

***Lack of a clear mechanism for de-
registration of electoral contenders in
presidential elections pursuant to Article
75(5) of the Electoral Code***

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Introduction

Existence of a system for penalizing electoral violations is important to ensure that elections are free, fair and genuine. At the same time, electoral sanctions are put in place to protect the votes cast and are a guarantor of the fairness of the entire electoral process.

Due to the effects it can produce, de-registration of an electoral contender is an extremely important procedure, requested in each election. However, the mechanism provided by law for the application of this sanction is unreliable, and the actions of the subjects involved in this process are often unpredictable.

Analysing this subject is essential, since this sanctioning can be both a mechanism for restoring the equal rights of electoral contenders, in case of bona fide application of this sanction, as well as a method of unlawfully influencing the election results – in case of its selective and unfounded application.

Thus, this document aims to analyse the practice from previous elections of de-registering electoral contenders and the appeals made in the 2020 presidential election, requesting de-registration of electoral contenders, to identify the barriers to efficient detection of electoral violations and enforcement of this sanction, and to formulate recommendations to remedy the situation.

The sanction of de-registering an electoral contender – a procedure lacking reliability and predictability

Presentation of the problem

The most serious electoral sanction¹ – de-registration of an electoral contender – is applied if it was found that:

- undeclared financial and in-kind resources were used;
- the expenses exceeded the ceiling for the electoral fund;
- the electoral contender used funds coming from abroad;
- the candidate did not suspend the previously held positions;
- non-citizens of the Republic of Moldova were involved in any form of electoral activities by the electoral contender.

According to Article 75(5)-(6) of the Electoral Code, the mechanism of de-registering an electoral contender comprises the following distinct stages:

1. Existence of a notification, a complaint, submitted to the electoral body, or a self-initiative regarding the violations on the part of the electoral contender, that fall within the grounds listed above.
2. Examination of the submitted notification/complaint.
3. Issuance of a decision by the electoral body and a subsequent application to the court with the request to de-register the electoral contender.
4. Issuance of a decision by the court that establishes the alleged violation and orders de-registration of the electoral contender.
5. Modification of the ballot paper or ordering the application of a 'Withdrawn' stamp by the electoral body and de-registration of observers delegated by the electoral contender.

Although, at first glance, the mechanism for applying the sanction of de-registering electoral contenders seems straightforward and without possible interpretations, a selective application of the legal provisions has been found over several elections. This resulted mainly from the failure to harmonize the legislative and regulatory changes made over time and from inconsistent interpretations of complaints/notifications made by electoral bodies and courts.

Since the adoption of the Electoral Code (1997) to date, the sanction enforcement mechanism underwent insignificant changes². However, the amendment of the Electoral Code with regards to complaints and failure to harmonize the relevant regulations resulted in deficient implementation of the mechanism of electoral contender de-registration. In particular, we refer to:

- The introduction in the Electoral Code, in 2015, of a rule according to which the examination of complaints regarding the financing of electoral campaigns is not subject to the established limitation periods. Following this amendment, no solution/mechanism has been identified to ensure the timely application of the sanction of electoral contender de-registration, on grounds of non-declaration of financial means or the use of financial means from abroad.
- The change in 2017 of the way the actions/inactions of the electoral contenders were challenged: from complaints submitted to the electoral bodies to challenging these types of actions directly in court. As the mechanism of electoral contender de-registration is not adjusted, the complaints regarding the actions/inactions of the electoral contenders (on the

¹ Article 75(5) of the Electoral Code.

² The changes to the mechanism of electoral contender de-registration were made in 2010 and 2015, when the list of violations for which this sanction can be applied was extended and starting with 2010 the SCJ, as a court deciding on the cancellation of the registration of an electoral contender, was replaced by the CCA.

basis of the grounds set out in Article 75(5) of the Electoral Code) shall be submitted or brought to the notice of the electoral body, since it alone has the power to request de-registration of an electoral contender.

Failure to harmonize the provisions of the Electoral Code and the Administrative Code (entered into force in April 2019), likewise, resulted in a deficient application of the mechanism of electoral contender de-registration. The deficiencies refer to the procedure of examining the request to de-register an electoral contender and to the parties to the dispute.

So, the way this mechanism is set up at present entails risks of selective application of the sanction of electoral contender de-registration.

International standards provide that de-registration should be limited to extraordinary cases and be defined clearly and exhaustively by law³.

Nor does the name correspond to the concept and effects provided for by the legislature. Various sources (reports/specialized studies) use both the term 'cancellation of registration/de-registration' of an electoral contender⁴, including for violations in the election campaign, as well as the term 'disqualification' of a candidate⁵. At the same time, in at least in 12 other states, violating the funding rules of an election campaign is sanctioned with de-registration of the candidate or political party (Afghanistan, Armenia, Bangladesh, Bhutan, Brazil, Canada, Ecuador, Eswatini, Kazakhstan, Russian Federation, Tajikistan, Tanzania)⁶.

However, the provisions of the Civil Code of the Republic of Moldova treat nullity as a civil sanction, directed against the effects of the civil legal act, which is concluded in non-compliance with the validity requirements. By annulling a legal act, it is deemed, with retroactive effect, that it has not produced any legal effect from the moment of conclusion⁷. When applying the provisions of the civil legislation on nullity to the electoral provisions, we can conclude that de-registration of an electoral contender may constitute a sanction against the effects of the registration, which was carried out in violation of the electoral rules. We exemplify with the case of Armenia, the Electoral Code⁸ of which stipulates that the registration of a candidate or a list of candidates can be declared invalid if after registration there is certain evidence proving that the documents submitted were falsified. At the same time, de-registration of an electoral contender takes place if a withdrawal request was submitted; the political party was dissolved; the activities of the political party were suspended or banned; the number of political parties included in the alliance fell below 2 etc.

