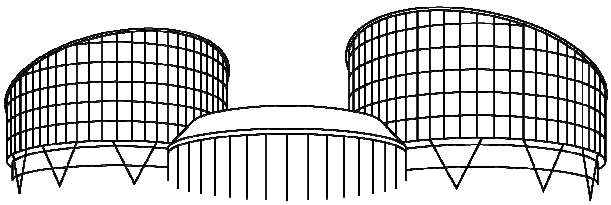

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

**CASE OF TĂNASE v. MOLDOVA**

*(Application no. 7/08)*

JUDGMENT

STRASBOURG

27 April 2010

*This judgment is final but may be subject to editorial revision.*

**In the case of Tănase v. Moldova,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Peer Lorenzen, *President*
Françoise Tulkens
Josep Casadevall
Ireneu Cabral Barreto
Corneliu Bîrsan
Rait Maruste
Vladimiro Zagrebelsky
Elisabeth Steiner
Dean Spielmann
Sverre Erik Jebens
Ján Šikuta
Dragoljub Popović
Isabelle Berro-Lefèvre
Päivi Hirvelä
George Nicolaou
Zdravka Kalaydjieva
Mihai Poalelungi, *judges*

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 16 September 2009 and on 10 March 2010,

Delivers the following judgment, which was adopted on the last-mentioned date:

# PROCEDURE

1. The case originated in an application (no. 7/08) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Moldovan and Romanian nationals, Mr Alexandru Tănase and Mr Dorin Chirtoacă ("the applicants"), on 27 December 2007.

2. The applicants were represented by Ms J. Hanganu, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, a breach of their right to stand as candidates in free elections and to take their seats in Parliament if elected, thus ensuring the free expression of the opinion of the people in the choice of legislature as guaranteed by Article 3 of Protocol No. 1 to the Convention. They also complained under Article 14 taken together with Article 3 of Protocol No. 1.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). In a joint decision and judgment dated 18 November 2008, a Chamber of that Section composed of the following judges: Nicolas Bratza, Lech Garlicki, Giovanni Bonello, Ljiljana Mijović, David Thór Björgvinsson, Ledi Bianku and Mihai Poalelungi and also of Fatoş Aracı, Deputy Section Registrar, found, by a majority, the application in respect of Mr Chirtoacă inadmissible; unanimously declared the application in respect of Mr Tănase admissible; held, unanimously, that there had been a violation of Article 3 of Protocol No. 1 to the Convention; and found, unanimously, that it was not necessary to examine separately the complaint under Article 14 taken in conjunction with Article 3 of Protocol No. 1.

5. On 6 April 2009, following a request by the Government, the Panel of the Grand Chamber decided to refer the case to the Grand Chamber in accordance with Article 43 of the Convention.

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. Jean-Paul Costa was unable to attend the second deliberations. Peer Lorenzen took over the presidency of the Grand Chamber in the examination of the application and Corneliu Bîrsan, first substitute, became a full member (Rule 11).

7. The remaining applicant, Mr Tănase, and the Government each filed written observations on the merits. In addition, third-party comments were received from the Romanian Government, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 16 September 2009 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
MR V. GROSU, *Agent*;

(b) *for the applicant*
MS J. HANGANU, *Counsel*;

(c) *for the Romanian Government*
MR R.-H. RADU, *Agent*,
MS D. TASE,
MS I. POPESCU,
MS I. CIOPONEA, *Advisers*.

The Court heard addresses by Mr Grosu, Ms Hanganu and Mr Radu.

9. Following developments subsequent to the hearing (see paragraphs 68 to 70 below), the applicant advised that he did not wish the case to be struck out of the Court's list.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1971 and lives in Chişinău. He is ethnically Romanian and is a Moldovan politician.

### A. Historical background

11. The Principality of Moldavia first emerged as an independent State in 1359. Its territory covered the area between the Eastern Carpathian Mountains, the Dniestr river and the Black Sea; today, this area encompasses Moldova, part of Romania and part of Ukraine. Its population spoke the same language and was of the same descent as the populations of Wallachia and Transylvania (both part of modern-day Romania).

