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Local democracy in the Republic of Moldova: clarification of the conditions surrounding the suspension of the Mayor of Chişinău

Bureau of the Congress

Rapporteur¹: Gunn Marit HELGESEN, Norway (R, EPP/CCE)

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Summary

This document reports the conclusions of the rapporteur, Gunn Marit Helgesen, with regard to her visit to Chişinău at the request of the Bureau of the Congress. The rapporteur notes with concern that the conditions in which the mayor of the capital of the Republic of Moldova has been suspended are problematic in terms of Articles 3.2, 7.1 and 8.3 of the European Charter of Local Self-Government. She has proposed a draft resolution instructing the Congress to arrange a fact-finding mission, which will result in a recommendation to the Moldovan authorities, asking the Venice Commission to give its opinion on the compatibility of the local recall referendum with the international standards, and requesting that the information in the present report be forwarded to the Monitoring Committee so that the latter may take it into account in the monitoring of local and regional democracy in the Republic of Moldova planned for 2018, particularly in the light of the complaint sent to the Congress in the meantime by the Congress of Local Authorities of Moldova (CALM), which reports pressure being brought to bear on local elected representatives through recurrent court proceedings against them.

¹ L: Chamber of Local Authorities / R: Chamber of Regions
 EPP/CCE: European People's Party Group in the Congress (EPP/CCE)
 SOC: Socialist Group
 ILDG: Independent Liberal and Democratic Group
 ECR: European Conservatives & Reformists Group
 NR: Not registered with any political group in the Congress

RESOLUTION 420 (2017)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 of Local and Regional Authorities, which states that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the aforesaid Statutory Resolution CM/Res(2015)9, which provides that “[t]he 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. Resolution 409 (2016) of the Congress relating to the Rules and Procedures of the Congress and in particular Chapter XVII on organisation of monitoring procedures;

d. Recommendation 322 (2012) of the Congress on local and regional democracy in the Republic of Moldova;

e. the explanatory memorandum appended hereto on “Local democracy in the Republic of Moldova: clarification of the conditions surrounding the suspension of the Mayor of Chişinău”.

2. The Congress notes 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 Bureau instructed Gunn Marit Helgesen (Norway, R, EPP/CCE), President of the Chamber of Regions of the Congress, to travel to Chişinău to visit Dorin Chirtoaca, Mayor of Chişinău and Vice-President of the Chamber of Regions, in order to clarify the conditions surrounding his suspension and prepare and submit to the Congress a report on this issue;

d. the rapporteur travelled to Chişinău on 30 August 2017, where she had meetings with Mr Chirtoaca, the mayor of the capital, the Head Prosecutor of the National Anti-corruption Centre, Congress of Local Authorities of Moldova (CALM) representatives and the Minister of Justice. The detailed programme of the visit is appended to this report;

e. the delegation would like to thank the Permanent Representation of the Republic of Moldova to the Council of Europe for its kind assistance in arranging this visit and the persons with whom it met for the open and constructive discussions.

3. The Congress expresses concern regarding:

a. failure to comply with Article 8.3 of the Charter inasmuch as the elected mayor of the capital of the Republic of Moldova has been suspended by a judicial authority and the anti-corruption prosecutor approached the municipal council on his own initiative to ask it to go to court to begin proceedings to suspend the mayor, which amounts to interference and risks politicising the judiciary, in the absence of provisions governing the specific procedure for suspending a local elected representative;

b. failure to comply with Article 3.2 of the Charter inasmuch as the Mayor of Chişinău has been replaced by an unelected individual, a local-government officer, having successively served as acting deputy mayor and then as acting mayor;

² Debated and adopted by the Congress on 19 October 2017, 2nd sitting (see Document [CG33\(2017\)23final](#), explanatory memorandum), rapporteur: Gunn Marit HELGESEN, Norway (R, EPP/CCE).

c. failure to comply with Article 7.1 of the Charter inasmuch as a local recall referendum is being organised to curtail the mayor's term of office, despite the fact that the Moldovan Constitution and the law on the conditions of office of local elected representatives prohibit any binding mandate.

4. The Congress recalls that member States of the Council of Europe that have signed and ratified the Charter have undertaken to comply with its provisions.

5. It further recalls that "local democracy" is a shared value across the continent and thus a constituent part of European democracy. This implies that local elected representatives must be able to exercise their functions freely, in fact and in law, in the same way that elected representatives at the national level must be able exercise theirs in any democratic state.