Therefore, de-registration of an electoral contender would be appropriate for cases where the registration was affected by flaws or if the electoral contender no longer meets the conditions provided by law after certain changes are made (for example, following the modification of the list of candidates in local or parliamentary elections the minimum representation rate fell below 40%). And in the case of electoral contenders' violations referred to in Article 75(5) of the Electoral

³ [Using international Election Standard](#). Council of Europe handbook for civil society organisation. Armenia, 2013, p. 9.

⁴ [Electoral Justice Regulations](#) Around the World, Key findings from International IDEA's global research on electoral dispute resolution systems, p. 44, OSCE/ODIHR [Handbook](#) for the observation of election dispute resolution, p. 42.

⁵ [IDEA International Obligations for Elections](#), Guidelines for Legal Framework , p. 234; [Venice Commission Report](#) on electoral Law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues, 08.10.2020, p. 39-40, [Research](#) on electoral dispute resolution in Georgia, p. 60.

⁶ IDEA Electoral Justice [Database](#).

⁷ According to Article 327(1) of the Civil Code, a legal act is void if the nullity sanctions the violation of a legal provision that protects a general interest (absolute nullity). According to Article 331(1) of the Civil Code, a void legal act is deemed retroactively to not have produced any legal effect from the moment of conclusion.

⁸ Electoral Code of [Armenia](#), 2016, Article 88.

Code would be appropriate to rename the sanction of de-registration into sanction of exclusion or disqualification from election.

As to the effects, the flawed mechanism of electoral contender de-registration leads, first of all, to not effectively penalizing those responsible for serious violations of the electoral rules, encouraging the continuation of illegal behaviour. By failing to impose the sanction, the electoral contenders who strictly follow the law are placed in an unequal position. And in the end, it can significantly influence the election results and jeopardize the recognition of their legality. The indirect and long-term effect of the lack of a clear mechanism of electoral contender de-registration is the loss of confidence of both voters and candidates in the electoral bodies and the electoral process.

Between 2014 and 2020, in six national and ten partial elections, there were at least **five cases of de-registration of electoral contenders filed in the court, including the Supreme Court of Justice**. The share of complaints and notifications that invoked one of the grounds provided for in Article 75(5) of the Electoral Code was high. Just the ground pertaining to the use of undeclared financial and in-kind funds or to expenses exceeding the ceiling for the electoral fund, according to Promo-LEX analyses, was invoked in the complaints submitted in the last national elections in 10-22%⁹ of the total complaints and notifications.

Table on cases of electoral contender de-registration

Election	Electoral contender d-registered	The subject that notified the electoral body	Ground for de-registration pursuant to Article 75(5) of the Electoral Code	Details
2014 Parliamentary Election	‘Patria’ Political Party	General Police Inspectorate	1. Use of undeclared financial and in-kind resources.	1. Failure to declare expenses for mobile telephony services, purchasing cars and fuel (MDL 8,158,506).
			2. Use in the election campaign of funds coming from abroad.	2. Renato Usatii did not receive income on the territory of the Republic of Moldova, and the state bodies had evidence that in his bank accounts was deposited only a part of the amount brought into the country.
2015 General Local Elections, Dubasarii Vechi	Aurel Antoci, independent candidate for the position of mayor and councillor	Criuleni TO of the Democratic Party of Moldova	Use of undeclared financial and in-kind resources.	Failure to declare expenses for printing electoral posters.
2016 Presidential Elections	Inna Popenco, Social-Political Movement ‘Ravnopravie’	Silvia Radu, independent candidate	Use of undeclared financial and in-kind resources.	Failure to declare expenses for making discount cards at social stores (project initiated by ‘Pentru Orhei’ NGO) – MDL 25,044.60.
New Local Elections, Chisinau – May 2018	Reghina Apostolova, ‘Sor’ Political Party	Anatolie Salaru, National Unity Party	1. Use of funds coming from abroad.	1. Transfer of MDL 200,000 from a company based in the Republic of Moldova, with money originating from abroad.
			2. Involvement of foreign citizens in electoral campaigning.	2. Conduct of electoral campaigning by foreign citizens – the singer Jasmin.

⁹ 2019 parliamentary elections – 22%; general local elections of 2019 – 14%; 2020 presidential elections – 11%.

New Parliamentary Elections, Constituency No 38 – March 2020	Vitalie Balinschi , ‘Sor’ Political Party	Liberal Party	Use of undeclared financial and in-kind resources.	Failure to declare expenses for printing electoral materials (Publication ‘Pentru popor’) – MDL 177,450 and for the trips organised by ‘Pentru Orhei’ NGO for the benefit of ‘Șor’ PP – MDL 635,712.
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At least one case from the table above came to the attention of the European Court of Human Rights, namely the complaint of ‘Patria’ PP regarding its de-registration in the 2014 Parliamentary Elections¹⁰. On 4 August 2020, the ECHR delivered a judgment finding that *the interference with the applicants’ electoral rights fell short of the standards required by Article 3 of Protocol No. 1. In particular, the applicant party’s disqualification from participating in the elections was not based on sufficient and relevant evidence, the procedures of the electoral commission and the domestic courts did not afford the applicant party sufficient guarantees against arbitrariness, and the domestic authorities’ decisions lacked reasoning and were thus arbitrary.*

In the 2020 Presidential Elections, several complaints and notifications were submitted requesting de-registration of electoral contenders. Thus, in two complaints and a notification, the Commission was requested to find that an electoral contender failed to declare financial means – requests that were not accepted by the CEC¹¹.

