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The functioning of democratic institutions in Moldova: implementation of Resolution 1666 (2009)

Report

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

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Summary

The Monitoring Committee notes that the fresh elections of 29 July 2009 have not resolved the political and institutional deadlock which emerged after the parliamentary elections of 5 April 2009. Although the balance of forces in the Parliament has changed, no party has managed to secure the necessary majority to elect the President of the Republic. Therefore, the Assembly should call upon the new dominant coalition and the opposition to enter into meaningful negotiations on this issue.

The Committee calls upon the Moldovan authorities to continue to work on the implementation of Resolution 1666 (2009), in strict compliance with the recommendations of the Council of Europe Commissioner for Human Rights, resolves to continue following up this issue closely and proposes to report back to the Assembly on the progress made at one of its forthcoming part-sessions.

A. Draft resolution

1. The Parliamentary Assembly, which has been monitoring the democratic development of Moldova since the monitoring procedure in respect of this country began in 1996, and has supported the progressive establishment of its institutions, regretted the post-electoral events of April 2009.
2. Accordingly, in its Resolution 1666 (2009) on the functioning of democratic institutions in Moldova, the Assembly condemned the acts of violence which took place during and after the post-electoral protests, urging the authorities to conduct an independent and thorough investigation of all allegations of violence, as well as to establish an independent and transparent inquiry into the post-electoral events and the circumstances which led to them.
3. The Assembly welcomes the release of all persons who were arrested in connection with the post-electoral events of April 2009. It is closely following the ongoing investigations. At the same time, the Assembly calls upon the competent Moldovan authorities to implement with all due diligence the recommendations of the Council of Europe Commissioner for Human Rights, as well as those contained in its Resolution 1666 (2009). Moreover, in accordance with a well-established practice, the Assembly calls upon the Moldovan authorities to authorise the publication of the report by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the CPT's visit to Moldova on 27-31 July 2009, as soon as it is received.
4. The Assembly notes that, according to the international election observation mission, the fresh parliamentary elections held on 29 July 2009 after the dissolution of the Parliament as a result of the failure to elect a President of the Republic were orderly administered and could be contested by political parties representing a plurality of views. Many of the international commitments were met. However, the campaign environment was still negatively affected by subtle intimidation and bias in media coverage.
5. The Assembly congratulates the Moldovan people for the large participation in the elections and for having expressed their political choice in a democratic manner, and the national authorities for having managed to organise orderly administered elections within a very brief time frame. However, it notes that the main flaws in the electoral process detected by the election observers are identical to those reported in previous elections and, in particular, the parliamentary elections of 5 April 2009. In this respect, the Assembly reiterates its earlier recommendations and calls upon the new Parliament to apply itself most speedily, with the European Commission for Democracy through Law (Venice Commission), to improving the Electoral Code and electoral practice in order to create a sound basis for free and fair elections in future.
6. The Assembly notes that the elections of 29 July 2009 have changed the balance of Moldova's political forces. Yet once again, no political force in the Parliament has the majority required to elect the President of the Republic, as 61 votes have to be mustered. Therefore, the Assembly calls upon the new dominant coalition and the opposition to enter into meaningful negotiations to break the deadlock and bring about the election of the President of the Republic. In accordance with the Constitution, the new President will nominate the candidate for the post of Prime Minister, after consultation with all parliamentary factions.
7. The Assembly believes that, once the new state institutions are put in place, they should work straight away on a far-reaching reform, including constitutional amendments where relevant, in order to establish genuine democratic safeguards against similar institutional and political deadlock situations.
8. The Assembly considers that the implementation of this resolution, Resolution 1666 (2009) and the Assembly's earlier resolutions on the honouring of Moldova's obligations and commitments, should constitute a priority for the new state institutions and invites its Monitoring Committee to monitor closely this matter and to report to it on the progress made at one of its forthcoming part-sessions.

B. Explanatory memorandum by Mrs Durrieu and Mr Vareikis, co-rapporteurs**Table of contents**

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I. Introduction

1. In its Resolution 1666 (2009) on the functioning of democratic institutions in Moldova, the Parliamentary Assembly resolved to continue to give attention to the situation in Moldova and invited its Monitoring Committee to examine the progress achieved by the Moldovan authorities and the opposition with regard to the implementation of Assembly recommendations and to propose any further action to be taken as required by the situation.