6. It emphasises that the general principle of local self-government entails decentralisation of public responsibilities and reasonable supervision on the part of national authorities and that the principle of proportionality, as defined in the Charter, requires national authorities and their representatives to use methods that encroach as little as possible upon local self-government when exercising their powers.

7. In the light of the foregoing, the Congress:

a. undertakes to monitor closely the situation of Dorin Chirtoaca, Mayor of Chişinău and Vice-President of the Congress, by arranging a fact-finding mission, including several visits if necessary, with a view to updating the information on his situation and on that of the capital city Chişinău, which will result in a recommendation to the Moldovan national authorities;

b. informs the Commission for Democracy through Law of the Council of Europe ("Venice Commission") of the present report and in particular requests its opinion on the compatibility of the local recall referendum aimed at cutting short the term of office of the capital's mayor with the international standards;

c. requests the Monitoring Committee to take account of this report in the monitoring exercise on the situation of local and regional democracy in the Republic of Moldova planned for 2018, particularly in the light of the complaint sent to the Congress in the meantime by the CALM, which denounces pressure being brought to bear on local elected representatives through recurrent court proceedings against them.

EXPLANATORY MEMORANDUM

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1. CONTEXT

1. On 30 August 2017 a delegation from the Congress of Local and Regional Authorities of the Council of Europe conducted a fact-finding visit to the Republic of Moldova led by Gunn Marit Helgesen, President of the Chamber of Regions (Norway, R, EPP/CCE) and Vice-President of the Congress, accompanied by Jean-Philippe Bozouls, Director of the Congress.

The background to and grounds for this visit can be summarised as follows:

1.1 Complaint

2. On 12 June 2017 Mr Dorin Chirtoaca, Mayor of Chişinău and Vice-President of the Chamber of Regions, sent a letter to the Bureau of the Congress notifying it of his arrest on 25 May 2017 for passive corruption and influence peddling.³

3. This arrest was covered by the international press, and a number of articles reported the circumstances surrounding Dorin Chirtoaca's arrest. At EU level, the ALDE and EPP political groups strongly criticised the latest political developments in the Republic of Moldova and voiced concern at the situation of the Mayor of Chişinău.

4. Since then the Congress has been regularly informed of developments in Dorin Chirtoaca's situation as well as the situation of other Moldovan mayors being prosecuted.

1.2 Bureau decision

5. At its meeting on 16 June 2017 the Bureau of the Congress instructed the President of the Chamber of Regions, Gunn Marit Helgesen, to visit Dorin Chirtoaca in order to clarify the context of the arrest and suspension of the Mayor of Chişinău and Vice-President of the Congress.

6. In a letter dated 13 July 2017, the Chair of the Monitoring Committee, Leendert Verbeek, asked Gudrun Mosler-Törnström, President of the Congress, to take advantage of Gunn Marit Helgesen's visit to the Republic of Moldova to gather information relating to allegations from Moldovan local elected representatives that had reached the Congress in the meantime and that reported pressure and intimidation to which they had been subjected. Ms Helgesen was notified of this request.

7. During the visit the delegation met Dorin Chirtoaca at his home in Colonita in the suburbs of Chişinău, where he had been under house arrest since 22 June 2017.⁴ In Chişinău the delegation also had meetings with Viorel Morari, Head Prosecutor of the National Anti-corruption Centre, Vladimir Cebotari, Minister of Justice, members of the Moldovan delegation to the Congress and representatives of the national association of Moldovan local authorities (CALM). The programme for the visit⁵ is appended to this report.

2. LEGAL BACKGROUND TO THE SITUATION OF THE MAYOR OF CHISINAU

8. Dorin Chirtoaca, Mayor of Chişinău and Deputy Chair of the Moldovan Liberal Party, has been serving his third term of office as mayor since June 2015.

9. In the Council of Europe Mr Chirtoaca is a member of the Congress's Monitoring Committee and has been Vice-President of the Congress since October 2016.

³ Offences under Article 324, paragraph 3a, and Article 326, paragraph 3a, respectively of the Moldovan Criminal Code.

⁴ Dorin Chirtoaca was placed under house arrest in his flat in Chişinău on 26 May 2017. When his house arrest was extended he requested transfer to his other home in Colonita, which was granted.