In addition, CEC registered eight complaints (40% of the total registered complaints) and eight notifications/requests to cancel electoral contenders’ registration. Of the notifications/requests submitted:

1. six invoked the involvement in the electoral campaign of people from abroad as a ground for submitting the request for cancellation of the electoral contender’s registration;
2. six invoked the use of undeclared financial means as a ground for submitting the request for cancellation of the electoral contender’s registration;
3. one invoked both of the above-mentioned reasons;
4. in the case of three other complaints/notifications, no specific ground was indicated out of those stipulated in Article 75(5) of the Electoral Code.

None of these complaints or notifications/requests were examined in a public meeting of the CEC and no request was satisfied. Nevertheless, CEC’s answers were the following:

1. in the case of four requests – that there was no sufficient and conclusive evidence, so that those imputed to the electoral contender to be examined as prescribed in Article 75(5) of the Electoral Code;
2. in the case of two requests – that the alleged violations were not found;
3. in the case of six requests – that they do not meet the conditions of admissibility, in particular because there was no complaint of injury to a personal right of the complainant¹².

Four other complaints and notifications were not examined or were submitted for examination to the competent authority (GPI, General Prosecutor’s Office).

¹⁰ *Case of Political Party ‘Patria’ and others vs the Republic of Moldova* (No 5113/15, pronounced on 4 August 2020, final on 4 November 2020).

¹¹ In the case of complaints, CEC stated that the requirements of form and content were not met (the affidavit was missing and the supporting evidence attached was not properly authenticated, as the originals were not presented to the Commission). As to the notifications, the Commission stated that the findings did not support the allegations.

¹² Complainant refers to the person who lodged a complaint, a notification or a request, by which he invokes a violation of the Electoral Code.

Notification to/self-initiative of the electoral body on the electoral contender's violations that meet the grounds provided for electoral contender de-registration.

De-registration is applied at the request of the Central Electoral Commission (CEC), and in case of local elections – of the District Electoral Council (DEC) too. Interpreting the legal norm, we conclude that there are two hypothetical situations:

- when CEC/DEC acts upon the available information and makes the request to de-register an electoral contender;
- when CEC/DEC, based on the notification/complaint submitted by an electoral contender or a voter, or based on the notification to the law enforcement bodies or public institutions, submits a request to de-register an electoral contender.

A. No cases when **CEC/DEC have take action on their own initiative** and submitted a request to de-register an electoral contender have been reported so far. CEC has the authority to supervise and control the observance of the legal provisions on electoral campaign funding. During this process, it could identify reasonable grounds for launching the procedure of applying the sanction of electoral contender de-registration. For example, while reviewing the financial reports submitted by contenders, CEC can identify violations concerning the use of undeclared financial and in-kind resources; the expenses exceeding the ceiling for the electoral fund and the use, by the electoral contender, of funds coming from abroad.

A good example is when, after checking the financial reports submitted by the initiative groups registered for the Parliamentary Elections of March 2020, CEC found that the report did not contain all the expenses related to the activity of the initiative group and the established ceiling was exceeded. For the violation of Article 41(2)(d) and (4) of the Electoral Code, CEC applied two warnings to the PP 'Sor' and ordered cancellation of budgetary allocations until the end of 2020¹³.

Unlike the new parliamentary elections, during the presidential elections CEC found a number of violations of the Electoral Code related to the funding of the initiative groups¹⁴ and of the electoral campaign¹⁵ (Article 41 of the Electoral Code). Nonetheless, the Commission only warned the initiative groups and the electoral contenders about the need to comply with the legal provisions, without applying any sanction.

We assume that the electoral bodies have sufficient tools and mechanisms to act on its own initiative regarding violations of the electoral law, including by launching the procedure of de-registration, if there are reasonable grounds.

B. Notification of the electoral body. The electoral body may be notified regarding the violations committed by electoral contenders both by other contenders and voters, and by the

¹³ [CEC Decision](#) No 3779 of 4 March 2020.

¹⁴ The Commission established several violations, including the violation of Article 41(1) of the Electoral Code, stating that the initiative group accepted donations from other sources than salaries, entrepreneurial income, proceeds from scientific or creative works, namely from pension and social allowances; violation of Article 41(2) (i), i.e. the use of funds from the 'Initiative group' account before their written declaration to CEC; and the violation of the Article 41(2)(e) with political parties that formed the initiative groups exceeding the ceiling for the legal entities provided by the law, but not exceeding the general ceiling established by the CEC Decision.

¹⁵ The Commission established, inter alia, the violation of Article 41(1) of the Electoral Code stating that the initiative groups accepted donations from other sources than salaries, entrepreneurial revenue, proceeds from scientific or creative work, namely from pension and social benefits, and established that certain individual donors of the electoral contenders had no source of revenue reported to the State Tax Service or the reported revenue was lower than the amount donated.

state institutions or law enforcement bodies. In the case of complaints and notifications submitted by electoral contenders and voters, all the stakeholders, being parties to the electoral process, are on equal footing. However, if the complaint is submitted by state institutions or law enforcement bodies, they could be reasonably suspected of interference with in the elections or favouring/disadvantaging an electoral contender. Therefore, notification of each potential violation of electoral norms, maintaining an equal and equidistant approach, can lead to an effective sanctioning of the election breaches. For example, with regards to the de-registration of electoral contender PP 'Patria' in the 2014 Parliamentary Elections¹⁶, the General Police Inspectorate notified the Commission about the violation of the legal provisions and the electoral contender claimed selective prosecution. In this case, ECHR found that *No evidence of the use of any cash belonging to Mr Usatii for the needs of the applicant party was presented by the police and none was requested by the CEC and the domestic courts. Indeed, the Court obtained a full copy of the domestic case file and it does not appear to contain anything in that respect.*

We believe that the notification submitted by state institutions and law enforcement bodies against electoral contenders must comply with the principle of legality and equality of all electoral contenders before the law. Thus, when public institutions and law enforcement bodies have pertinent information, they must notify the electoral bodies, and in order to avoid any suspicious of selective justice, they have to refer to the case within which the respective reviews were performed. Details on the starting date of such reviews and other elements of procedural transparency must be also confirmed by making similar reviews regarding other electoral contenders.