2. In order to comply with the Assembly request, we paid a visit to Moldova on 10 June 2009 to study the recent political developments and follow up on the implementation of Resolution 1666 (2009). Our findings and conclusions from that visit were summarised in an information note, which was made public by the decision of the Monitoring Committee on 22 June 2009 (doc. AS/Mon (2009) 25 rev.). This information note is reproduced in Appendix I and we shall refer to it where appropriate in the present report.

3. Moreover, upon our suggestion, the Monitoring Committee decided to hold, on 23 June 2009, an exchange of views with the members of the Moldovan delegation to the Assembly, as well as with the representatives of the parliamentary opposition parties not represented in the delegation. The parliamentary opposition forces – the Liberal Democratic Party of Moldova (LDPM), the Liberal Party (LP) and the “Moldova Nostra” Alliance (AMN) – were represented by Mr Alexander Tanase, Vice President of the LDPM, Ms Corina Fusu, Vice President of LP, and Mr Vyacheslav Untila, Vice President of AMN. Unfortunately, no member of the Moldovan delegation to the Assembly could participate in this exchange of views.

4. At its meeting of 26 June 2009, the Bureau of the Assembly decided to place the item on the functioning of democratic institutions in Moldova and the follow-up to Resolution 1666 (2009) on the agenda of the Assembly’s fourth part-session, as well as approved the composition of the Ad hoc Committee on the observation of snap parliamentary elections of 29 July 2009, led by Mr Çavuşoğlu. We fully subscribe to the findings of the delegation led by Mr Çavuşoğlu. In order to avoid duplication, we shall not make in this report a separate analysis of the conduct of the elections of 29 July. Where appropriate, we will refer to the report of the Ad hoc Committee and to the Statement of the preliminary findings and conclusions of the international election observation mission (IEOM) which observed the elections of 29 July.

5. Against this background, the present report aims at analysing the political consequences of the parliamentary elections of 29 July 2009 and assessing any progress or lack thereof made in the implementation of Assembly Resolution 1666 (2009).

II. Early elections of 29 July 2009 and recent developments

6. In accordance with the Constitution of Moldova, on 16 June 2009, the Parliament was dissolved and early elections were called for 29 July 2009, due to the failure of the Parliament to elect a new President of the Republic after two attempts on 20 May and 3 June. Prior to its dissolution, the Parliament managed to adopt a number of amendments to the Electoral Code. The most important amendments reduced the turnout threshold from 50% plus one vote to 33% plus one vote, for the elections to be considered valid, and lowered the electoral threshold for political parties to access the distribution of seats from 6 to 5%. We welcomed these amendments which go in the right direction and comply with the recommendations of the European

Commission for Democracy through Law (Venice Commission).¹ We regret, however, that the Parliament did not abolish the prohibition of formation of coalitions of political parties to participate in elections. Equally, we regret that the problem of electoral lists and of the voting arrangements for Moldovan citizens residing abroad was not solved. We reiterate, in this respect, our earlier recommendations and expect the new Moldovan Parliament to start quickly consultations with the Venice Commission in order to draft the appropriate amendments.

7. It is also worth mentioning that the provisions of the Electoral Code precluding candidates holding multiple citizenships from taking parliamentary seats, unless they renounce their other citizenship, were not amended. In this respect, we recall our recommendation to “suspend the application of [these] articles of the Electoral Code [...], while awaiting the judgement of the Grand Chamber of the European Court of Human Rights in the *Tanase and Chirtoaca against Moldova* case (application n° 7/08)”².

8. According to the international election observation mission (IEOM), in the which the Assembly’s Ad hoc committee participated, “the 29 July early parliamentary elections in Moldova overall were well administered, allowing for competition of political parties representing a plurality of views. Many of the OSCE and Council of Europe commitments were met. However, the campaign environment was negatively affected by subtle intimidation and bias in media coverage”³. A detailed assessment of the electoral process is contained in the Statement of preliminary findings and conclusions of the IEOM as well as in the report of the Ad hoc Committee. We shall not repeat the key findings of the election observers in this report.

9. We would like to congratulate the Moldovan people for having expressed their political choice in a democratic manner and the Moldovan authorities for having managed to organise an orderly and well administered election within a very short time-frame. That said, we have to stress that the key problems in the electoral process detected by the election observers had already been detected in previous elections. In this respect, we recall the Assembly Resolution 1666 (2009) and reiterate our recommendations concerning the urgent need to improve Moldova’s electoral process as well as strengthen the country’s democratic institutions. The continuation of democratic reforms should restore public trust in the electoral process and the country’s institutions.