12. In the fifteenth century, Moldavia accepted the suzerainty of the Ottoman Empire.

13. Following the Russo-Turkish war of 1806 to 1812, the eastern part of the Principality of Moldavia, bounded by the Dniestr river on the east and the River Prut on the west, was annexed by the Russian empire. It was renamed Bessarabia.

14. In 1859, the western part of the Principality of Moldavia united with Wallachia and formed a new State. From 1861, the new State was known as Romania. In 1877, Romania gained independence from the Ottoman Empire.

15. In early 1918, Bessarabia declared its independence from Russia and, on 27 March 1918, united with Romania. The population of Bessarabia became Romanian citizens.

16. The Soviet Union did not recognise the unification of Bessarabia and Romania. On 28 June 1940, following the Molotov-Ribbentrop pact with Nazi Germany, the Soviet Union re-annexed the territory of Bessarabia.

17. Following the conclusion of the Second World War, approximately 70 per cent of the territory of Bessarabia, inhabited by some 80 per cent of its population, became the Moldavian Soviet Socialist Republic (changed to the Soviet Socialist Republic of Moldova in 1990). The remaining territory of Bessarabia became part of the Ukrainian Soviet Socialist Republic. Those

residing in Bessarabia lost their Romanian nationality and became Soviet citizens. Romania became a Soviet Union satellite State.

18. Following the collapse of the Soviet Union, in the Declaration of Independence of 27 August 1991, the Parliament of the Republic of Moldova condemned, *inter alia*, the Russian annexation of the territory from the Principality of Moldavia in 1812 and the Soviet annexation of the territory from Romania in 1940 and proclaimed the independence of the country within the boundaries of the former Moldavian Soviet Socialist Republic. Shortly thereafter, Moldova joined the United Nations and was recognised by the international community.

### B. Nationality post-independence

19. In 1991 the Parliament of the Republic of Moldova adopted a Law on Citizenship and proclaimed as its citizens, *inter alios*, all persons who had lived in the territory of the former Moldavian Soviet Socialist Republic before the Soviet annexation and their descendants.

20. The applicant obtained Moldovan nationality as a descendant of persons living on the territory of the Republic of Moldova before 28 June 1940.

21. Also in 1991, the Romanian Parliament adopted a new law on citizenship making it possible for persons who had lost their Romanian nationality before 1989, for reasons not imputable to them, and their descendants to reacquire Romanian nationality.

22. Initially, under Article 18 of the Moldovan Constitution adopted on 29 July 1994, which entered into force on 27 August 1994, nationals of Moldova were not permitted to hold the nationality of any other State other than in exceptional cases. However, the prohibition was ineffective in practice as many Moldovans of Romanian descent used the provisions of Romanian law to reacquire their lost Romanian nationality. At the same time, many Moldovans of other ethnic backgrounds acquired other nationalities such as Russian, Ukrainian, Bulgarian and Turkish.

23. In 2002 the Moldovan constitutional provisions prohibiting multiple nationalities were repealed.

24. On 5 June 2003, following the repeal of the constitutional prohibition on multiple nationalities, the Moldovan Parliament amended the Law on Citizenship, repealing the restriction preventing Moldovan nationals from holding other nationalities (see paragraph 74 below). The new provisions provided that the holders of multiple nationalities had equal rights to those holding only Moldovan nationality, without exception (see paragraph 75 below).

25. On an unspecified date the applicant obtained Romanian nationality. His current Romanian passport was issued in December 2005. Subsequently, he made public his holding of Romanian nationality.

26. The total number of Moldovans who have obtained Romanian citizenship since 1991 is unknown as the Romanian Government have never made this information public. However, it has been estimated that between 95,000 and 300,000 Moldovans obtained Romanian nationality between 1991 and 2001. On 4 February 2007 the President of Romania stated in an interview that there were some 800,000 Moldovans with pending applications for Romanian nationality and that his Government expected the number to reach 1.5 million, of the total of 3.8 million Moldovan citizens, before the end of 2007.