¹⁶ According to the OSCE/ODIHR Election Observation Mission Final [Report](#) for the Parliamentary Elections of 30 November 2014, after the elections the representatives of 'Patria' party alleged selective prosecution of their activists, including home searches and criminal prosecutions. On 4 December, one PP member was arrested on charges of making death threats on social media against a member of the Prosecutor General's Office.

Review by the electoral bodies of the notification or complaint alleging one of the violations established in Article 75 (2) of the Electoral Code

The stage of complaint review by the electoral body is subjected to the highest risks of non-uniform interpretation. Predictability of the electoral body's actions is critical for the legal certainty and credibility of the electoral system. Any changes in the assessment of the same circumstances can easily create suspicions of political bias. Thus, it is critical to elucidate the issues listed below.

a. The place and method of challenging the actions/inactions of the electoral contenders

According to Articles 71(1) and 72(2) of the Electoral Code, the actions/inactions of electoral contenders shall be challenged directly in court, without having to challenge it first with the electoral body.

At the same time, according to Article 71(6) of the Electoral Code, the complaints regarding the funding of election campaigns for parliamentary and presidential elections shall be addressed to CEC, and those regarding independent candidates in local elections - to DEC. If comparing the above provisions with the provisions of Article 75 (5) and (6), stating that the electoral body shall request the court to establish the violation and apply the sanction, a legal uncertainty both for complainants and for the electoral bodies is found. Respectively, it is not clear which body is responsible for the complaints regarding the failure to suspend from office the electoral contender and for involving non-citizens of the Republic of Moldova in electioneering activities by the electoral contender.

A specific procedure for de-registration of an electoral contender being established, Article 75(5) and (6) can be regarded as special norms in respect to those provided for in Articles 71 and 72, but we believe that this uncertainty must be solved by amending the Electoral Code. *The failure to solve this uncertainty may result in conflicts of competences between electoral bodies and courts or the mechanism of applying the sanction of electoral contender de-registration may be distorted.*

Note that during the 2020 Presidential Elections, the involvement of third people in electioneering was challenged both with electoral bodies and in the court. Nonetheless, given that the complaints were submitted before and after the election campaign, the sanction of electoral contender de-registration was not applicable.

b. Admissibility of the complaint/notification requiring de-registration of an electoral contender

According to Article 71(5) of the Electoral Code, the complaint shall include the description of the alleged violations, evidence, legal basis, the requirements of the complainant, signature and the identity data of the person who lodges the complaint. Special requirements for challenging the actions that could lead to the de-registration of the electoral contenders' are not set up by the law. Respectively, if the general elements mandatory for a complaint are not met, the electoral body should review the justification of the violations alleged and the requests submitted.

During the 2020 Presidential Elections, ten complaints and three notifications were submitted, requesting CEC to de-register certain electoral contenders and/or establish that electoral contender failed to report funds. Though the complaints seemed to meet the conditions laid down in Article 71(5) of the Electoral Code, CEC replied that six complaints do not meet the admissibility requirements, especially due to the failure to claim the damage of a personal right of the complainant, as provided for in the Administrative Code. At the same time, the

Commission mentioned that two other complaints do not comply with the form and content requirements, namely because the affidavit was not attached and the annexes serving as evidence were not duly certified.

We believe that the electoral bodies must avoid refusing to review the complaint due to form-related requirements that are either unreasonable or not provided for in the Electoral Code, especially in case of violations that can result in de-registration of an electoral contender. At the same time, the submitted complaints that do not meet the form-related requirements can serve, at least, as a trigger for starting a procedure on its own initiative. Therefore, the refusal to review the complaint may be equivalent to accepting the unlawful conduct of the electoral contender and thus encourage the contenders to maintain such behaviour.

The electoral law does not stimulate what conditions shall be met by a notification of an alleged violation that could result in electoral contender de-registration. We believe that in such a case, the minimum requirements shall be met, which allow understanding the essence of the notified problem, identifying the evidence and individualising the person who submitted the notification.

During the presidential elections, at least two cases were found when CEC suggested that the submitted document requiring de-registration of an electoral contender should have been prepared in a different form. We mention as an example the notification submitted by the representative of candidate Maia Sandu about the undeclared expenses of candidate Igor Dodon. In this case, CEC removed the notification review from the meeting's agenda on the grounds that the submitted notification had the form and content of a complaint, sending a note to the representative with the right to consultative vote to remedy the shortcomings in the Electoral Code¹⁷. At the same time, regarding several counts of the complaint submitted by another candidate – Renato Usatii, who also alleged undeclared expenses of candidate Igor Dodon, CEC suggested that he had the right to make his claims in the form of notifications in order to examine them from the financial reporting perspective¹⁸.

We believe that regardless of the title and type of the submitted document, the electoral body must have an active role in reviewing and settling electoral violations, especially those that could result in de-registration of electoral contenders, and avoid setting excessive conditions for those who submit complaints or notifications.

c. Competences and role of the electoral body and other public institutions in the de-registration of an electoral contender

The legal framework in force provides the exclusive competence of the electoral body to request in court de-registration of an electoral contender, however it does not state on what conditions to decide whether to file the case to the court or not. Therefore, this stage of electoral contender de-registration was left every time at the discretion of the electoral body without establishing an order of the electoral bodies' actions for examining these requests or specific criteria to be used by the electoral body in deciding whether or not to send the case to the court.

