

34th SESSION

Report
CG34(2018)09final
27 March 2018

Fact-finding mission on the situation of local elected representatives in the Republic of Moldova

Monitoring Committee

Rapporteurs:¹ Marc COOLS, Belgium (L, ILDG)
Gunn Marit HELGESEN, Norway (R, EPP/CCE)

Recommendation 411 (2018)	2
Explanatory memorandum	4

Summary

The present report follows up on the rapporteurs' conclusions drawn from the fact-finding mission on the situation of local elected representatives in the Republic of Moldova, carried out in Chişinău on 13 December 2017, at the request of the Monitoring Committee. Subsequent to a complaint formulated by the Congress of Local Authorities of Moldova (CALM) and addressed to the Congress, the fact-finding mission aimed to gather additional information about these allegations and to clarify the situation of the suspended Mayor of Chişinău.

The rapporteurs reiterate the conclusion of the previous report, namely that the suspension of the Mayor of Chişinău represents a violation of articles 3-2, 7-1 and 8-3 of the European Charter of Local Self-Government. They also express their concern at the repercussions of a local recall referendum, targeting the Mayor of the capital, on the governance of Chişinău and more broadly on the functioning of local democracy in Moldova. Lastly, the rapporteurs consider that the situation of local democracy has deteriorated in the Republic of Moldova.

On this basis, the rapporteurs recommend that the Moldovan authorities revise the national legislation in order to issue clear and non-contradictory provisions, as regards the procedure for suspending local elected representatives as well as on local recall referenda; to resume the dialogue with the CALM; and to enter into a constructive dialogue with the Congress rapporteurs, especially within the framework of the monitoring mission for local and regional democracy in this country which they plan to undertake at the end of Spring 2018.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RECOMMENDATION 411 (2018)²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b of Statutory Resolution CM/Res(2015)9 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy;”

b. Article 2, paragraph 3 of Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented;”

c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of the monitoring procedures;

d. Congress Resolution 420 (2017) and the explanatory memorandum on “Local democracy in the Republic of Moldova: clarification of the conditions surrounding the suspension of the Mayor of Chişinău”.

e. The appended explanatory memorandum appended hereto on the Fact-finding mission on the situation of local elected representatives in the Republic of Moldova.

2. The Congress points out that:

a. The Republic of Moldova acceded to the Council of Europe on 13 July 1995. It signed the European Charter of Local Self-Government (ETS No. 122, “the Charter”) on 2 May 1996 and ratified it on 2 October 1997 without any reservations. The Charter came into force in respect of the Republic of Moldova on 1 February 1998;

b. The Republic of Moldova has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

c. The Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe instructed the co-rapporteurs on local and regional democracy Gunn Marit Helgesen (Norway, R, EPP/CCE) and Marc Cools (Belgium, L, ILDG),³ to carry out a fact-finding visit to Moldova in order to clarify the situation of local elected representatives in this country;

d. The fact-finding visit took place on 13 December 2017 in Chisinau. During the visit, the Congress delegation met with Dorin Chirtoaca, with local elected representatives as well as representatives of political parties, with members of the Moldovan Delegation to the Congress and with representatives of the State Chancellery, the Chair of the Central Electoral Commission and the President of the Constitutional Court.

3. The delegation wishes to thank the Permanent Representation of the Republic of Moldova to the Council of Europe and the interlocutors who met with the delegation, for their open and constructive discussions.

4. The Congress expresses its concern with regard to:

a. several violations of the Charter identified in Resolution 420 (2017) which are still valid, notably with respect to Article 8 paragraph 3, Article 3 paragraph 2, and Article 7 paragraph 1, in particular as regards the conditions of suspension of the general mayor of Chisinau and the consequences that this situation entails on the dysfunction of local governance in the capital city, as stressed in the abovementioned resolution;

² Debated and adopted by the Congress on 27 March 2018, 1st sitting (see Document [CG34\(2018\)09](#), explanatory memorandum), co-rapporteurs: Marc COOLS, Belgium (L, ILDG) and Gunn Marit HELGESEN, Norway (R, EPP/CCE).

³ They were assisted by Prof. Angel Manuel MORENO MOLINA, Chair of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

b. the lack of clear legal basis to suspend a local elected representative which also derives from contradictory provisions in domestic law ; the same prevails as regards local recall referenda and the conditions for the suspended mayor to campaign;

c. the fact that a large number of criminal prosecutions have been conducted against local elected representatives on the grounds of the anti-corruption fight and which appear to lead to problematic features as regards European standards;

d. the lack of consultation with the Congress of Local Authorities of Moldova (CALM);

e. the overall situation of local democracy in Moldova which has deteriorated substantially since the last Congress monitoring report adopted in 2012.

5. In the light of the foregoing, the Congress recommends that the Moldovan authorities:

a. examine the Court proceedings against local elected representatives in order to ensure that they are not constitutive of judicial harassment and do not prevent local elected representatives from managing their municipalities freely;

b. revise the Moldovan legislation (including the Electoral code) in order to issue clear and non-contradictory provisions and ensure their conformity with European standards, as regards the procedure of suspension of local elected representatives as well as local recall referenda and the conditions for campaigning;

c. find the correct equilibrium between local public interest and the fight against corruption in order to maintain a good level of local governance in the light of the Charter and other European standards and allow local elected representatives to exercise their political mandate freely whilst also benefiting from the presumption of innocence;

d. resume the dialogue with the national Congress of Local Authorities of Moldova in the framework of a regular formalised effective consultation process, in accordance with the Charter and Resolution 328 (2012);

e. enter into a constructive dialogue with the Congress rapporteurs on local and regional democracy on Moldova in the framework of the monitoring visit scheduled for spring 2018, in order to improve rapidly the situation as regards local democracy in Moldova, and in particular the situation of local elected representatives in this country.

6. The Congress calls on the Committee of Ministers to transmit this recommendation to the Moldovan authorities and to take it into account, as well as the accompanying explanatory memorandum, in its activities relating to this member State.