10. The parliamentary elections of 29 July have changed the balance of forces on Moldova’s political scene. While the Communist Party of Moldova (CPM) remains the strongest force in the Parliament, holding a relative majority of 48 seats out of the total of 101, the former opposition parties, i.e. the Liberal Democratic Party of Moldova (LDPM), the Liberal Party (LP), the Democratic Party (DP) and the Alliance “Moldova Nostra” (AMN) managed to secure altogether 53 seats. They are distributed as follows: LDPM: 18 seats, LP: 15 seats, DP: 13 seats, AMN: 7 seats. It is worth noting that for the elections of 29 July, Mr Lupu, former Speaker of Parliament, was at the top of the Democratic Party list. Mr Lupu was elected leader of the Democratic Party after having resigned from the Communist Party on 10 June 2009 and accepted Mr Diacov’s proposal that Mr Lupu take over from him the leadership of the Democratic Party. This political force has secured 12,54% of the votes in the elections of 29 July whereas in the April elections it had obtained 2,97% having thus failed to pass the electoral threshold and enter Parliament. Mr Lupu’s move from the Communist Party to the Democratic Party has thus played an essential role in the setting up of the new political landscape.

11. On 8 August 2009, the former opposition parties established a coalition called “Alliance for European Integration” (AEI). With 53 seats, AEI had a sufficient majority to elect the Speaker of the new Parliament (i.e. 52 votes). However, neither the new Alliance nor the Communist Party have the necessary majority to elect the President of the Republic (3/5 of the members of Parliament, i.e. 61 votes).

12. The mandates of the newly elected MPs were validated by the Constitutional Court on 14 August 2009.

13. The leaders of the AEI declared their readiness for a dialogue with the CPM over the election of the President of the Republic. The CPM representatives also emphasised the need for dialogue to avoid a repeat of the institutional and political crisis which had triggered the dissolution of the Parliament elected on 5 April. However, in actual fact, when the AEI invited the CPM to hold consultations on 25 August 2009, the Central Committee of the CPM decided to initiate separate negotiations with each political group, so as to arrive at a broad centre left majority, and turned down the AEI’s proposal. The parties belonging to the AEI in

¹ See our statement of 17 June 2009

² See paragraph 8.2. of Resolution 1666 (2009)

³ Statement of preliminary findings and conclusions. IEOM, Chisinau, 30 July 2009

turn unanimously rejected the CPM's offer. To the best of our knowledge, no meeting between the parties of the new majority and the opposition took place before the first sitting of Parliament.

14. Parliament held its first sitting on 28 August 2009, presided over by the oldest member present, Mr Ivan Calin, a Communist Party MP. Following the opening speeches, the CPM MPs asked the presiding member to suspend the sitting until 4 September, to enable the newly elected MPs to hold consultations on the formation of parliamentary groups. The representatives of the Liberal Party, the Liberal Democratic Party, the Democratic Party and the Alliance "Moldova Nostra" protested, pointing out that their groups were already formed and there was no need for additional consultations. The presiding member then suspended the sitting and the CPM MPs left the debating chamber. The sitting nonetheless resumed immediately, presided over by Mr Ion Hadarca, a Liberal Party MP, since he had become the oldest member present following the departure of the CPM MPs. The Alliance for European Integration subsequently officially proposed Mr Mihai Ghimpu as a candidate for election to the office of Speaker. A vote was held, and Mr Ghimpu was elected Speaker of Parliament by 53 votes for, without the CPM MPs having participated in the ballot. The date for the next sitting of Parliament has not been fixed yet.

III. Institutional framework

15. In order to analyse the political consequences of the early elections of 29 July 2009, it is worth recalling briefly the rules governing the election or appointment of the key country's political institutions.

16. According to the Constitution of Moldova, the Parliament is composed of 101 members and elected on the basis of universal, equal, direct and secret suffrage. It is the country's supreme representative body and legislative authority (articles 60 and 61). The Parliament is elected for a four-year term. The newly elected Parliament is convened for its first session within a maximum of 30 days of the election day (article 63). Once constituted, the Parliament should elect its Speaker, by an absolute majority of votes (i.e. 50% plus one vote of all elected members, which represents 52 votes – article 64). The mandate of an MP is incompatible with the holding of any other remunerated position, with the exception of didactic and scientific activities (article 70).