We believe that the **respective criteria must be clear and without interpretations**, and the electoral body's decisions must be justified. Thus, the disqualification of an electoral contender can generate concerns regarding the selective application of justice, the effect of the decisions on the options available to voters and the lack of legal remedies for the affected contenders.

¹⁷ [Minutes](#) No 312 of the CEC ordinary meeting of 13 November 2020.

¹⁸ [Letter](#) No CEC-8/3440 of 20 November 2020.

Regarding the rules laid down by the Electoral Code on de-registration of an electoral contender, *the electoral body has the competence to:*

- *review the circumstances alleged by the complainant;*
- *if necessary, request the involvement of other bodies (police, State Tax Service) to confirm or refute the alleged facts, including management of evidence;*
- *if there are reasonable grounds confirming the violation of the Electoral Code, the electoral body shall file the case to the court, requesting to issue a decision on de-registration of electoral contenders.*

We mention that the electoral body must have an active role in the administration of additional evidence that shall confirm or refute the electoral contender's violation. This is important to avoid unfair sanctioning of the electoral contender or a failure to sanction the electoral contender that committed the violation, though the electoral body was notified. We note that in the case of PP 'Patria', ECHR claims that the charges against the applicant's party regarding the use of funds coming from abroad during the electoral campaign are not supported by any evidence, with the support documents missing from the national file. We point out that the notification was submitted by the police that, by definition, may not file charges without evidentiary support.

According to the Article 75 (5) and (6) of the Electoral Code, the electoral body does not have the competence of establishing the violations provided for de-registration of electoral contenders. This competence is assigned to the court. Nonetheless, CEC, as an authority in charge of surveillance and control of election campaigns' funding and of registering electoral contenders, could not abstain from ascertaining expenses that exceed the ceiling for electoral funds – Article 75 (5) (a). In such cases, there might be situations when the violation is established both by the electoral body and the court.

In at least three cases of electoral contender de-registration between 2014 and 2018, the electoral bodies did not establish the violation allegedly committed by the electoral contender, claiming not to have jurisdictional duties and the competence to qualify in one way or another the collected evidence. However, the electoral bodies concluded, on the basis of evidence and records, on the existence of reasonable grounds for starting the procedure to request de-registration. Therefore, they requested that the court, if the violation is established, to cancel the electoral contender registration. Nonetheless, in 2020, during the New Parliamentary Elections, CEC found violation related to the use of undeclared financial and in-kind resources, requiring the court only to de-register the electoral contender¹⁹.

Considering the above mentioned, we believe that the responsibilities of the electoral body and of the court in terms of identifying the violation, based on Article 75 (5) of the Electoral Code, have to be reviewed and aligned with other existing provisions.

Concerning the competencies of the law enforcement bodies, reviewing the decisions of electoral bodies and courts on de-registration of electoral contenders, we found that the Police had an important role in at least four cases, starting with notifying the electoral body about the violation of the law (PP 'Patria' - 2014²⁰) to collecting evidence and providing materials on the case notified to the electoral body (Ina Popenco, MSP 'Ravnopravie' – 2016²¹, Reghina Apostolova, PP 'Sor' – 2018²², Vitalie Balinschi, PP „Sor” – 2020²³). In order to prevent any

¹⁹ [CEC Decision](#) No 3791 of 4 March 2020.

²⁰ [CEC Decision](#) No 2069 of 26 November 2014 on the notification of the Central Electoral Commission by the General Police Inspectorate, recorded under No CEC-7/10006 on 26 November 2014

²¹ CEC Decision No 435 of 20 October 2016 on the complaint No CEC-10/27 of 18 October 2016 submitted by candidate to the President of the Republic of Moldova, Ms. Silvia Radu

²² [Decision](#) of DEC Chisinau No 37 of 10 May 2018 on the complaint No 119 and the notification No 125 of 8 May 2018, submitted by the executive president of PUN, Mr Anatolie Salaru

abuse, we hence assume that the responsibilities of law enforcement bodies in the process of electoral contender de-registration must be clearly prescribed and limited to:

- *informing the electoral body of circumstances and facts they are aware of;*
- *submitting evidence they have related to the notified case;*
- *providing the necessary support to the electoral body in order to elucidate the circumstances relevant for the case.*

At the same time, law enforcement bodies and public institutions must abstain from establishing violations on the basis of Article 75 (5) of the Electoral Code, as this competence belongs exclusively to courts.

We recall that during the 2020 Presidential Election, there existed at least one case when the complaint on de-registration of an electoral contender was sent to law enforcement bodies for review because the alleged violations needed to be investigated²⁴. We believe that in this case, besides notifying the law enforcement bodies on criminal investigation of the complaint, CEC had also to request an answer whether the materials held by the respective bodies could result in reasonable suspicious of violations provided for in Article 75 (5) of the Electoral Code. Or, CEC has to give an answer to this specific request. Otherwise, the request submitted by the complainant will be left unexamined.

d. The procedure of reviewing the requests for the electoral contender de-registration

While the procedure of complaints examination is provided for in the CEC Regulation on the procedure for reviewing and settling complaints by electoral bodies during the electoral period, the notification review procedure is not regulated. As for the way of reviewing the violations provided for in Article 75(5) of the Electoral Code, we believe that the electoral body must comply with the procedure of reviewing and settling complaints laid down in the CEC Regulation and ensure a transparent process to avoid any doubts regarding the impartiality of the electoral body. In particular, the electoral body has to:

- *Ensure the observance of the right to equality of arms* for the electoral contender the de-registration of which is requesting, offering a reasonable period of time to present its position. We point out that in the case of PP 'Patria', ECHR found that the appellant did not receive sufficient procedural guarantees against the arbitrariness, mentioning that it was taken by surprise that CEC examined its case and was not ready for that hearing.
- *Review the respective complaint/notification in public hearing.* Ensuring the transparency of this subject, including in cases when the facts alleged are not true or the request for de-registration is unfounded, could help building greater confidence in electoral bodies and a predictable electoral process.
- *Publish on the website, in the complaints section, the case materials,* including all the requests made by electoral bodies to the public institutions and law enforcement bodies to elucidate the facts alleged and their answers. These materials are usually fundamental in deciding whether or not to request de-registration of an electoral contender. In addition, public access to these materials, conclusions or findings would eliminate cases when public institutions or law enforcement bodies could be partial towards certain electoral contenders.