7. The Congress recommends that the Parliamentary Assembly, the European Commission on Democracy through Law ("Venice Commission") and the Commissioner for Human Rights take into account these recommendations within the framework of their activities in this country.

EXPLANATORY MEMORANDUM

Table of contents

- 1. ANTECEDENTS5
- 2. NEW FACTS AND ADDITIONAL CONSIDERATIONS PERTAINING TO THE SITUATION OF THE CITY OF CHISINAU6
 - 2.1. The current personal situation of Mr Chirtoaca6
 - 2.2. The governance of the city of Chisinau.....7
 - 2.3. Political and legal analysis of the local referendums that may be organised to recall a mayor in the Republic of Moldova8
 - 2.3.1 General procedure under Moldovan law.....8
 - 2.3.2 Specific features concerning the referendum held in Chisinau on 19 November 20179
 - 2.3.3. General legal considerations concerning local recall referendums in Moldova10
- 3. ISSUES RAISED BY THE COMPLAINT SUBMITTED BY THE CONGRESS OF LOCAL AUTHORITIES OF MOLDOVA (CALM)12
 - 3.1. General situation of “undue pressures” on local officials and leaders.....12
 - 3.2. Remunerations for local officials14
 - 3.3. Lack of consultation and political dialogue in the context of local reforms.....14
- 4. CONCLUSIONS15
- 5. RECOMMENDATIONS15
- APPENDIX - Programme of the fact-finding visit to the Republic of Moldova17

EXPLANATORY MEMORANDUM

1. ANTECEDENTS

1. On December the 13th 2017, a Delegation of the Congress of Local and Regional Authorities of the Council of Europe (hereinafter, “the Delegation”) carried out a fact-finding mission in Chisinau, the capital city of the Republic of Moldova. The Delegation was composed of two rapporteurs: Gunn Marit Helgesen (Norway, EPP/CCE⁴) Rapporteur on local democracy, vice-president of the Congress and President of the Chamber of Regions, and Marc Cools, (Belgium, ILDG⁵), Rapporteur on local democracy, Chamber of Local Authorities. The delegation was accompanied by the Secretariat of the Congress and assisted by Prof. Dr. Angel M. Moreno, Chairman of the Group of Independent Experts on the European Charter of Local Self-Government.

2. The antecedents and reasons for this fact-finding mission may be summarised as follows: on 30-31 August 2017, a visit was carried out in Chisinau by the President of the Chamber of Regions in order to clarify the situation of Dorin Chirtoaca, Vice-President of the Congress and Mayor (*Primar general*) of the city of Chisinau. He had been suspended from office and suffered home arrest since May 2017, as a consequence of a criminal investigation opened against him.

3. This visit gave rise to:

- The adoption of Report CG33(2017)23 final, of 19 October 2017, “Local democracy in the Republic of Moldova: clarification of the conditions surrounding the suspension of the Mayor of Chisinau”. In this report, different violations of the Charter were found.
- The adoption of the Congress Resolution 420(2017)⁶, which called for close attention to the personal situation of Dorin Chirtoaca in the future, by arranging one or several fact-findings if necessary.
- The decision to carry out a monitoring mission in the country, to be held in spring 2018.
- To inform the Commission for Democracy through Law of the Council of Europe (Venice Commission) of that report, which was asked for an opinion on the compatibility of a recall referendum with international standards.

4. On 13 July 2017 the Congress received a complaint letter from the association of local authorities of the Republic of Moldova (CALM), where the signatories depicted different unsatisfactory aspects of the situation of local self-government and local autonomy in Moldova.

5. Consequently, the Congress decided to carry out a fact-finding mission in Moldova, having the following aims: ascertaining the progress of the situation of the suspended mayor of the capital city (Chisinau), and to get first-hand information on the serious allegations formulated in the complaint of the CALM.

6. During this fact-finding mission, the Congress Delegation met in Chisinau with Dorin Chirtoaca, with local elected representatives as well as representatives of political parties, with members of the Moldovan Delegation to the Congress, with representatives of the State Chancellery, the Chair of the Central Electoral Commission and the president of the Constitutional court. The programme of the mission is appended to this report. The fact-finding mission proved to be instrumental in getting more and deeper information on the facts under consideration, as well as to get a clear, more precise and immediate understanding of the legal and political aspects of the situation.

7. The facts, information and allegations collected by the Delegation will be analysed from the perspective of Charter, taking into consideration also other Council of Europe sources (and in particular Venice Commission documents) and in the light of the most common local government practice in Europe.

4 EPP/CCE: European People’s Party Group in the Congress

5 ILDG : Independent and Liberal Democrat Group in the Congress

6 Debated and adopted by the Congress on 19 October 2017 (rapporteur: Gunn Marit Helgesen)

2. NEW FACTS AND ADDITIONAL CONSIDERATIONS PERTAINING TO THE SITUATION OF THE CITY OF CHISINAU

2.1. *The current personal situation of Mr Chirtoaca*

8. As noted supra, in May 2017 Mr Dorin Chirtoaca was provisionally suspended as Mayor of Chisinau by a court order, adopted in the context of a criminal prosecution triggered against him under different charges.⁷ Together with this suspension, a home arrest was pronounced against him. For concrete details of this fact, full reference is made to the explanatory memorandum CG33(2017)23final. This report will focus on the situation after August 2017.

9. Dorin Chirtoaca is still under suspension from office, but his home arrest was lifted on 10 November 2017, shortly before the end of the electoral campaign of the recall referendum organised in Chisinau (see, *infra* point 2.3). He could attend the meeting with the Delegation at the Council of Europe's field office in Chisinau, whilst in August the meeting took place in his home as he was not allowed to move from his home place. At present, Mr Chirtoaca is under release under judicial supervision. He still has some restrictions on his personal freedom: he cannot leave the city; his passport is still kept by the court and he must ask for permission if he wants to leave the country (he was authorised to travel to Romania to assist to the funeral of former King Michael I); he is not authorised to meet certain people and officials; he could not participate actively in the abovementioned local recall referendum, etc.