⁵ The delegation would like to thank the Permanent Representation of the Republic of Moldova to the Council of Europe for helping to organise and facilitate the visit as well as the persons with whom it met during the visit for their helpfulness and the information with which they kindly provided the delegation.

The facts

10. In 2013 the Mayor of Chişinău began negotiating a public-private partnership for a paid parking scheme planned for the city of Chişinău.
11. In 2014 Chişinău Municipal Council adopted a decision on the procedure for launching the partnership project and set up a tendering committee headed by one of the deputy mayors, Nistor Grozavu. The Municipal Council objected to the Mayor of Chişinău being a member of this committee.
12. By an order of 25 September 2015, criminal proceedings were brought against members of Chişinău city council⁶ by the anti-corruption prosecutor on the grounds of “a future agreement” linked to the invitation to tender, which was aimed at ensuring that the Austro-Hungarian company EME Parkleitsystem GmbH would win the tender. According to Dorin Chirtoaca’s defence counsel, he was notified of this order on 26 May 2017.
13. In October 2015 the Austro-Hungarian company EME Parkleitsystem GmbH was awarded the tender.
14. On 25 April 2017 Nistor Grozavu, Deputy Mayor of Chişinău, and Igor Gamretchi, head of the Chişinău City Transport Department, were placed in police custody by prosecutors from Moldova’s National Anti-corruption Centre. Both officials were placed under formal investigation for having signed the contract at issue (Mr Grozavu) and for influence peddling (Mr Gamretchi). Once released from police custody, Mr Grozavu, the deputy mayor, resumed his duties at Chişinău City Council while investigation of the complaint against him continued.
15. Following statements by the Deputy Mayor of Chişinău and the head of the Transport Department, on 25 May 2017, calling into question the integrity of Mr Chirtoaca, the latter was remanded in custody that same day by the prosecutors of the Anti-corruption Centre. He was then placed under house arrest on 26 May 2017 for a period of 30 days and suspended from office on 28 July. His house arrest was extended on 22 June 2017, 14 July 2017, 10 August 2017 and 11 September 2017 by order of the Chişinău court on the grounds that the sentence applicable was longer than two years, that there was a reasonable suspicion that the accused had committed an offence and that there was a risk of interference with the administration of justice and a risk that the accused might abscond. The grounds cited for extending the house arrest on 11 September were the risk of absconding owing to the accused’s dual nationality.
16. The Anti-corruption Centre accuses Mr Chirtoaca of having instructed his deputy to sign the contract with EME Parkleitsystem GmbH without the municipal council’s approval.
17. The criminal proceedings initiated in May 2017 were joined⁷ retroactively to the criminal proceedings that had been instituted on 25 September 2015 not against named individuals but against “officials exceeding their statutory rights and responsibilities with serious consequences” (see paragraph 12 above).
18. By a decision of 28 July 2017 based on section 33 of the Local Public Administration Act (“LPA Act”), the court suspended Dorin Chirtoaca from his duties as mayor.
19. Since 2 August 2017 Nistor Grozavu has been serving as acting Mayor of Chişinău.
20. On 6 September 2017 Dorin Chirtoaca was summoned by the Anti-corruption Centre to be informed of another investigation to be opened against him for abuse of authority.⁸
21. On 12 September 2017 Chişinău Municipal Council approved, by 26 votes to 15, a local referendum on recalling the mayor and proposed 19 November 2017 as the date on which it should be held. The Central Electoral Commission has ratified this proposal.

6 The order does not contain any names. It is literally addressed to “officials exceeding their statutory rights and responsibilities with serious consequences”.

7 See anti-corruption prosecutor’s order of 20 June 2017 concerning Criminal Complaint No. 2015970483.

8 An offence under Article 328, paragraph 3, of the Moldovan Criminal Code.

2.1 Suspension from office of the Mayor of Chişinău

22. On 21 July 2017, on the basis of section 33 of the LPA Act relating to a mayor's suspension from office, the Anti-corruption Centre's head prosecutor applied to Chişinău Municipal Council (Application No. 7576) asking whether it wished to go to court so as to begin proceedings to suspend the Mayor of Chişinău.