27. As to the number of Moldovans holding a second nationality other than Romanian, this figure is also unknown. However, it appears to be considerable and it seems that Russian nationality is the second most popular, after Romanian. On 16 September 2008 the Russian Ambassador to Moldova stated in a televised interview that there were approximately 120,000 Moldovans with Russian passports on both banks of the Dniestr river (i.e. in the whole of Moldova).

28. The Moldovan Government indicated in their observations before the Chamber that one third of the population of Transdniestria had dual nationality while a Communist member of Parliament ("MP"), Mr V. Mişin, advanced during the Parliament's debates concerning Law no. 273 (see paragraphs 78 to 81 below) the number of 500,000 as an approximate total number of Moldovans with dual nationality.

### C. Overview of the political evolution of Moldova prior to the electoral reform in 2008

29. During the last decade and prior to the elections of 2009, the Communist Party of Moldova was the dominant political party in the country with the largest representation in Parliament.

30. Besides the Communist Party, there were over twenty-five other political parties in the country with considerably less influence. Their exact number was difficult to ascertain because of constant fluctuation. Because of their weaker position, very few of them managed to clear the six per cent electoral threshold required in past legislative elections to enter Parliament.

31. In the 2001 elections the Christian Democratic People's Party was the only party aside from the Communist Party, from the twenty-seven parties participating in the elections, which succeeded in clearing the electoral threshold alone by obtaining some 8 per cent of the vote. Six other parties merged into an electoral block (a common list) and in this way were able to obtain some 13 per cent of the vote. The Communist Party obtained some 50 per cent of the vote and, after the proportional distribution of the wasted votes, obtained 71 of the 101 seats in Parliament.

32. In 2002 the electoral legislation was amended. The six per cent electoral threshold for a single party was retained but a new nine per cent

threshold was introduced for electoral blocks composed of two parties, rising to twelve per cent for three or more parties.

33. In the 2005 elections, out of twenty-three participating parties, the Christian Democratic People's Party was again the only party, besides the Communist Party, which managed to clear the electoral threshold by itself with some 9 per cent of the vote. Three other parties, united into an electoral block, obtained some 28 per cent of the vote while the Communist Party obtained almost 46 per cent of the vote. After the proportional distribution of the wasted votes, the Communist Party obtained 56 of the 101 seats in the Parliament.

34. In July 2005, following persistent criticism by international observers and the Council of Europe, the Parliament again amended the Electoral Code, setting the electoral threshold for individual parties at four per cent and for electoral blocks composed of any number of parties at eight per cent. The Commission for Democracy through Law of the Council of Europe ("the Venice Commission") and the Organisation for Security and Cooperation in Europe ("OSCE") praised the lowering of the electoral threshold for individual parties and suggested a similar threshold for electoral blocks, which, in their view, were to be encouraged in order to provide more cooperation and stable government.

35. In the local elections of June 2007, the Communist Party obtained some 40 per cent of the votes in the local legislative bodies. As there is no electoral threshold in local elections, it became an opposition party in the majority of the local councils. The applicant became a member of the Chişinău Municipal Council following these elections.

36. The applicant was subsequently elected vice-president of the Liberal Democratic Party, an opposition party created in January 2008.

### D. The 2008 electoral reform

37. On 10 April 2008 the Moldovan Parliament passed a reform consisting of three major amendments to the electoral legislation: an increase of the electoral threshold from four per cent back to six per cent; a ban on all forms of electoral blocks and coalitions; and a ban on persons with dual or multiple nationality becoming members of Parliament.

38. The amendment banning those with dual or multiple nationalities becoming MPs was introduced by way of Law no. 273 (see paragraphs 78 to 80 below). This law was approved in its first reading by Parliament on 11 October 2007. The draft, prepared by the Ministry of Justice, provided that only persons having exclusively Moldovan citizenship were entitled to work in senior positions in the government and in several public services and be candidates in legislative elections (see paragraph 78 below). It contained a specific provision relating to Transdniestria (see paragraphs 80 to 81 below).