10. The suspension of the General Mayor of Chisinau has been renewed several times by the court (at the request of the Prosecutor's office). For instance, on 21 September 2017, the Court of Appeal of Chisinau decided to prolong his house arrest for 30 more days.⁸ Despite the successive renewals, there is no visible progress in the criminal investigation affecting him and Mr Chirtoaca remains in the same uncertainty concerning his suspension. In fact, he predicted that his situation would probably remain the same at least until the next local elections, scheduled in November 2019.

11. The persistence of his situation of suspension deserves an analysis of the legal aspects of the suspension of mayors in Moldova. This suspension is declared by a competent criminal court (the district court) on the request of the public prosecutor. The legal rules governing that restrictive, provisional measure are art. 33 of the Law on LPA Act⁹ and art. 197 of the Moldovan Criminal Code.¹⁰ During the visit carried out in August 2017, the President of the Chamber of Regions was told by several interlocutors that the suspension of a mayor by a court is a legal possibility whose legal procedure has not been regulated in detail yet. That is, the possibility to suspend a mayor is laid down in the Criminal Code, but it is not regulated (as concerns procedure) in the Code of Criminal Procedure. The testimonies heard by the President of the Chamber of Regions, especially at the Ministry of Justice, mentioned even that there was a legal loophole or vacuum in this area. Under this information, the rapporteurs considered that the procedure used to suspend Mr Chirtoaca was an illegal one.

12. During the fact-finding mission, though, the rapporteurs received other type of information. Apparently, there is no need for a special or specific procedure in Moldovan criminal procedural law for a judge to suspend a mayor. The mere fact that this restrictive measure is foreseen in art. 33 of the LPA and in art. 197 of the Criminal Code is enough for the court to adopt the corresponding interim measures, applying directly the Code of Criminal Procedure and, if necessary, the Law on civil procedure. This information was provided to the delegation by the Chancellery of State and the Constitutional Court.

13. The measure of suspension is adopted by a court of law and is open to be appealed. In this sense, it should be noted that the lawyers of the suspended mayor of Chisinau filed an appeal against the suspension order in the Chisinau Court of Appeal, but the said court, on 5 October 2017, declared

⁷ On the 6th of September 2017, a new penal case was opened against him for abuse of power (incorrect execution of certain court judgements).

⁸ Mr Chirtoaca claimed that this line of successive prolongations of his home arrest was decided without a full penal file been brought to the attention of the court.

⁹ "(1) A mayor who is prosecuted for an offence may be suspended from office until the case is definitively settled (2) Suspension may be ordered only by a court in accordance with the law".

¹⁰ "the investigating authority, the investigating judge, the prosecutor or the court, depending on their jurisdiction, shall have the right to apply to the suspect or defendant other coercive procedural measures such as (...) provisional suspension from office".

the appeal inadmissible, declining to adjudicate on the merits.¹¹ Then, they appealed to the Constitutional Court, pointing out that art. 33 of the LPA Act was unconstitutional, but this appeal was also dismissed by a decision of the Constitutional Court dated 6 September 2017. Finally, they complained to the European Court of Human Rights by the end of November 2017, and the case is still pending at the time of writing these lines.

14. Those measures seem disproportionate in comparison with the charges raised against the suspended mayor of Chisinau. As stressed in the previous report (CG33(2017)23final) it should be noted that the acting mayor appointed by Dorin Chirtoaca after his suspension, Mr Grozavu, acknowledged being an accomplice of Mr Chirtoaca in the alleged corrupt (manipulation of a public procurement award for the construction of a public parking). However, Mr Grozavu himself has been neither suspended from office nor subject to provisional home arrest or pre-trial custody, something which seems contradictory, to say the least.

15. In this line of reasoning, the rapporteurs asked the question to the Constitutional Court representatives whether there is case-law on the proportionality of the measure of preventive suspension of a mayor, taking into account the presumption of innocence, the correlative disruption of the local life that this measure entails and the requirements of local self-government. They were told that, whilst there is case law on the constitutionality of the measure of provisional suspension of mayors "in abstracto", there is no specific case-law on the respect of the principle of proportionality by the said measure, as such argument has not been produced yet in the judicial activity of that High Body. For this reasons, the rapporteurs reiterate in this report the findings that the situation here analysed amounts to a violation of art. 8.3 of the Charter (principle of proportionality in the control of local government bodies).

2.2. The governance of the city of Chisinau

16. Another noticeable new development since the visit carried out in August 2017 has been the organisation of a recall referendum in the city of Chisinau. According to the relevant provisions of domestic legislation (see *infra*, point 3), a local referendum was organised in Chisinau, aiming at dismissing Mr Chirtoaca from his position of mayor. The referendum was held on 19 November 2017, but the number of votes was very low (93.000 votes, 17.5% of the census), and did not reach the minimum threshold of 30% of the local census, required by the Law, to make it valid.

17. The results of the local recall referendum may be read in different ways (lack of interest from the local citizens, unclear role of the referendum, etc.) but the most plausible interpretation might be that the local residents did not want to remove from office Mr Chirtoaca. The suspended mayor, for his part, appraised the results as an implicit vote of confidence and trust from the citizens. He underlined that in the local elections of 2015 he collected 163.000 favourable votes (out of 613.000 electors in total). Moreover, the number of voters who agreed on his revocation in the recall referendum (93.000) was even noticeably lower than that of the voter that voted against him in those local elections (143.000).

18. From the legal and procedural point of view, the recall referendum had no impact whatsoever on the personal situation of Mr Chirtoaca: since the local consultation did not meet the required minimum participation threshold, it could not be legally validated and consequently did not produce any legal effect.

