish a basis for constructive dialogue involving all the political forces.

26. We also understand that the preparation and adoption of *an Action Plan with concrete measures and deadlines on the implementation of the Assembly recommendations contained in [Resolution 1666 (2009)], as well as commitments taken, as established in Resolution 1572 (2007) on the honouring of obligations and commitments by Moldova* (paragraph 10.6.), is a future task for the new Parliament resulting from the elections on 29 July 2009. We shall return to the implementation of this recommendation in our next report.

V. Preliminary conclusions and recommendations

27. After the failure of the presidential election and the dissolution of Parliament, the Republic of Moldova has embarked on a key political period. New parliamentary elections are to be held on 29 July 2009, in accordance with the new rules of the amended Electoral Code. The amendments to the Electoral Code would appear to be going in the right direction and comply with the recommendations of the Venice Commission, even though they do not address all the concerns of the Assembly and the Council of Europe. In this connection, we recommend that the authorities scrupulously apply these new changes.

28. We also recommend that the various bodies responsible for organising the electoral process, in particular the Central Election Commission, fully shoulder their responsibilities and take appropriate steps to deal with the problems connected with the voters' registers and the participation in the elections of Moldovan citizens resident abroad. It is also necessary to ensure that the campaign takes place under the best possible conditions, in strict accordance with European standards, particularly with regard to access to the media.

29. In order to support Moldovan democracy at this difficult time, we recommend that the Assembly Bureau appoint a strong delegation to observe the election on 29 July 2009.

30. As for the implementation of Resolution 1666 (2009) on the functioning of democratic institutions in Moldova, we consider that the Monitoring Committee should continue to follow developments in this area, particularly after the elections on 29 July, as several important Assembly recommendations set out in the resolution will need to be implemented by the future Parliament and future Government.

31. We nevertheless call on the competent authorities that remain in place during this transition phase, in particular the Prosecutor General's Office, to launch investigations without delay into all the documented cases of violence and ill-treatment. For our part, we shall closely follow the actions of the Prosecutor General's Office in this respect and shall inform the Monitoring Committee of the progress made at a forthcoming meeting.

32. At the same time, we would point out that, in order to comply with the Assembly's request, the authorities must keep the Monitoring Committee informed about the progress of the independent, transparent and credible enquiry into the post-electoral events.

APPENDIX

Programme of the fact-finding visit to Chisinau (10 June 2009)

Mrs Josette DURRIEU, senator
Mr Egidijus VAREIKIS, member of Parliament
Mr Artemy KARPENKO, co-secretary of the Monitoring Committee

Wednesday 10 June 2009

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| 09:30 – 10:15 | Meeting with representatives of extra-parliamentary parties,
Mr Dumitru DIACOV and Mr Vlad CUBREACOV |
| 10:20 – 11:15 | Meeting with representatives of the diplomatic community |
| 11:30 – 12:00 | Meeting with Mr Valeriu GURBULEA, Prosecutor General
Visit to persons detained after the events of 7-8 April in Prison No. 13 |
| 12:45 – 13:30 | Working lunch with Mr Marian LUPU, member of the Parliamentary Committee on
Economic Policy, Budget and Finances |
| 13:45 – 14:30 | Meeting with representatives of parliamentary parties in opposition – Liberal Party,
Liberal Democrat Party and « Moldova Noastră » Alliance |
| 14:45 – 15:15 | Meeting with representatives of the governing party |
| 15:20 – 16:00 | Meeting with non governmental organisations |
| 16:00 – 16:30 | Press conference |