39. In an explanatory note to the draft law, the Deputy Minister of Justice stated:

> "Having analysed the current situation in the country in the field of citizenship, we observe that the tendency of Moldovans to obtain citizenships of other countries is explained by their desire to obtain privileges consisting of unrestrained travel in the European Union, social privileges, family reunion, employment and studies.
>
> At the same time, persons holding other nationalities have political and legal obligations towards those states. This fact could generate a conflict of interest in cases in which there are obligations both towards the Republic of Moldova and towards other states, whose national a particular person is.
>
> In view of the above, and with a view to solving the situation created, we consider it reasonable to amend the legislation in force so as to ban holders of multiple nationalities from public functions ...
>
> This will not mean, however, that those persons will not be able to work in the Republic of Moldova. They will be able to exercise their professional activities in fields which do not involve the exercise of state authority ... "

40. During the debates in Parliament numerous opposition members requested that the draft law be sent to the Council of Europe for a preliminary expertise. However, the majority voted against this proposal. Instead, the opposition was invited to challenge the new law before the Constitutional Court of Moldova. No such challenge was made at that time (but see paragraphs 54 to 58 below). Numerous MPs from the opposition argued that the proposed amendment banning multiple nationals from sitting as MPs was contrary to Article 17 of the European Convention on Nationality (see paragraphs 83 to 85 below) but the Deputy Minister of Justice expressed a contrary view and argued that, in any event, it was open to Parliament to denounce that Convention if there were any incompatibility.

41. On 7 December 2007 the draft law was approved by Parliament in a final reading (see paragraph 78 below). Following its adoption by Parliament, however, the President refused to promulgate the law and returned it to Parliament for re-examination.

42. The draft law was accordingly further amended and the list of positions in the government and in the public service closed to holders of multiple nationalities was reduced. The provisions concerning legislative elections were also amended to allow persons with dual or multiple nationality to be candidates in legislative elections; however, they were obliged to inform the Central Electoral Commission about their other nationalities before registering as candidates and to renounce them, or initiate a procedure to renounce them, before the validation of their MP mandates by the Constitutional Court (see paragraph 79 below).

43. On 10 April 2008 the new draft law was again put before Parliament by the Law Commission of Parliament. As noted above, it was adopted on

that date. In light of the amendments made by Law no. 273, an exception was introduced to the provision in the Law on Citizenship concerning equality of citizens to allow different treatment where provided for by law (see paragraphs 24 above and 75 below)

44. On 29 April 2008 the President promulgated the law adopted by the Parliament on 10 April 2008. On 13 May 2008 the law was published in the Official Gazette, thus entering into force. The other two amendments to the electoral legislation (see paragraph 37 above) were also enacted and entered into force in May 2008.

## E. International reactions to the electoral reform

### *1. Council of Europe's Commission against Racism and Intolerance*

45. On 29 April 2008 the Commission against Racism and Intolerance ("ECRI") made public a report adopted on 14 December 2007. In its report, ECRI expressed concern about the amendments concerning dual and multiple nationalities:

> "16. ECRI notes with interest that Article 25 of the Law on Citizenship, in full accordance with Article 17 of the European Convention on Nationality, which has been ratified by Moldova, provides that Moldovan citizens who are also citizens of another State and who have their lawful and habitual residence in Moldova enjoy the same rights and duties as other Moldovan citizens. In this respect, ECRI would like to express its concern about a draft law on the modification and completion of certain legislative acts adopted in its first reading by Parliament on 11 October 2007. According to this draft law, only persons having exclusively Moldovan citizenship are entitled to work in senior positions in the government and in several public services. From the information it has received, ECRI understands that if this draft law enters into force as it stands, Moldovan citizens with multiple citizenship would be seriously disadvantaged compared with other Moldovan citizens in access to public functions. It thus appears that, if the law enters into force as such, this could lead to discrimination, i.e. unjustified differential treatment on the grounds of citizenship. ECRI understands that a wide-ranging debate is occurring within Moldova at the time of writing this report as far as this draft law is concerned and that many sources both at the national and international level have stressed the need to revise the text thoroughly before its final adoption in order to ensure its compatibility with national and international standards.
>
> ...
>
> 18. ECRI strongly recommends that the Moldovan authorities revise the draft law of 11 October 2007 ... in order to ensure that it neither infringes the principle of non-discrimination on the grounds of citizenship nor undermines all benefits of the recent changes made to the law on citizenship and allowing for multiple citizenship."