19. On the other hand, the governance of the city of Chisinau is still under a very unsatisfactory situation from the perspective of local democracy. When the mayoral office is vacant or when the mayor is suspended in Moldova, this abnormal situation is regulated by the LPA Act and by the by-laws on the Composition and Operation of the Chisinau Municipal Council, dated 14 June 2016. Under these legal rules, Mr Nistor Grozavu, a civil servant employed as a personal adviser in the Mayor's private office, was appointed as acting deputy mayor (on the proposal of Mr Chirtoaca) and he served this position from 2011 until 2 August 2017, when he took over as acting mayor (it should be stressed once more that, despite the fact that Mr Grozavu was implicated in the same criminal proceedings as the mayor, he continued in office).

¹¹ This aspect of his file was depicted by Mr Chirtoaca as a clear anomaly under domestic Procedural Law.

20. This abnormal situation in the governance of the capital city was already analysed in the above mentioned report (CG33(2017)23final) which highlighted that “the administration of the capital city by an unelected official who first held the office of acting deputy mayor and then of acting mayor, without any decisions taken by the municipal council is clearly problematic in the light of art. 3.2 of the Charter”. The rapporteurs still share this conclusion.

21. This assessment is even more confirmed by the facts that took place after the visit of August 2017, which have worsened this situation. Namely, the then acting Mayor, Mr Grozavu, proposed another person for the position of acting mayor and on 6 November, Mrs Silvia Radu was appointed the new interim mayor of Chisinau. This operation took place, it should be underlined, without any vote by the Municipal Council.

22. Several considerations may be made in this respect: on the one hand, it is unclear whether the appointment of Mrs Radu by Mr Grozavu meets the legal requirements, as it appears that, when Mr Grozavu appointed Mrs Radu his mandate had already expired. On the other hand, as a consequence of the suspension of Dorin Chirtoaca and the succession of “ad interim” appointments of substitutes, the Mayoral post has been performed for several months by persons who are staff members of the local authority and who have no political legitimacy at all, that have been not elected and that are not responsible to the electors. This situation does not only fail to comply with art. 3.2 of the Charter, but also with international democratic standards.

23. Another point deserves to be stressed: in the Republic of Moldova the mayors are elected directly by the citizens, apart from the elections for the members of the local council. When a mayor dies or resigns, or in other way the post of a mayor becomes vacant, anticipated mayoral elections are organised in the town or city in order to elect a new mayor, who will serve the remaining part of the mandate until the call of the general local elections. These “special” elections are held in fall or in spring. However, the law also provides that, if the mayor has been suspended, no anticipated elections can be called to replace him during his suspension. (under art. 33.(1) of the LPA Act). This is supposed to be a safeguard in favour of an indicted and suspended mayor.

24. Consequently, no local partial anticipated election for mayor can be organised in Chisinau as long as the suspension of the mayor remains in force or as long as he does not resign. Thus, it would be expectable that the General Mayor of Chisinau will remain suspended until the next local elections, due in November 2019. In this prospect (and despite his status as suspended mayor), he could run for re-election and make electoral campaign.

25. In the light of the precedent, the prospects are that the exceptional situation of temporariness in the mayor office of Chisinau could last from May 2017 until November 2019, when the new local elections will be held. The duration of this temporary situation, where the city is run by unelected officials, is too prolonged. The situation is clearly negative and constitutes a serious disruption of local government. The situation is even worst since it affects the capital of the nation and the most important city of the country. This clearly irregular situation goes against the requirements of art. 3.2 of the Charter, as noted *supra*.

2.3. Political and legal analysis of the local referendums that may be organised to recall a mayor in the Republic of Moldova

26. The present fact-finding mission allowed the rapporteurs to get a deeper and more comprehensive understanding of this type of local referendums, which are certainly unique in the European context.

2.3.1 General procedure under Moldovan law

27. Moldovan electoral legislation regulates different types of referendums and consultations that may be held at national or local level. At local level, there are two types of referendums: (a) consultative ones and (b) recall referendums. These consultation processes are governed by the national Electoral Code, which was approved 20 years ago.¹² In this time, 20 local referendums have been organised in different municipalities of Moldova out of which 19 were recall referendums. The procedure of such recall referendum may be summarily described as follows:

¹² The Central Electoral Commission of Moldova considers that the Code of Good Practices of the Venice Commission does not apply to local referendums.

- *Grounds*: under art. 177 of the Electoral Code, there are three possible grounds for triggering a recall local referendum in Moldovan law: (a) if the mayor fails to uphold the interests of the local community; (b) if he fails properly to exercise the responsibilities of his elective office in accordance with the law; and (c) if he infringes moral and ethical norms if this conduct has been proven”.

- *Initiation of the referendum*: The initiation of the referendum can be activated by the city council on its own motion (provided that at least two thirds of the local councillors approve the motion) or by a group of citizens (*group of local initiative*) representing at least the 10% of the local census. The signatures must be validated by the court (“subscription list”). Afterwards the court notifies the local council and asks it to determine the question that will be submitted to the local residents, and to determine the date of the referendum. The Court registers the initiative in the Central Electoral Commission, who organises the referendum. The local referendum is called and a local electoral council is set up.

- *Safeguards*: There are some safeguards for the mayor who is threatened with dismissal: (a) a recall referendum cannot be held earlier than one year after his election and not later than six months before the following local elections; (b) at least 30% of the registered local voters should vote in the referendum; (c) the number of voters who vote in favour of the mayor’s revocation should be at least the same number plus one vote of those who voted in favour of him in the local elections; (d) if the local referendum fails, then another referendum cannot be organised within one year.

- *Holding the referendum*: on the prescribed day, the referendum takes place at the designated voting stations. Before the referendum there is a campaign, but in order to participate in it registration is compulsory. Only political parties may register to participate in local referendums, not individuals.

- *Legal effects of the referendum*: if the referendum is “successful”, then local elections for a new mayor are called. It seems that the revoked mayor could still participate in this new electoral process. If, on the contrary, the referendum is not validated because the minimum number of votes was not reached or because it got an insufficient majority, then the referendum does not produce any effect whatsoever, at least from the legal point of view (it could, naturally, produce political consequences). In this later case, no new recall referendum may be organised at least during one year. According to official statistics, out of 19 recall local referendums held in the last 20 years, only 6 led to the dismissal of the mayor.