17. The President of the Republic of Moldova is the Head of State (article 77). The President is elected by the Parliament by a qualified majority of 3/5 of the members (i.e. 61 votes). If the Parliament fails to elect the President of the Republic after two attempts, the outgoing President dissolves the Parliament and calls a new election (article 78). The outgoing President exercises duties until a new President is sworn in (article 80). The mandate of the President may only be extended in the event of war or catastrophe (article 80). No person shall exercise the function of President of the Republic for more than two consecutive terms (article 80). The function of the President is incompatible with holding another remunerated position (article 81). The office of the President may become vacant in case of expiry of the presidential mandate, resignation from office, removal from office, definite impossibility of performing duties or death (article 90). In the event the office of the President of the Republic becomes vacant, the duties of the President shall be exercised by the Speaker of the Parliament and by the Prime Minister, in this order of priority (article 91), until a new President is elected.

18. The Government is the executive authority of the Republic of Moldova (article 96) and is headed by the Prime Minister (article 101). The President of the Republic of Moldova designates a candidate for the office of the Prime Minister, after consultations with parliamentary factions. The Parliament shall vote on the candidature of the Prime Minister, as well as the list of Ministers and the Government's programme, by an absolute majority vote (50% plus one vote of all elected members) (article 98). The Government exercises its functions until the day of the new parliamentary elections. From that day on and until the day a new Government is appointed, the outgoing Government takes care of the current affairs of the country (article 103).

IV. Expected political developments and the way forward

19. While democratic and sound in principle, the provisions of Moldova's Constitution do not contain detailed guidelines about the mechanisms of overcoming the current political and institutional crisis. The parliamentary elections of 5 April resulted in strong polarisation of the country's political scene. The CPM, which at that stage held an absolute majority of 60 seats but fell just one vote short of securing the qualified majority required to elect the country's President (i.e. 61 votes), did not create the necessary conditions for an inclusive political dialogue with the representatives of the parliamentary opposition. The opposition representatives for their part did not accept the results of the elections, claiming they had been rigged by the CPM. The stances adopted by the two sides and their unwillingness to make reciprocal concessions led to

an impasse and a political and institutional crisis: since no political force had the majority required to elect the President of the Republic, Parliament had to be dissolved.

20. The results of the new elections of 29 July are very similar in nature: while the parties forming the Alliance for European Integration (AEI) have secured an absolute majority of 53 seats, allowing them to elect the Speaker of the Parliament as well as, at a later stage, vote in a Government, they fell short, by 8 votes, of securing the qualified majority of 3/5, necessary for the election of the President of the Republic (61 votes). In this context, the Communist Party of Moldova (CPM) becomes a strong opposition force, holding 48 seats in Parliament and representing the views of about 45% of the citizens who voted in the 29 July elections.

21. At the moment, if no meaningful dialogue between the new majority coalition (Alliance for European Integration) and the opposition (Communist Party of Moldova) is established on the subject of the election of the President of the Republic, the country may again fall into an institutional crisis, as, according to article 78, the Parliament will have to be dissolved again if it fails to elect the President of the State after two attempts⁴.

22. Given the above, it becomes obvious to us that the Moldovan institutions need to be reformed and amendments to the Constitution are necessary. We expect the Moldovan authorities to launch the necessary reforms, in co-operation with the Venice Commission, as soon as practicable. The direct election of the President of the Republic by the voters is at times envisaged.

23. In the current crisis, we take note of the fact that the new majority coalition (Alliance for European Integration) was able to elect the Speaker of Parliament on 28 August 2009. The Speaker must now play an effective role and assist the majority and the opposition to better shoulder their respective responsibilities, by launching meaningful negotiations on the election of the President of the Republic without further delay. After having consulted the Secretariat of the Venice Commission and carefully studied Moldova's Constitution, we consider that the election of the new President of the Republic should be an absolute priority of the Parliament. It is the new President of the Republic who, once elected, has to engage consultations with all parliamentary factions and propose a candidate for the post of Prime Minister. Pending the election of the new President of the Republic and the appointment of a new Prime Minister, the outgoing Government should act in a care-taker capacity. We shall be vigilant observers of this political process and are prepared to give our political support and advice, if necessary.

V. Implementation of Resolution 1666 (2009)

24. Due to the political agenda, only selective steps towards the implementation of Resolution 1666 (2009) have been made since June 2009. Our observations contained in the information note of 22 June 2009 (see Appendix) therefore largely remain valid.

25. Two important new developments have to be mentioned.

26. Firstly, we have taken note of the fact that, since our last visit to Chisinau, all the detainees arrested in connection with the events of 7-8 April have been released and placed under "house arrest". The criminal investigations are pending, and we will closely follow their conduct.