*2. The Council of Europe Parliamentary Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe*

46. In a report dated 14 September 2007, *Honouring of obligations and commitments by Moldova*, the Parliamentary Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe ("the Honouring of Obligations Committee") noted the following:

> "20. The Assembly appreciates the efforts made by the Moldovan authorities in order to assess the degree of implementation of the recommendations made by Council of Europe experts. However, all new draft legislation in areas relating to the commitments to the Council of Europe must be submitted to expertise and discussed with Council of Europe experts prior to adoption."

47. In its subsequent report of 9 June 2008, *The state of democracy in Europe: the functioning of democratic institutions in Europe and progress of the Assembly's monitoring procedure*, the Honouring of Obligations Committee stated, *inter alia*, that:

> "80. In their 2007 report on the honouring of obligations and commitments by Moldova (Doc. 11374), the co-rapporteurs of the Committee on Moldova welcomed the changes made to the Electoral Code in 2005. In particular, the threshold for party lists was lowered to 4% for lists presented by individual political parties and 8% for coalitions of political parties ...
>
> 82. The Monitoring Committee was ... alarmed by the recent legislative developments with regard to the Electoral Code. In April 2008, the Moldovan Parliament amended the Electoral Code again to raise the threshold for party lists up to 6%. Moreover, the establishment of 'electoral blocs' – joint lists submitted by a coalition of political parties - was prohibited. These measures have raised concern and the committee decided at short notice to hold an exchange of views with the Moldovan delegation on 15 April. The electoral legislation should not be changed every two or three years according to political imperatives. It should allow a wide spectrum of political forces to participate in the political process to help build genuinely pluralistic democratic institutions. The co-rapporteurs will closely examine the recent amendments as well as the reasons behind the recent legislative developments during the observation of the preparation of the forthcoming parliamentary election to be held in spring 2009."

*3. The Parliamentary Assembly of the Council of Europe*

48. Concern was also expressed by the Parliamentary Assembly in its Resolution No. 1619 (2008) on the state of democracy in Europe, adopted on 25 June 2008:

> "5.3. the Assembly ... regrets the recent decision of the Moldovan Parliament to raise this threshold for party lists to 6%".

49. In Resolution 1666 (2009) on the functioning of democratic institutions in Moldova, the Parliamentary Assembly expressed its serious concern:

> " ... about the Moldovan authorities' partial compliance with its earlier recommendations regarding the improvement of the electoral process and the strengthening of the state's democratic institutions before the parliamentary elections of 5 April 2009. The amendments introduced to the Electoral Code in April 2008 raised the electoral threshold from 4% to 6%, did not provide for electoral coalitions of political parties and socio-political organisations and introduced a ban on the exercise of elevated public functions by Moldovan citizens holding multiple nationality. The combined effect of these amendments was to restrict the opportunities for a number of political forces to participate effectively in the political process, thus weakening pluralism."

50. It called on Moldova to:

> "8.1. resume reform of the electoral legislation, in co-operation with the European Commission for Democracy through Law (Venice Commission), in order to lower the electoral threshold for political parties, thus opening up the political process for more pluralism; ...
>
> 8.2. suspend the application of articles of the Electoral Code prohibiting people who hold multiple citizenship from exercising elevated public functions, while awaiting the judgment of the Grand Chamber of the European Court of Human Rights in the case of *Tănase and Chirtoaca v. the Republic of Moldova*; ..."