2.3.2 Specific features concerning the referendum held in Chisinau on 19 November 2017

a. Grounds for initiating the referendum:

28. The rapporteurs asked on which of the three grounds provided for by art. 177, paragraph 2 of the Electoral Code the recall referendum involving Mr Chirtoaca had been initiated, but their interlocutors from the Electoral Commission declined to convey information of this matter and suggested to read the corresponding Court decision. They alleged that they did not want “to enter into political debate”. The Delegation did not have access to this information.

29. This issue is important because, as explained *supra*, there are only three possible grounds or justifications to hold a recall referendum. In the case of Dorin Chirtoaca, it is clear that the third ground (“if he infringes moral and ethical norms if this conduct has been proven”) cannot be applied, since he has not been convicted yet. Thus, the only appropriate ground for initiating the recall referendum should be the first or the second reasons that are laid down in art. 177.2 (if the mayor “*fails to uphold the interests of the local community*”, or “*fails properly to exercise the responsibilities of his or her elective office in accordance with the law*”). However, the rapporteurs are not convinced that any of those grounds could be invoked in this case, because Mr Chirtoaca did not *fail to uphold* the interest of the local community of Chisinau, nor did he fail to *properly exercise* the responsibilities of his office in accordance with the law, since the presumption of innocence of Mr Chirtoaca has not been revoked by a final Court decision. Furthermore, any interpretation of art. 177.2 should be a restrictive one, since an extensive interpretation of this extraordinary mechanism would go against the political rights of the holder of the Mayoral office and against the institutional dignity of this position in the context of local self-government, which is protected by the Constitution.

30. In any case, in the view of the rapporteurs the legal wording of art. 177.2 of the Electoral Code allows for the calling of revocation referendums under weak or loose justifications. The wording leaves a large discretion too for the promoters (and for the Court asked to validate the initiative). The existence of local recall referendums is already a special (even unique) feature in Moldovan law, in the context of the most common European practice in local government. On the other hand, the domestic law provides that imperative mandates are prohibited. Therefore the grounds for organising a recall on referendum should at least be regulated in a clear and predictable way. The current wording of art. 177.2 of the Electoral Code (especially the first two sentences) do not meet the necessary requirements of legal certainty.

b. Launching the referendum:

31. The prosecutor addressed the local council and asked it to adopt the formal decision to launch such referendum, but the council refused. Then, a group of citizens organise themselves as sponsors of the referendum. They collected the necessary signatures and, once validated by the Court, the city council adopted the decision of the date of the referendum and of the question to be asked to the local residents. The question asked during the referendum was: “do you support the dismissal of the general mayor of the municipality of Chisinau, Dorin Chirtoaca?” The date of the referendum was agreed on the 19th of November, 2017. Some 307 polling stations were installed, and there were many observers, among which four international observers.

c. No participation of Mr Chirtoaca in the referendum campaign:

32. the suspended mayor of Chisinau could not participate in the campaign for the local referendum where his dismissal was decided¹³. He tried to register to participate in the electoral campaign order to defend his case, but he was prevented to do so by the local electoral council, interpreting the electoral code. The basic justification was that Mr Chirtoaca was subject to judicial restrictive measures. The local electoral commission considered that under the electoral code, only political parties may register and take part in the campaign of the local referendum. Dorin Chirtoaca did not share this interpretation of the legislation and appealed the decision of the local electoral council to the competent judicial Court, but his appeal was rejected. In any case, and according to Mr Chirtoaca, the judge issued his decision on 23 October 2017, while the registration period had expired on the 21st of October. The Delegation was told at the Central Electoral Commission that Mr Chirtoaca could have appealed the decision of the local electoral council to the Central Electoral Commission, which he did not do. His political party (the Liberal party) could make campaign in favour of him, but Mr Chirtoaca was also prevented to do campaign as a member of his party.

33. Beyond the factual considerations of the case, and the more or less correctness of the findings of the local electoral council in the case of Mr Chirtoaca, the Delegation understands that the fact that a suspended mayor is prevented from participating in the campaign of a local referendum that can lead to his dismissal does not meet the essential requirements of the “due process” principle, of human rights protection and of local democracy. Moreover, it sounds strange that: a person is suspended from office as mayor; a local referendum is organised to dismiss him; and that he cannot take part in the campaign...precisely because he is suspended. This amounts to a vicious circle that is far from basic legal and democratic standards. The rapporteurs consider that a legal amendment of the legal framework is more than necessary.

2.3.3. General legal considerations concerning local recall referendums in Moldova

34. The existence of local referendums for the dismissal of mayors is certainly a unique feature of the Moldovan system of local government, if one puts it in the context of the most common Europe practice in the matter. It is certainly unusual to find this mechanism. Most European countries, at least those known by the Delegation, do not include this device in their legal systems.

¹³ Mr Chirtoaca reported that, during the campaign preceding the local recall referendum he suffered personal attacks and defamation in the media.

35. This local referendum could be seen as an extraordinary device that empowers the local community to put an end to the mandate of a local leader. Furthermore, art. 3.2 of the Charter, *in fine*, in principle favours the use of local referendum as a means to ensure direct citizen participation. However, this mechanism raises certainly many questions pertaining not only to local government Law, but also to political science, since there is certainly a potential tension between the very nature of representative democracy (of which local democracy is one type) and the possibility for the political body (in this case, the local residents) to dismiss or revoke the political representative of the said body (in this case, the mayor).

36. At the level of national institutions (Parliaments), most countries have resolved this tension by declaring in one or another way the prohibition of the “imperative mandate”, which stands for the proposition that, once the member of a national parliament (MP) has been elected by the people, he is not supposed to follow instructions from his constituency or his political group, and that the voters cannot in any way reverse, revoke or cancel the political mandate implicitly in their election. In this sense, the Moldovan constitution stipulates clearly that “any imperative mandate is deemed null and void” (art. 68.2).