23. The Municipal Council did not respond to the prosecutor's application.

24. On 26 July 2017 the Anti-corruption Centre's head prosecutor lodged an application with the court requesting provisional suspension of the Mayor of Chişinău on the grounds that Mr Chirtoaca could prevent establishment of the truth and influence witnesses with whom he had ties or professional contacts. The prosecutor based his application to the court on the provisions of Article 197 of the Criminal Procedure Code (CPC) and section 33 of the LPA Act.

25. Section 33 of the LPA Act provides as follows:

"(1) A mayor who is prosecuted for an offence may be suspended from office until the case is definitively settled. Organisation of new elections for the office of mayor is prohibited for the entire duration of the suspension.

(2) Suspension may be ordered only by a court in accordance with the law.

(3) If he or she is acquitted or the proceedings are terminated, the suspended mayor is entitled to damages unless granted an amnesty. The mayor shall be reinstated until expiry of his or her term of office.

(4) The provisions of this section shall also apply to deputy mayors."

26. Article 197 of the CPC concerning other coercive procedural measures provides:

"[...] 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."

27. On 28 July 2017 Mr Chirtoaca was suspended from office.

28. Mr Chirtoaca's lawyers argued before the Buiucani Court of First Instance and the Chişinău Court of Appeal that the CPC contained no provisions relating to the procedure for suspending an elected representative.

29. They further pleaded that section 33 of the LPA Act was unconstitutional, pointing out that this law did not contain any provisions relating to the procedure for suspending an elected representative either. There was thus a "legal vacuum" in this respect. The objection of unconstitutionality was dismissed by the Constitutional Court in a decision dated 6 September 2017.

2.2 House arrest

30. The Moldovan Criminal Procedure Code defines house arrest as follows:

Article 188, paragraph 1

"House arrest consists in isolating a suspect or defendant from society by confining that person to his or her home and establishing certain restrictions."

Article 188, paragraph 3

"House arrest shall be accompanied by one or more of the following restrictions:

- *A ban on leaving the dwelling.*
- *Restrictions on telephone calls and on sending and receiving postal items*
- *Prohibition of communications with certain persons and of receiving them at home."*

Article 188, paragraph 4

“A person under house arrest is required to:

- Maintain electronic monitoring devices in working order and wear them permanently*
- Answer calls or make telephone calls for monitoring purposes*
- Appear in person before the prosecution authority or court at the appointed times.”*

31. Despite successive appeals by his lawyers, Dorin Chirtoaca’s house arrest has been extended four times on the grounds that there are plausible suspicions that he committed an offence punishable by a prison sentence of over two years and that there is a risk of interference with the investigation, a risk of influencing witnesses or absconding owing to “the character and personality of the accused”, a risk of evidence being destroyed and a risk of absconding owing to the accused’s dual nationality.

2.3 Physical conditions of Dorin Chirtoaca’s house arrest

32. Mr Chirtoaca is being detained at his home in the village of Colonita. He cannot leave home without the court’s permission. The rapporteur here notes that the court refused to grant Mr Chirtoaca permission to leave his home so as to travel to the Council of Europe’s office in Chişinău, where he wished to meet with the delegation. She therefore went to his home to hold the planned exchange of views.

33. Dorin Chirtoaca’s parents (who live in Chişinău) visit him every weekend to bring him food supplies and other essentials (such as medicines).

34. Mr Chirtoaca is contacted on his home landline every two hours between 7 a.m. and 9 p.m. by the head prosecutor’s department of the Anti-corruption Centre to check his presence at home. Such a telephone call was indeed made during the discussions with the delegation.

35. Mr Chirtoaca has had no income since his arrest on 25 May 2017, and his social rights have also been affected by the measures to which he is subject.

36. In an emergency Mr Chirtoaca is allowed to call an ambulance. In this case, the ambulance must then confirm that the emergency is genuine before taking him to hospital or to a medical centre.

37. Dorin Chirtoaca has himself restricted his use of common means of communication such as the Internet and his mobile phone and landline, since, as he told the delegation, he does not wish to put his family and friends “at risk” through contact with them.

38. During the meeting with the delegation he explained that his situation was psychologically difficult owing, firstly, to a lack of everyday communication with the outside world and, secondly, to his sense of injustice because he considers the proceedings to be unfounded. Mr Chirtoaca continues to proclaim his innocence.

3. LOCAL DEMOCRACY: APPLICABILITY OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

39. The Republic of Moldova signed the European Charter of 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.

40. Article 8 of Moldova’s Constitution provides for the primacy of international law over domestic law; consequently the Charter is applicable and directly enforceable in domestic law.