²³ [CEC Decision](#) No 3791 of 4 March 2020 on the notification No CEC-7/ 6985 of 3 February 2020 of the Liberal party

²⁴ [CEC Answer](#) No CEC-8/3304 of 8 November 2020

e. The time-limits for reviewing the complaints/notifications invoking violations that could result in de-registration of an electoral contender

The legal framework does not provide specific time-limits for reviewing requests for de-registration of an electoral contender by the electoral body, therefore the provisions on examining complaints by the electoral bodies are applicable. According to Article 73 (2) of the Electoral Code, the complaints against actions/inactions of the electoral contenders shall be reviewed within **5 calendar days** from submission, but not later than on the election day. When reviewing the complaints and disputes, the electoral bodies/courts shall prioritize those related to the registration of electoral contenders and to the accuracy of electoral lists.

We believe that the priority of the complaints concerning the registration of electoral contenders is also applicable to de-registration of electoral contenders, so that the electoral body could examine the submitted request within a reasonable time-limit and the courts could also pronounce its decision on it.

The complaints alleging the violation of legal provisions related to the election campaign funding – grounds laid down in Article 75(5) (a) and (b) – represent a particular problem²⁵. Reviewing complaints regarding the political parties' election campaigns funding is not subject to the limitation periods provided for in Articles 72-74 of the Electoral Code. Thus, on the basis of this provision, CEC can examine the violations related to the election campaign funding within extended time-limits, but de-registration of an electoral contender is useless after the election day. Extremely long administrative procedures which determine liability and impose the sanction only after the election has been held and the person committing the infraction has obtained the improper benefits may also be an invitation to break the law²⁶.

During the presidential election, CEC pronounced its decision on two complaints that alleged undeclared funds and requested de-registration of the electoral contender within eight and nine days, respectively²⁷. Moreover, the complaints were submitted four and, respectively, two days before the election day, but CEC pronounced its decision on them five days after the election day.

To this end, we believe that the complaints related to de-registration of electoral contenders, including for the grounds stated in Article 75 (5)(a) and (b) have to be reviewed within reasonable time limits – up to 5 days, but not later than on the election day.

f. Severity of violations and proportionality of sanctions applied

Article 75 provides a series of sanctions applicable for the violation of the electoral law: warning, de-registration of the initiative group, initiating the contravention process as per the legislation, depriving from state budget allowance, requesting de-registration of the electoral contender. If for most of violations the electoral body needs to assess the severity of the violation and to appropriately apply proportional sanctions, for de-registration of an electoral contender, the legislator provides expressly the list of violations to which the sanction is applied.

In other words, the discretion of the electoral body to assess the violations and select proportional sanctions refers to violations others than those established in Article 75 (5) of the Electoral Code. For the violations established in Article 75(5) of the Electoral Code, the electoral

²⁵ The use, by the election contender, of unreported financial and in-kind resource or exceeding their expenses above the ceiling for the electoral fund; the use, by the electoral contender, of funds coming from abroad.

²⁶ [Electoral Justice](#), The International IDEA Handbook, pct. 123.

²⁷ Complaint CEC-10APr/14 of 11 November 2020; Complaint CEC-10APr/15 of 12 November 2020.

body has the positive mission to draw up a request to the court if the collected evidence and materials prove reasonably that the violation alleged by the complainant occurred.

Note that the Promo-LEX Observation Mission of the 2019 Local Elections identified two cases when the electoral bodies found that the electoral contenders were not suspended from office – grounds provided in Article 75 (5) (c), but only warned the contenders, justifying that their actions were not political and did not influence the election campaign²⁸. Through such actions, the electoral bodies actually assumed inappropriate competences, thus limiting the competence of the court to review the request for electoral contender de-registration.

Regarding the proportionality of the accountability, at the 2019 General Local Elections, CEC concluded that Article 75(5) of the Electoral Code does not differentiate between the electoral contenders' individual and joint liability, which means that it should be applied taking into account the degree of liability proportionality reported to the alleged facts. In other words, if there are reasonable grounds of violation committed by a certain party (for example, undeclared financial expenses), the electoral contenders (counsellors, mayors) nominated by the respective party shall be de-registered. Or, taking into account that the right to be elected is an individual right, the person who exercises it cannot be subjected to joint liability for the actions of the party or other candidates nominated by it²⁹.

Given the situation above, we believe that the legal rules for electoral contender de-registration must be detailed, including with regards to the subjects that can be sanctioned, considering the type of the elections. In order to increase the likelihood of compliance, it is advisable for the electoral law to provide for the sanctions imposed on political parties to be independent of the liability that may attach to their leaders, members, candidates or supporters³⁰. The assessment of the proportionality, in this case, does not have to be at the discretion of the electoral body.