37. The Constitutional Court of Moldova has already produced jurisprudence on this provision. Namely, in his Judgment of 19 June 2012 (complaint no. 8b/2012) the court interpreted art. 68 (1) and (2), and art. 69 (2) of the Constitution and identified the meaning of the prohibition of imperative mandate for the MPs. The Court declared, *inter alia*, that “*since they are not representatives of a faction of the population, parliamentarians...are absolutely free in the exercise of their mandate and do not have the obligation to fulfil the commitments that they could undertake before the election or any eventual instructions of the voters expressed during the mandate*” (par. 43). The Court went on to hold that “*in the logic of free representation, the parliamentarian’s mandate is irrevocable: voters may not make it to stop prematurely and dismissal’s practice in blank is prohibited. Voters may not, therefore, express dissatisfaction with the way in which a candidate has fulfilled the mission than by refusing to grant their votes when he/she seeks re-election*”.

38. In the context of the clarity of this judgement, the natural question is whether this case-law is applicable, *mutatis mutandis*, to local government and to the local officials that have been elected in free local elections. At first sight that question could be replied in the positive, since the “mandate” of an MP is very similar to the one held by a mayor, since both politicians are instruments of representative democracy. Moreover, art. 4 (1) of the Act No. 768 of 2 February 2000, on the conditions of office of local elected representatives provides that “any imperative mandate shall be null and void”. As it can be seen, the wording of this legal rule replicates exactly the wording of the article of the Constitution dealing with the mandate of the MPs. However, the same statute stipulates in the following section (art. 5, par. 4) that “the mayor’s term of office shall be curtailed in the event of...(d) recall by a local referendum pursuant to the electoral code”. The contradiction between these two legal provisions of the same Act is clear, in the view of the rapporteurs, but cannot be solved using any of the most common methods of interpretation (*lex posterior, lex specialis*, etc.).

39. During their meeting at the Constitutional Court, the rapporteurs asked the question whether the holdings of the judgment of 19 June 2012 could be applicable, *mutatis mutandis*, to the mandate held by a mayor. The reply was negative. In the opinion of the Court, the provisions of art. 68 of the Constitution relate exclusively to the national parliament, and cannot be extended to other powers of the State, or to the Executive branch, of which the local government is a constituent part.

40. However, it appears that there is a recent Constitutional Court decision on the matter of local recall referendums (released in October 2017). The Delegation was briefed about this ruling but had no direct access to it. In this case, an appeal was filed in the Constitutional Court against the legal provision that allows for the organisation of local, recall referendum, an instrument that the applicants deemed unconstitutional. The application was dismissed by the Constitutional Court. In order to handle the application, the Court took into consideration the national law and practice, but also Council of Europe materials and decisions and guidelines of the Venice Commission. The main argument founding the Court’s decision was that in a democratic society (e.g in the Moldovan one) no public official can be exempted from the possibility of being removed through direct democratic procedures. For instance, even the President of the Constitutional Court can be removed by means of a referendum initiated by the Parliament. The Constitutional Court also pointed out the differences between an MP, who implements the national sovereignty, and a local elected representative, who is a manager of a type of governmental organisation.

41. Therefore, it can be said that with this decision the Constitutional Court has implicitly confirmed the constitutionality of the local recall referendums in the Republic of Moldova.

42. However, it is clear that this instrument may produce a serious dysfunctioning of local democracy. Mayors work under the permanent “sword of Damocles” of a revocation referendum, since the grounds for activating such mechanism (as discussed *supra*) do not meet appropriate standards of certainty. At the same time, the law leaves the door open to organised factions of citizens, who could use this mechanism in a perverse way to reverse a mayor. And, finally, there are still negative outcomes and open questions in the practical application of this instrument. For instance, what happens if the local referendum allows the dismissal of a local elected representative and later on the suspended mayor is judged on the merits and acquitted by the Court? In this case he would have been removed “by the people” on the basis of accusations that eventually turned out to be unfounded.

43. Another interesting point is the subjective situation of the mayor during the campaign preceding the local referendum (the fact that he is prevented to take part on it). The rapporteurs asked the Constitutional Court representatives if there is case-law on the conformity of this apparently abnormal situation. The reply was that there is no case-law on the matter. Therefore, the question remains open whether a mayor can constitutionally be prevented from participating in the campaign of a local referendum where his position is under discussion.

44. In the light of the precedent considerations, the rapporteurs conclude that it would be advisable to revise the current legal scheme governing local recall referendums, in order to provide for more certainty and predictability of the grounds for triggering those referendum; to ensure the participation of the mayor in the preceding electoral campaign, and to avoid distorting consequences of the application of this instrument in the local democratic life.

3. ISSUES RAISED BY THE COMPLAINT SUBMITTED BY THE CONGRESS OF LOCAL AUTHORITIES OF MOLDOVA (CALM)

45. CALM is the only nationwide association of local authorities, to which most of them are affiliated. This association submitted a long complaint to the Congress of the Council of Europe, called “On the current pressing problems in the Local Public Administration and the major debts in the implementation of the republic of Moldova reforms and commitments in the field of decentralisation and local democracy”.

46. Basically, the complaint letter raised several points where, in short, they alleged: (a) a governmental blockade in the implementation of the actions outlines in the Congress Recommendation 322(2012), on the necessary reforms at local level; (b) an unsatisfactory situation of local government finances; (c) the existence of a process of re-centralisation in the country; (d) the very low remunerations for local officials; (e) the existence of a campaign of undue governmental pressure on local officials, which includes political and judicial harassment; and (f) a lack of dialogue and political negotiation between the central authorities and the representatives of local governments.

47. The extent and seriousness of the complaints turned out to go well beyond the mandate decided for this fact-finding mission, and the Delegation could only focused on some of these complaints, which are summarily described below. Consequently, some of the allegations could not be examined and analysed at this time. Its full examination is therefore postponed to the monitoring visit that the Congress is planning to carry out in Republic of Moldova in spring 2018.

3.1. General situation of “undue pressures” on local officials and leaders

48. In its complaint, the CALM reported that in Moldova many local officials (especially mayors) have been subject to criminal prosecution and investigation (*dossar penale*) under charges of corruption, abuse of power (art. 328 of the criminal code) and financial mismanagement. This pattern can be characterised by the following features:

a. The number of affected local officials is unusually high, in comparison with common statistics in European countries. In this respect, it was impressive that absolutely all the local representatives met by the rapporteurs were or had been subject to such investigations and prosecutions. In some cases, the same local official accumulated up to nine such criminal investigations. Mayors are the local officials who are the most targeted by this practice because they are allegedly responsible for taking decisions involving expenditures, the award of public contracts and the management of local properties.

b. Some investigations seem to have been initiated for minor offences, or even for omissions to act. For instance, for awarding a small contract for constructing a fence around a school, for the reparation of the roof of the Town Hall or for cutting trees from the yard of the Town Hall.

c. The proportion of investigated local officials who belong to some parties (the Liberal Democratic Party, the Communist Party, the Liberal Party, the PPN (“our party”, *partidul nostru*) is much higher than the number of investigated mayors belonging to other parties (especially the Democratic party or the Socialist Party). The claim that there is a pattern of “selective law enforcement” was repeatedly and vehemently forwarded by the local representatives met by the rapporteurs. This would allegedly be the result of a comprehensive strategy of the central government and of the Democratic party, now in power at national level.

d. These criminal prosecutions are frequently accompanied with the adoption by the criminal Courts of the provisional measure of suspension of office of the mayor, a suspension that may be coupled with a home arrest or even with pre-trial detention of the investigated local official. Moreover, the suspension from office is usually prolonged many consecutive times, so as to cover an unreasonable long time-span.

e. Furthermore, local leaders claim that the petition of the prosecutor to the criminal Court is in many cases not supported by robust evidence. On the contrary, a mere “reasonable suspicion” alleged by the prosecutor suffices for the judge to grant an interim restriction measure.

f. In the fight against corruption, quasi-inquisitorial instruments are used, such as the accusation on the part of other local government officials (for instance, the deputy mayor). If that person confesses in exchange for immunity - that he and the mayor participated in the investigated criminal action, the deputy mayor remains unprosecuted, while the accused mayor is suspended (and eventually arrested).

49. The consequences of this situation are very serious from the perspective of the functioning of local democracy. There are two main points: (a) the prosecutors are exerting, *de facto*, a very strong influence on the functioning of the local governments, (b) many local leaders are dissuaded from remaining in the local political life, and especially young people are discouraged about devoting to local politics. Many people are declining to run as candidates for local elections.

50. The rapporteurs asked several questions on the reality and seriousness of this situation during the meeting with representatives of the State chancellery. The top officials met declared that corruption is a very serious problem in Moldova and that the government has pledged to combat efficiently this blot (illustrated by the fact that one former Prime Minister, five former ministers and some prominent businessmen were prosecuted for charges of corruption and some of them served prison sentences). They assured that the acts, decisions and initiatives taken by the Public Prosecutors or by Moldovan criminal Courts are adopted in an entirely independent and autonomous way, that the government has no intervention or initiative in the matter whatsoever and that they declined to make comments on the actions of the Law enforcement authorities.

51. They declared that they respect the activity of the judicial branch and underlined that under Moldovan Law any indicted mayor is faced to suffering interim or preventive restrictive measures, just like any other top governmental official. They also pointed that not infrequently local mayors lack the necessary legal and managerial education for the sound spending of the public monies. Finally, they underlined that legal guarantees apply in those cases and in many cases a mayor who had been suspended and criminally investigated was eventually discharged by the higher or Supreme Court and subsequently reinstated in his mayoral position in a most honourable way (they mentioned the case of the mayor of Taraclia).

52. In the light of this divergence of versions, it seems undisputed at least that there is certainly a pattern of systematic and massive criminal investigations against mayors and local officials in the country. This is evidenced by the oral testimonies of the local representatives, news in the media, documents and findings of international organisations, printed materials presented to the Delegation,¹⁴ etc. The Delegation, thought, could not get evidence or proved reasons for concluding that this situation was the result of a deliberate governmental strategy, or a plan of the Democratic party (now in power), as alleged by some local representatives. In reality that would be very hard or even impossible to prove. This issue is anyway very serious and should be analysed in more detail during the monitoring mission in Moldova planned in spring 2018.

3.2. Remunerations for local officials

53. In its letter, the CALM also complained that the remunerations paid to members of the local councils and to mayors in Moldova are very low. Such remunerations were depicted by CALM as “humiliating”. They contend, in addition, that the economic conditions offered to local officials are absolutely deterring for any person who wants to devote to local politics. Consequently, there is a lack of motivation for people and young local politicians quit local government life.

54. Governmental representatives’ sources (State chancellery) told the Delegation that they concede that salaries and wages are low and they are aware of this situation. They agreed that the wages should be revised and raised. However, they also stressed that in order to do so it is necessary to have economic resources. This is why the government is allegedly engaging in governmental reforms, in order to make monies available for this type of arrangements.

3.3. Lack of consultation and political dialogue in the context of local reforms

55. Local representatives reported that the government is not implementing the recommendations of the Congress on local reforms, that it is stopping the decentralisation process and that there is a clear pattern of recentralisation in the country. Moreover, they told the Delegation that the CALM is systematically excluded from governmental talks and negotiations in the field of local reforms. For instance, they claimed that the strategy on the reform of Public Administration was approved by a commission where there was not even one representative of CALM.

56. The governmental top officials met by the Delegation conveyed a very different picture of the situation. They explained that the Government has approved a clear agenda for governmental reforms, which includes the local authorities. They have approved a “Strategy of public administration reform” in 2016, and an Action Plan. Moreover, a specific Action Plan on decentralisation is due to be approved in 2018. The rapporteurs were told that the government is moving according to a schedule and there is no paralysis or blockade in the reforms. In the wake of this pattern of reforms, some competences have already been transferred to the local authorities.

57. On the allegations of lack of dialogue with local authorities, the State chancellery representatives stated that the government has allegedly pledged in favour of building a strong dialogue with the representatives of local authorities. In this sense, they underlined the fact that the current Prime Minister is the first and only one so far who held a meeting with the CALM shortly after taking office, and that he has agreed that a representative of the CALM could attend the meeting of the Cabinet of Ministers when there are issues affecting local authorities. Furthermore, they assured the Delegation that the representatives of the CALM will be included in the next commission of local government reform.

58. The CALM also claimed that there was no platforms for dialogue with the line ministries, the governmental representatives explained that this was not possible until now because the central government itself was in a process of reforms (from 16 ministries to 9) and that, once the new situation will be consolidated, there will be specific platforms for dialogue with local authorities for every and each ministry.

¹⁴ The representative of the “our party” Party provided the delegation with a booklet called “Political repression and political prisoners in Moldova” (2017), describing the situation affecting his organisation.

59. In any case, the governmental representatives conceded that the dialogue between the central government and the local authorities was not satisfactory. They stated that the Government opened the door and extended its hand to the local representatives, but that they did not accept the invitation. In this sense, and taking advantage that the Rapporteur Gunn Marit Helgesen, is at the same time the president of the Norwegian association of local authorities (KS), they suggested that this association could act as neutral intermediary or facilitator of the said inter-governmental dialogue.

4. CONCLUSIONS

a. The Delegation deplores the problematic questions concerning the correctness and soundness of the suspension of Dorin Chirtoaca which has not been clarified yet.

b. The rapporteurs also noted with concern that the suspension of Dorin Chirtoaca has been extended several times since the adoption of the first court decision in May 2017, without a robust criminal file been produced or sent to the attention of the Court yet.

c. They also observed with dissatisfaction the situation of temporariness and lack of democracy legitimacy in the holding of the position of Mayor of Chisinau.

d. Several unsatisfactory features in the current legal scheme governing the local referendums for revoking mayors in Moldova, are observed as well, especially those concerning the inability of a suspended mayor to participate in the local recall referendum and the legal wording that identifies the grounds for organising such local consultations.

e. The rapporteurs are still very concerned by the very high and abnormal (by European standards) number of criminal investigations against local officials, especially mayors, and that in many cases those criminal investigations have problematic features.

f. Finally, the Delegation noticed that the inter-institutional consultation between the central government and the local authorities representatives (especially the CALM) is not working well, and that the political dialogue is at present seriously threatened. However, during the visit, the two parties (Government and CALM) declared themselves ready to dialogue.

60. In conclusion, the rapporteurs reaffirmed their assessment of several violations of the Charter identified during the visit carried out in August 2017. In this sense, they noticed an overall negative situation of local democracy in the country. In comparison with past monitoring exercises and visits, the rapporteurs consider that local democracy is suffering a certain degradation and deterioration.

5. RECOMMENDATIONS

61. On the basis of the precedent consideration, the rapporteurs propose the following draft recommendations:

- Moldovan authorities should be invited to revise the legal rules regulating the grounds on which a local recall referendum can be organised (art. 177.2 of the Electoral Code). The legal amendments should try to clarify those grounds in order to provide more legal certainty and to reduce the room of discretion in triggering those popular consultations.

- They should also be invited to revise the legal rules regulating the local recall referendums in order to allow clearly for the possibility for a suspended mayor to take part in the electoral campaign preceding the local referendum, so that he can participate on it and state his case.

- It is suggested that Moldovan authorities make the necessary legal and regulatory arrangements in order to avoid the possible distorting consequences of the application of this instrument in the local democratic life.

- A more appropriate balance between the satisfaction of the public interest of combating corruption and the requirements of local democracy should be found, so that the criminal prosecutions against local officials and mayors take adequately into consideration the societal and political values of self-government and the necessity of producing the least possible disruption of the local institutional life.

- Central and local authorities are encouraged to resume and revive in good faith and open mind the necessary mechanisms of inter-administrative consultation and political dialogue, in order to find a common position on the planned reforms affecting local authorities.

APPENDIX - Programme of the fact-finding visit to the Republic of Moldova

**CONGRESS FACT-FINDING VISIT TO THE REPUBLIC OF MOLDOVA
(Chisinau)**

13 December 2017

PROGRAMME

Congress delegation

Ms Gunn Marit HELGESEN	Rapporteur on local democracy Vice-President of the Congress President of the Chamber of Regions, EPP/CCE ¹⁵ Mayor of Telemark, Norway
Mr Marc COOLS	Rapporteur on local democracy Chamber of Local Authorities, ILDG ¹⁶ First Deputy Mayor, Uccle, Belgium

Congress secretariat

Mr Jean-Philippe BOZOULS	Director of the Congress
Ms Stéphanie POIREL	Secretary to the Monitoring Committee

Consultant

Prof. Angel M. MORENO	Expert, Chair of the Group of Independents Experts on the CEAL
-----------------------	---

¹⁵ EPP/CCE: European People's Party Group of the Congress.

¹⁶ ILDG: Independent Liberal Democrat Group in the Congress

**13 December 2017
Chisinau**

- **NATIONAL DELEGATION TO THE CONGRESS AND REPRESENTATIVES OF THE CONGRESS OF LOCAL AUTHORITIES FROM MOLDOVA (CALM)**

Mr Dorin CHIRTOACA, Mayor of Chisinau, Vice-President of the Congress

Ms Alina RUSSU, Chairperson of the Central Electoral Commission

- **STATE CHANCELLERY**

Mr Valentin GUZNAC, Deputy Secretary General of the Government

- **CONSTITUTIONAL COURT**

Mr Tudor PANTÎRU, President

- **MEETING WITH REPRESENTATIVES OF SEVERAL POLITICAL PARTIES**

PLDM - Liberal Democratic Party of Moldova

PL - Liberal Party

PCRM - Communist Party

PPN - Our Party