3.1 Proportionality of the intervention by the controlling authority in relation to the importance of the interests which it seeks to protect

41. Article 8.3 of the Charter provides that administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it seeks to protect.

42. As regards the purely judicial aspect of the case, the rapporteur entertains doubts as to whether the directly elected Mayor of Chişinău can be suspended from office when there are no provisions in domestic law relating to a procedure for suspending a local elected representative. Indeed, some of the persons contacted acknowledged the existence of a legal vacuum in this respect in their discussions with the delegation.

43. The rapporteur would underline that every individual has a basic right to be presumed innocent. That being so, the suspension from office of the Mayor of Chişinău and the deprivation of liberty constituted by house arrest (renewed four times at the time of writing) although he has not been convicted seem excessive and could simply have been replaced by court supervision and prohibition of contact with any individuals connected with the case, as Mr Chirtoaca's counsel requested.

44. In particular, the rapporteur notes that the head prosecutor approached the Chişinău Municipal Council to ask whether it would consider proceedings to suspend the mayor, despite the absence of any statutory basis for giving effect to such proceedings. In the rapporteur's opinion, this amounts to interference by the prosecutor, which entails a risk of politicising the judiciary, since for a prosecutor to approach a municipal council is more a political process than a judicial one.

45. To conclude on this aspect, the rapporteur points out that, assuming the charges against Mr Chirtoaca are founded in law and in fact, the preventive measure of suspending the mayor, thus leaving the capital without an executive elected by direct universal suffrage, on the basis of allegations not yet supported by evidence seems disproportionate within the meaning of Article 8.3 of the Charter.⁹

3.2 Concept of local self-government

46. The city of Chişinău is currently being run by an official who, after having served as acting deputy mayor, at present holds the office of acting mayor under domestic law.

47. Section 17, subparagraph 2, of Law No. 136 of 17 June 2016 on the rules governing the Chişinău Municipal Council: Deputy mayors

A deputy mayor shall be elected on a proposal by the mayor and by decision of the municipal council, adopted by a majority vote of the elected councillors. If the decision on the proposed candidate for deputy mayor is excluded from the agenda for two consecutive meetings, by decision of the municipal council, or does not obtain the required number of votes at two consecutive sessions, the mayor shall appoint the deputy mayor by means of an order, which shall be brought to the attention of the municipal council.

48. Section 26, subparagraph 4, of the LPA Act

“Any person, including councillors, can be elected deputy mayor.”

⁹ The rapporteur notes that in the most recent report on local and regional autonomy in the Republic of Moldova adopted by the Congress on 13 March 2012 it was stated that the rapporteurs who had carried out the monitoring visit had the impression that local authorities in the Republic of Moldova enjoyed self-government on paper but in actual fact it was limited, particularly owing to interference by central government in the day-to-day activities of local authorities. During its visit the delegation heard statements by various government officials who clearly wished to rectify this situation by effectively strengthening local self-government.

49. Section 34, subparagraph 1, of the LPA Act: Acting mayor

“If the mayor's term of office is terminated before it expires, or the mayor is suspended from office or is unable to hold office, he or she shall be replaced by a deputy mayor.”

50. Rule 55 of the Rules on the Composition and Operation of the Chişinău Municipal Council dated 14 June 2016

“The term of office of the Deputy Mayor of Chişinău shall end upon expiry of the municipal council's term of office. If the deputy mayor's term of office has expired and a successor has not taken up his or her duties, the deputy mayor shall continue to hold office until a successor takes office.”

51. Deputy mayors are appointed by decision of the municipal council pursuant to section 17, subparagraph 2, of the law on the rules governing the Chişinău Municipal Council,¹⁰ section 34 of the LPA Act and Rule 55 of the Rules on the Composition and Operation of the Chişinău Municipal Council. In 2007 Mr Grozavu, a public servant employed as a personal adviser in the Mayor's Private Office, was appointed deputy mayor in this way. His term of office was to run until 2011.¹¹ However, the aforesaid rule also provides that a deputy mayor may remain in post even beyond the expiry of his or her term of office if the municipal council fails to elect a successor. This was the case, and Mr Grozavu therefore remained acting deputy mayor from 2011 until 2 August 2017, when he took over as acting mayor.

52. The rapporteur draws attention to Article 3 of the Charter on the concept of local self-government (particularly paragraph 2), which provides as follows:

1. *Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.*
2. *This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.*

53. The continuation in office of a deputy mayor who is implicated in the same criminal proceedings as the mayor, himself under house arrest, already raises a number of questions. Disregarding the issue of the fairness of the judicial proceedings, which lies outside the scope of the Charter and the Congress's field of competence, in the rapporteur's opinion 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 being taken by the municipal council, is clearly problematic in the light of Article 3.2 of the Charter as regards the concept of local self-government applicable in the Republic of Moldova.

3.3 The local referendum to recall the capital's mayor

54. On 12 September 2017 Chişinău Municipal Council voted to hold a referendum to recall the mayor, Dorin Chirtoaca, based on Article 177, paragraph 2, of the Electoral Code.¹²

55. This referendum is to be held on 19 November 2017.

56. Article 68, paragraph 2, of the Moldovan Constitution provides:

“Any imperative mandate shall be deemed null and void.”

¹⁰ Law No. 136 of 17 June 2016.

¹¹ Section 26, subparagraph 4, of the LPA Act provides that “any person, including councillors, can be elected deputy mayor”.

¹² In 2014 and 2016 the socialist members of the municipal council applied to the court of first instance for holding of a recall referendum based on this provision of the Electoral Code. Their applications were dismissed as unfounded.

57. Law 768 of 2 February 2000 on the conditions of office of local elected representatives provides as follows:

Section 4, subparagraph 1

“Any imperative mandate shall be null and void.”

58. Section 5, subparagraph 4

“The mayor’s term of office shall be curtailed in the event of:

[...]

b) Inability to serve in the office for over four consecutive months, including on medical grounds

c) Conviction and sentence;

d) Recall by a local referendum pursuant to the Electoral Code

59. The LPA Act contains the following provisions on local referendums:

Section 8: Local referendums

(1) In matters of particular importance for the territorial administrative unit, the population can be consulted through a local referendum organised under the Electoral Code.

Section 14: Basic powers of local councils

(1) The municipal council shall have the right to initiate legislation and decide, with due regard for law, on all matters of local interest other than those regarding other public authorities.

(2) (z) [...] the municipal council shall consider information from councillors and take decisions on this basis; hear reports and information from the mayor [...], initiate and, where appropriate, decide on the holding of local referendums.

60. Local referendums are governed by the Electoral Code. Grounds for recall are set out in the following provision:

Article 177, paragraph 2, of the Electoral Code

Recall of a mayor may be initiated if he or she fails to uphold the interests of the local community, fails properly to exercise the responsibilities of his or her elective office in accordance with the law or infringes moral and ethical norms if this conduct has been proven.

61. Paragraph 2 of Article 177 therefore specifically allows recall of a mayor for failure to uphold the interests of the local community if the facts have been established, which implies that the citizens of this community have the general power to remove a mayor before expiry of his or her term of office by means of a referendum.

62. The delegation draws attention to a note sent to the Council of Europe on 30 August 2001 by the National League of Associations of Mayors of Moldova,¹³ in which the league condemned not only the lack of clarity of Article 177, paragraph 2, of the Electoral Code but also its unconstitutional nature, since this provision allowed a mayor to be recalled, whereas Article 68, paragraph 2, of the Constitution prohibited any binding mandate.

63. The rapporteur refers to Charter Article 7.1 of the Charter, which provides:

“The conditions of office of local elected representatives shall provide for free exercise of their functions.”

64. In the rapporteur’s opinion, the decision to hold a recall referendum for the Mayor of Chişinău to curtail his term of office infringes this right to free exercise of his functions.

¹³ See [Appendix 3](#) of the report by the Congress of Local and Regional Authorities of the Council of Europe on the situation of local and regional democracy in Moldova (CG (9) 6 Part II)

65. The rapporteur also refers to an opinion of the Venice Commission¹⁴ addressing the question of the recall procedure for elected representatives in the Republic of Moldova: “Attempts to remove the irrevocability of MPs in the Republic of Moldova have previously been an issue of concern for the OSCE/ODIHR and the Council of Europe. Imperative mandate and recall of representatives are unknown in modern European democracies: as underlined by the Venice Commission, ‘the basic constitutional principle which prohibits imperative mandate or any other form of politically depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism’.”

66. In this opinion the Venice Commission refers to a judgment of the Moldovan Constitutional Court dated 19 June 2012 on the interpretation of Article 68, paragraph 2, of the Constitution, among other provisions. In this judgment,¹⁵ the Constitutional Court held that the prohibition of any binding mandate laid down in the above provision means that “Members of Parliament exercise their mandate directly, freely and effectively, according to their beliefs, in the interests of the whole people”. The Constitutional Court stresses that “in line with free representation, the parliamentarian’s mandate is irrevocable: voters cannot end it prematurely and the practice of ‘blank resignations’ is prohibited. Voters cannot, therefore, express dissatisfaction with the way in which a candidate has fulfilled his or her mandate other than by refusing to vote for that candidate again when he or she seeks re-election.”¹⁶

67. In electing a mayor by direct universal suffrage, voters are delegating their power of action to this mayor and more generally giving him or her a mandate to represent the community as a whole. This institutional system allows a transfer of sovereignty reflected in the elected representative’s right to express the will of the community and “legislate” on its behalf.

68. The rapporteur considers that the Venice Commission’s argument regarding members of parliament (paragraphs 66 and 67 above) should also be applicable *mutatis mutandis* to local elected representatives, since prohibition of “any imperative mandate” applies to all elected representatives, whether elected nationally or locally. In fact this prohibition is expressly stated in both the Moldovan Constitution and the law on conditions of office of local elected representatives.

69. She therefore concludes that there has been a breach of Article 7.1 of the Charter together with an infringement of the basic constitutional principle – regularly cited by the Council of Europe and the OSCE – of prohibition of a binding mandate.

3.4 Conditions of office of local elected representatives enabling free exercise of their functions

70. During her visit the rapporteur had a meeting with the Congress of Local Authorities of Moldova (CALM), represented by its president and by members of the association and of the national delegation to the Congress of Local and Regional Authorities.

71. In the course of this meeting the delegation's contacts complained of a deterioration in dialogue with the central authorities since the start of 2017. In particular, they informed the rapporteur of the situation of a number of mayors being subjected to political pressure or court proceedings that they considered unfounded and which had led to arrests – with media coverage – by hooded members of the police, who handcuffed these mayors, only for them then to be released without charge in some cases.

72. Some mayors told the delegation that they had been subject to several sets of court proceedings, often subsequently dropped, over two terms of office, i.e. eight years. They complained that this was damaging to their reputations and political careers even though they were eventually found not guilty of the charges.

¹⁴ See [Joint Opinion CDL-AD \(2017\)012](#) adopted by the Venice Commission at its 111th plenary session (Venice, 16-17 June 2017), paragraph 67 and, more generally, see the report on imperative mandate and similar practices ([CDL-AD \(2009\) 027](#)), paragraph.39.

¹⁵ [Judgment of Moldovan Constitutional Court dated 19 June 2012](#). See in particular paragraph 37 and the operative part of the judgment.

¹⁶ *Ibid.*, paragraph 44.

73. The mayors attending the meeting unanimously deplored the methods of supervision employed, which they considered to be harassment, as well as the manner of their arrests, which they thought was being used to intimidate local elected representatives and control them more effectively. The delegation's contacts indicated that financial audits of their municipalities often resulted in judicial proceedings being brought on a variety of charges.

74. The rapporteur draws attention to the domestic legislation protecting the conditions of office of local elected representatives in the Republic of Moldova, which includes the Constitution of 29 July 1994, Law 436-XVI of 28 December 2006 on local public administration and Law 768-XIV of 2 February 2000 on conditions of office of local elected representatives.

75. As for the Charter, which has been ratified by the Republic of Moldova, Article 7.1 provides:

“The conditions of office of local elected representatives shall provide for free exercise of their functions.”

76. In the light of the facts outlined above, the rapporteur believes that, while Moldovan law does indeed provide for conditions of office of local elected representatives guaranteeing them free exercise of their functions, it follows from the concurring accounts heard during the visit that these conditions do not offer sufficient protection in practice, at any rate not within the meaning of Article 7.1 of the Charter. The rapporteur therefore concludes that Moldova has breached this provision.

77. The rapporteur suggests that the Monitoring Committee take account of this information for the monitoring of local and regional democracy to be carried out in the country in 2018, particularly in the light of the complaint sent to the Congress in the meantime by the CALM, which reports facts similar to those revealed during the visit.

4. GENERAL CONCLUSIONS

78. The facts and the situation reported to the delegation clearly raise issues that come within the objective scope of the Charter, particularly Articles 3.2, 7.1 and 8.3 thereof.

79. It can be noted that there is a disproportion between the accusations against the Mayor of Chişinău and the measures taken to suspend him from office and place him under house arrest, thus leaving the capital without an executive elected by direct universal suffrage, on the basis of allegations not yet supported by evidence.

80. Moreover, the mayor has been suspended without any specific procedure for doing so under domestic law. The rapporteur further emphasises that the fact that the head prosecutor approached the Chişinău Municipal Council to ask whether it wished to initiate court proceedings to suspend the mayor, in the absence of any statutory basis for giving effect to such proceedings, amounts to further interference by a judicial authority, which could lead to politicisation of this authority (Article 8.3).

81. The establishment of an interim administration for the capital in the person of an unelected official (who was already serving as acting deputy mayor) is also problematic regarding application of Article 3.2 of the Charter, quite apart from the fact that this person is implicated in the same criminal proceedings as the mayor.

82. The decision to hold a recall referendum on 19 November 2017, although the Moldovan Constitution and the law on conditions of office of local elected representatives prohibit any binding mandate, is also problematic with respect to Article 7.1 of the Charter.

83. Lastly, the facts reported to the delegation by a group of mayors made subject to court proceedings, sometimes with media coverage, bear witness to a certain tension in relations between the local and national levels and to the pressures being exerted on Moldovan local elected representatives that prevent them from exercising their functions freely. Here it can only be concluded once again that this situation does not comply with Article 7.1.

84. The rapporteur considers that the points outlined above raise questions regarding application of the Charter, as ratified by the Republic of Moldova.

85. She requests the Bureau to adopt the present report and approve the draft resolution and to submit the latter for adoption at the 33rd session of the Congress from 18 to 20 October 2017.

86. She further requests that, once adopted, the present report and resolution should be transmitted for information to the Monitoring Committee so that the latter can take them into account when monitoring application of the Charter in the Republic of Moldova.

APPENDIX: Programme of the monitoring visit to the Republic of Moldova

**CONGRESS MONITORING VISIT TO THE REPUBLIC OF MOLDOVA
Chişinău
(30-31 August 2017)**

PROGRAMME

Congress delegation

Rapporteur

Ms Gunn Marit HELGESEN

Rapporteur on local democracy
Vice-President of the Congress
President of the Chamber of Regions, EPP/CCE¹⁷
Mayor of Telemark, Norway

Congress secretariat

Mr Jean-Philippe BOZOULS

Director of the Congress

Ms Stéphanie POIREL

Secretary of the Monitoring Committee

Interpreters

Mr Alexandru MELENCIUC

Mr Serge BUFTEAC

The working language of the meetings will be English. Interpretation will be provided from and into Romanian.

¹⁷ EPP/CCE: European People's Party Group of the Congress.

**Wednesday, 30 August 2017
Chişinău**

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

Lawyers:

- **Ms Tatiana IOVU**
- **Mr Ion CASIAN**

National Anti-corruption Centre:

- **Mr Viorel MORARI**, Head Prosecutor

Congress of Local Authorities of Moldova (CALM):

- **Ms Tatiana BADAN**, Mayor of Selemet, Head of the Moldovan delegation to the Congress, President of CALM
- **Ms Violeta CRUDU**, Mayor of Cruzesti, member of the Moldovan delegation to the Congress
- **Mr Alexandr TARNAVSKI**, Deputy Head of Popular Assembly of the Autonomous Territorial Unit of Gagauzia, member of the Moldovan delegation to the Congress
- **Ms Iraida BINZARI**, Head of Falesti District, member of the Moldovan delegation to the Congress
- **Mr Constantin COJOCARI**, Mayor of Edinet, member of the Moldovan delegation to the Congress
- **Mr Gheorghe RAILEANU**, Mayor of Cimislia, member of the Moldovan delegation to the Congress
- **Mr Victor BOGATICO**, Mayor of Rascani

**Thursday, 31 August 2017
Chişinău**

Ministry of Justice of the Republic of Moldova:

- **Mr Vladimir CEBOTARI**, Minister