27. Secondly, we have taken note of the Report by the Council of Europe Human Rights Commissioner, Mr Hammarberg, on his visit to Moldova from 25 to 28 April 2009.⁵ The findings and conclusions of the Human Rights Commissioner are also confirmed by Amnesty International, which sent us a letter on 24 August 2009. All these elements confirm our findings set out in Resolution 1666 (2009) as well as in the explanatory memorandum. Cases of violence and brutality by police officers cannot be tolerated and we join the Commissioner's appeal to make effective and comprehensive investigations into all allegations of ill-treatment. At the same time, we reiterate our recommendation to conduct an independent and transparent inquiry into the events that followed the elections of 5 April as well as into the circumstances which led to them. This should be the priority task of the new President of the Republic and of the Speaker of the newly elected Parliament.

28. We also note that the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe carried out an ad hoc visit to Moldova from 27 to 31 July

⁴ This interpretation of the Constitution was confirmed to us by the Secretariat of the Venice Commission, as the limitation on the number of dissolutions of parliament within one year (article 85) appears to apply only to cases of vote of no confidence to the Government.

⁵ CommDH(2009)27 of 17 July 2009.

2009.⁶ The main purpose of the visit was to assess the manner in which investigations were and are being carried out into cases possibly involving ill-treatment by members of police forces in the context of the post-election events in April 2009 in Chisinau. The visit also provided an opportunity to review the treatment of persons detained by the police. We remind the Moldovan authorities of their obligation fully to co-operate with the Committee and to implement its recommendations.

29. We recommend that the Monitoring Committee should remain seized of the implementation of Resolution 1666 (2009) and any new text to be adopted and report back to the Assembly about its findings at one of its forthcoming part-sessions.

⁶ Press release of 4 August 2009: <http://www.cpt.coe.int/documents/mda/2009-08-04-eng.htm>

APPENDIX I

Information note by the co-rapporteurs on their fact-finding visit to Chisinau (10 June 2009)⁷

Co-rapporteurs: Mrs Josette DURRIEU, France, Socialist Group, and Mr Egidijus VAREIKIS, Lithuania, Group of the European People's Party

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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 Grechean, outgoing Prime Minister, and Mr Stanislav Groppa, a well-known neurosurgeon. The election did not produce a result because Ms Grechean 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

⁷ This information note has been made public by decision of the Monitoring Committee dated 22 June 2009.

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 election 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 II

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

- | | |
|---------------|---|
| 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 |

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

Reference to committee: Resolution 1115 (1997) and Resolution 1666 (2009)

Draft resolution unanimously adopted by the committee on 9 September 2009

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunđa** (1st Vice-Chairperson), Mr Konstantin **Kosachev** (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro **Agramunt Font de Mora**, Mr Miloš **Aligrudić**, Mrs Meritxell Batet Lamaña, Mr Ryszard **Bender**, Mr József Berényi, Mr Luc **van den Brande**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Telmo Correia, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette **Durrieu**, Mr Mátyás **Eörsi**, Ms Mirjana Ferić-Vac, Mr Giuseppe Galati, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajibayli, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mrs Olha **Herasym'yuk**, Mr Andres **Herkel**, Mr Kastriot Islami, Mr Mladen Ivanić, Mr Michael Aastrup **Jensen**, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Hakki **Keskin**, Mr Haluk **Koç**, Mrs Katerina Konečná, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René **van der Linden**, Mr Eduard **Lintner**, Mr Pietro Marcenaro, Mr Bernard **Marquet**, Mr Dick Marty, Mr Miloš **Melčák**, Mrs Nursuna Memecan, Mr Jean-Claude **Mignon**, Mr João Bosco **Mota Amaral**, Mrs Yuliya **Novikova**, Mr Theodoros Pangalos, Mrs Elsa Papadimitriou, Mr Alexander **Pochinok**, Mr Ivan **Popescu**, Mrs Maria Postoico, Mrs Marietta **de Pourbaix-Lundin**, Mr Christos **Pourgourides**, Mr John Prescott, Mrs Mailis Reps, Mr Andrea Rigoni, Mr Ilir Rusmali, Mr Armen **Rustamyan**, Mr Indrek Saar, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Samad **Seyidov**, Mr Sergey Sobko, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mr Mihai Tudose, Mrs Özlem **Türköne**, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr Wach, Mr Robert **Walter**, Mr David **Wilshire**, Mrs Renate Wohlwend, Mrs Karin S. Woldseth, Mrs Gisela Wurm, Mr Andrej Zernovski.

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko