



Strasbourg, 29 October 2024

**CDL-PI(2024)019**

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**Information on the follow-up to**

**REPUBLIC OF MOLDOVA**

**Joint Follow-up Opinion of the Venice Commission and the  
OSCE/ODIHR to the Joint Opinion on amendments to the Electoral  
Code and other related laws concerning ineligibility of persons  
connected to political parties declared unconstitutional  
([CDL-AD\(2023\)048](#))**

**Joint amicus curiae brief of the Venice Commission and the  
OSCE/ODIHR on the ineligibility of persons connected to political  
parties declared unconstitutional  
([CDL-AD\(2023\)049](#))**

**presented at the 139<sup>th</sup> Plenary Session (Venice, 21-22 June 2024)**

- **Republic of Moldova:**
  - **Joint Follow-up Opinion of the Venice Commission and the OSCE/ODIHR to the Joint Opinion on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional ([CDL-AD\(2023\)048](#))**
  - **Joint amicus curiae brief of the Venice Commission and the OSCE/ODIHR on the ineligibility of persons connected to political parties declared unconstitutional ([CDL-AD\(2023\)049](#))**

At its 137th Plenary Session in December 2023, the Venice Commission adopted the Joint Follow-up Opinion with the OSCE/ODIHR to the Joint Opinion on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional and the Joint *amicus curiae* brief of the Venice Commission and ODIHR on the ineligibility of persons connected to political parties declared unconstitutional. In this Opinion and this *amicus curiae* brief, the Venice Commission and ODIHR stated that the reform, adopted in one day – the day after the constitutional court had declared as unconstitutional the law assessed by the previous joint opinion of the Venice Commission and ODIHR ([CDL-AD\(2023\)031](#)) – did not comply with the principle of broad consensus and public debate. While the rules examined served a legitimate purpose, they were not always predictable and did not always comply with the principle of proportionality. If the authorities wanted to maintain cases of ineligibility, they had to define the criteria for restricting the right to stand for election more precisely and more narrowly, in accordance with the principles of legal certainty and proportionality, limiting restrictions on this right to people whose activities have endangered the constitution and the integrity of the democratic state; the authorities had to demonstrate, by providing sufficient and relevant evidence, that a person met the conditions laid down by law; individuals had to be given a real chance before the electoral bodies, with a reasonable burden of proof enabling them to rebut the presumption of their individual involvement in the party's activities that led to its declaration of unconstitutionality. The ineligibility provided for by the amendments was preventive rather than punitive in nature and could therefore not be equated with a criminal charge within the meaning of Article 6 of the ECHR. The presumption of innocence was relevant if the procedure for deciding on the ineligibility took place in parallel with criminal proceedings.

In its decision of 26 March 2024, the Constitutional Court of the Republic of Moldova mainly followed the reasoning of the Venice Commission and declared the contested legislation unconstitutional. The hastiness of the procedure had not made it possible to MPs to exercise their constitutional prerogative to present proposals and amendments to the draft legislation. On the substance, the contested provisions did not go against the principle of presumption of innocence. However, while sufficiently clear and pursuing a legitimate aim, they could be applied in contradiction with the principles of proportionality and non-discrimination and did not provide sufficient guarantees capable of ensuring protection against arbitrariness. This was in particular due to the fact that the eligibility criteria did not contain neutral texts that would allow for the evaluation of candidates based on the danger they pose to the objectives declared by the legislator.