In addition, the proportionality of the sanction applied was the key element in CCA' rejection and SCJ's acceptance of the request to de-register Vitalie Balinschi at the New Parliamentary Election of March 2020. Thus, CCA found that the de-registration of the electoral contender due to undeclared funds and expenses exceeding the ceiling set for the initiative group is a disproportionate sanction³¹. But SCJ concluded that the measure's goal is legal, and de-registration of the electoral contender is authorised by the legislation in force³². Thus, the goal of the sanction provided for in Article 75(5)(a) of the Electoral Code is to discourage one to get the mandate by violating the electoral law, by conducting a non-transparent election campaign, especially by using undeclared financial and in-kind resources. At the same time, the Supreme Court of Justice mentioned that the absence of any reaction to the facts found by the electoral body and the limitation to simply mentioning the finding can lead to violations of the electoral law and is a deterrent factor for the electoral contenders that act in accordance with the law during the electoral run for the position of Member of the Parliament of the Republic of Moldova.

We point out that the sanction of electoral contender de-registration must specify the subjects bearing such liability, depending on the type of elections.

²⁸ [Final Report](#) . The Observation Mission of the general local and parliamentary elections of 20 October (3 November) 2019, p. 35-36.

²⁹ [CEC Decision](#) No 2820 of 15 October 2019.

³⁰ [Electoral Justice](#), The International IDEA Handbook, pct. 122.

³¹ [Decision](#) of the Chisinau Court of Appeal of 10 March 2020 on the case of CEC against single-member constituency DEC No 38 Hancesti, regarding the de-registration of contender Vitalie Balinschi nominated by PPS.

³² [Decision](#) of the Supreme Court of Justice of 13 March 2020 on the case of CEC against single-member constituency DEC No 38 Hancesti, regarding the de-registration of contender Vitalie Balinschi nominated by PPS.

Court review of the electoral body's request to de-register an electoral contender

According to Article 74 (1) of the Electoral Code, the court shall adopt and pronounce its decision according to the provisions of the Code of Civil Procedures and of the Administrative Code. A legitimate right or a freedom established by law, which was infringed through an administrative activity, can be claimed by an administrative appeal. At the same time, according to the SCJ Explanatory Decision of 2016³³, all the electoral disputes shall be reviewed as an administrative appeal, because the requirements submitted to the court for the protection of the electoral rights arise from administrative relations. At the same time, in the electoral cases which challenge the electoral contender's actions or require de-registration of the electoral contender, the appeal is submitted against the registered candidate or the party that registered its list of candidates in the order prescribed by the law.

The case-law of the Chisinau Court of Appeal is worth considering, which after the Administrative Code entered into force, interpreted the provisions of the Electoral Code and of the Administrative Code and issued appropriate decisions on several cases related to the 2019 Local Elections³⁴. Thus, CCA decided that the de-registration of the electoral contender had to be applied by DEC, not by the court of first instance, which should have pronounced its decision on the case only if the sanction applied by CEC was challenged. The main reason for this interpretation is that in an administrative proceeding only a public authority can act as a defendant, not an individual or a legal entity, and Article 75(5) of the Electoral Code contravenes to the principles of the Administrative Code. Thus, the CCA case-law actually changed the mechanism of electoral contender de-registration that was set up by the Electoral Code.

At the same time, after the Administrative Code entered into force, electoral contender de-registration was applied only in the Parliamentary Elections of March 2020 when an electoral contender was de-registered most recently³⁵. In that case, CEC brought an action against single-member constituency DEC No 38 (the body that registered the electoral contender), qualifying it as an atypical obliging action, according to Article 206(1)(b) of the Administrative Code, provisions that must be applied systematically together with Article 2(2) of the Administrative Code and Article 75(5) and (6) of the Electoral Code. If transposing the procedure applied in the 2020 Parliamentary Elections in a proportional system to presidential elections, CEC shall apply to the Court of Appeal with a request for obligation to cancel its own decision on de-registering an electoral contender, which would be contrary to the purpose of the administrative law. Thus, the lack of a clear regulation for the procedure of reviewing the request for electoral contender de-registration could result in non-uniform court interpretations.

We mention that similarly to the practice of Chisinau Court of Appeal of 2019, draft law No 263 of 19.06.2020³⁶ proposes to change the mechanism of electoral contender de-registration by assigning the full competence of applying the sanction to the electoral body that registered the contender. Nonetheless, the Venice Commission and ODIHR expressed, in their opinion on the draft law No 263³⁷, their concern that the law allows de-registration of the electoral contender by the electoral body, reminding that de-registration of an electoral contender deprives an eligible person of the right to run in elections. If the de-registration was decided before the

³³ [SCJ Decision](#) No 4 of 26 September 2016 on the application by the courts of certain provisions of the electoral law.

³⁴ [Decision](#) of the CCA Civil, Commercial and Administrative Litigation Board of 19 October 2019 in the case of DEC No 4 Anenii Noi against Serbov Tudor (IC), [Decision](#) of the Civil, Commercial and Administrative Litigation Board of 19 October 2019 in the case of DEC No 25/16 Jora de Mijloc against Serghei Labliuc (PP „Sor”).

³⁵ [Decision](#) of the Chisinau Court of Appeal of 10 March 2020 in the case of CEC against single-member constituency DEC No 38 Hancesti, regarding the de-registration of contender Vitalie Balinschi nominated by PP 'Sor'.

³⁶ [Draft Law](#) No 263 of 19 June 2020.

³⁷ [Urgent Joint Opinion](#) of Venice Commission and ODIHR on draft law no. 263 amending the electoral code, the contravention code and the code of audiovisual media services, p. 66-67.

election day, an appeal it is not likely to be possible in time so that the candidate/the party is able to compete correctly. Such a severe interference with the rights to vote shall be a measure of last resort, applied equally to all contenders only for the most serious violations and under an effective legal surveillance, in accordance with the international standards and good practices. It is recommended, at least, to provide that any appeal against such decision suspends automatically the latter.

We share the concerns and the opinion expressed by the Venice Commission and ODIHR with regards to assigning full competence of de-registering electoral contenders to the electoral body. At the same time, it is obvious that in the conditions of the current legislation, applying the sanction of electoral contender de-registration is literally impossible given the collision between the rules of the Electoral Code and of the Administrative Code.

Thus, we consider that both the review of complaints regarding the actions/inactions of an electoral contender, and the review of a request for de-registration of an electoral contender shall be conducted under a different procedure than the administrative proceedings. We bring the following reasons for maintaining the court competence of establishing the violation and de-registering electoral contenders rather than assigning the full competence of de-registration to the electoral body:

- **The electoral bodies' decisions could be motivated by political interest** – 8 of 9 CEC members are appointed by parliamentary parties, and 6 members do not work permanently; 70%-80% of the members of the lower-level electoral bodies are appointed by parliamentary parties.
- **The lower-level electoral bodies could lack appropriate experience and qualification** - the electoral councils are not permanent and their members are not always sufficiently trained in how to handle electoral disputes, especially regarding de-registration of electoral contenders.
- **It could be difficult to reach a consensus in the decision-making process** – the decisions on de-registration of an electoral contender shall be made by collegiate bodies, their members being also entitled to abstain from voting.
- **The parties of the dispute for de-registration of an electoral contender are different.** When de-registration of an electoral contender is required by another electoral contender, there is a genuine dispute between the two electoral contenders. When the electoral body pronounces its decision, this dispute will transform into a dispute between an electoral contender and the electoral body. We believe that the parties of the dispute must remain the same, having the opportunity to present their arguments in front of each court.
- **The administrative proceedings set up by the Administrative Code is complex** and requires that certain form-related requirements are met in line with the generally established terms³⁸, but are excessive for electoral disputes. However, given that electoral disputes are settled within 3-5 days, we believe that the settlement of electoral complaints should be also a simple procedure. According to the Code of Good Practices in Electoral Matters, any formality has to be removed in order to avoid inadmissibility decisions, especially on sensible political cases.

Considering the above mentioned, we underline the imperative need to introduce in the Electoral Code special rules for the procedure of court review of electoral cases requiring de-registration of an electoral contender.

³⁸The general terms provided by the Administrative Code: 30 days – submission of the preliminary request, 30+15 days – completing the administrative procedure by the administrative authority, 30 days for submitting a complaint, etc.

Conclusions

De-registration of electoral contenders is the most serious electoral sanction for contenders and, hence, should be applied only in exceptional cases.

This means that the legislation must contain clear and predictable provisions, and the bodies having the right to apply this sanction should not always avoid establishing the violation and de-registering the electoral contender. The lack of reaction to electoral contenders' violations is a deterrent factor for the other competitors that act legally during the election run.

We reiterate that de-registration of electoral contenders is vulnerable to abuse, especially by bodies entitled to submit a request for de-registration of an electoral contender, to collect and provide evidence confirming or refuting the violation, to establish the violations provided for in Article 75 (5) of the Electoral Code and to de-register electoral contenders.

Therefore, in order to maintain the sanction only as a mechanism for restoring the equal rights of electoral contenders and ensuring freedom for voters to form their opinions, both the legislator, CEC and the courts must take actions so that the sanction is applied proportionally to the violation, within a clear, transparent, predictable and timely procedure.

The mechanism of electoral contender de-registration is still complex, and prescribing in the legal framework the circumstances, conditions, criteria that will detail the way of applying the sanction will not necessarily facilitate establishing the violations or making decisions on whether to apply or not the sanction. Instead, including accurate provisions will ensure predictability of the electoral process, will discourage electoral contenders from using legally prohibited methods in order to achieve electoral results and, most importantly, will ensure compliance with the rule of law and protection of appropriate functioning of the democracy.

Recommendations

- Amend the definition of complaint in Article 1 of the Electoral Code as follows: ‘any request or notification that invokes the violation of electoral provisions’.
- Supplement Article 71 of the Electoral Code with a new paragraph (1¹) with the following content: ‘Complaints that allege one of the violations provided in Article 75(5) shall be submitted to the electoral body that registered the electoral contender’.
- Amend Article 71(6) of the Electoral Code by replacing the second statement with the following text: ‘The review of complaints or notifications concerning the funding of election campaigns submitted outside the election period, shall not be subject to the limitation period provided for in Articles 72-74’.
- Amend Article 75 paras (2)(e), (5) and (6) by replacing the words ‘cancellation of the registration’ with the text ‘disqualification from the election’ in all its grammatical forms.
- Amend the provisions of Article 75(5) by including in letters a) and b) the following final text: ‘In case of local elections, the sanction of disqualifying from elections shall be applied to the candidate who admitted the violation’.
- Include in the Electoral Code provisions regulating the procedure of court review of electoral cases related to disqualification of an electoral contender from elections.
- Amend the Regulation on the procedure for reviewing and settling complaints by electoral bodies during the electoral period by stating explicitly the duties of the electoral body with regards to complaints or notifications invoking grounds stated in Article 75(5) of the Electoral Code, i.e. the duty to check the circumstances invoked by the complainant, to request, if necessary, the involvement of other bodies (police, State Tax Service, prosecutor’s office, etc.) to confirm or refute the allegations, including with the administration of the reliable evidence, and file the case to court only if reasonable grounds for the violation of the respective rules of the Electoral Code are found.

Abbreviations

CCA – Chisinau Court of Appeal

CEC – Central Electoral Commission

DEC – District electoral council

CCP – Code of Civil Procedure

SCJ – Supreme Court of Justice

ECHR – European Court of Human Rights

TO – territorial organisation

PP ‘Patria’ – ‘Patria’ Political Party

PP ‘Sor’ – SOR Political Party