### *4. The European Commission for Democracy through Law*

51. On 23 October 2008 the European Commission for Democracy through Law ("Venice Commission") made public a report adopted on 17-18 October 2008 (Opinion No. 484/2008) concerning the amendments to the Electoral Code made in April 2008. The report expressed critical views in respect of all the aspects of the reform. As to the amendments concerning holders of multiple nationalities it stated the following:

> "30. A new paragraph to article 13(2) denies the right to 'be elected' in parliamentary elections to 'persons who have, beside the Republic of Moldova nationality, another nationality for the position of deputy in the conditions of Art. 75'. Article 75(3) states that a person may stand as a candidate with multiple citizenship, provided he/she upon election denounces other citizenships than the Moldovan. This must be considered as an incompatibility.
>
> 31. Beyond the mere question of the wording, restrictions of citizens' rights should not be based on multiple citizenship. The Code of Good Practice in Electoral Matters quotes the European Convention on Nationality, ratified by Moldova in November 1999, which unequivocally provides that 'Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party'.

32. Moreover, this restriction could be a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, articles 3 of the first Protocol and 14 of the Convention."

*5. Other international criticism*

52. On 27 May 2008, at a meeting of the EU-Moldova Cooperation Council in Brussels, the then President of the EU General Affairs and External Relations Council, Slovenian Foreign Minister, stated that it was important that Moldova conduct its parliamentary elections in 2009 in line with international standards and expressed concern at the latest amendments to the electoral law, which increased the electoral threshold to six per cent.

53. Concerns about the electoral reform were also raised on 9 July 2008 by the President of the Parliamentary Assembly of the Council of Europe in a speech to the Moldovan Parliament:

"... I strongly encourage you to obtain the approval by the Venice Commission in respect of the recent amendments to the legislation which will apply in the next elections, namely in what concerns the electoral threshold, the electoral blocks and the dual nationality. These are delicate problems and it is necessary to find the right balance between the preoccupations which guided you to make these amendments and the concern of the international community that these amendments are compatible with the principles of the Council of Europe."

## F. Challenge before the Constitutional Court

54. On 9 December 2008, Mr Vlad Filat, president of the Liberal Democratic Party, addressed a complaint to the Constitutional Court alleging that Law no. 273 was unconstitutional.

55. On 26 May 2009, the Constitutional Court delivered a judgment on the constitutionality of Law no. 273. It found the law to be constitutional and valid in its entirety. It held that the provisions of the law were clear and unambiguous, that they were accessible in that they were published in the Official Gazette and that they were foreseeable as they enabled, with sufficient precision, Moldovan citizens wishing to stand for Parliament but holding another nationality to adopt appropriate social-minded conduct to ensure that their rights were not curtailed. It emphasised that the law did not prevent dual nationals from becoming MPs as it offered them the possibility of complying with the law. It further considered the provisions of the law to be in conformity with norms of international law, concluding that the various international instruments permitted States to stipulate incompatibilities relating to the holding of multiple nationalities by public officials.

56. The court also found the law to be in pursuit of a legitimate aim, namely loyalty to the Moldovan State, in light of the importance of State sovereignty and the need for a permanent political and legal link between an

elector and the State. It considered that for Moldovan citizens holding the nationality of another State, the significance of Moldovan citizenship was substantially diminished as such a person might not be guided only by the constitutional requirements of Moldova and the interests of the Moldovan people but also by the interests of a foreign State. Accordingly, allowing members of Parliament to hold dual nationality was contrary to the constitutional principle of the independence of the mandate of members of Parliament, State sovereignty, national security and the non-disclosure of confidential information. In this regard, the court insisted that ensuring national security and consolidating Moldovan statehood had become an urgent necessity in light of movements to undermine the Moldovan State.

57. The court also considered the interference to be proportionate since it did not affect the substance of electoral rights but merely made the exercise of the right to be a member of Parliament conditional upon holding exclusive Moldovan citizenship. Citizens could choose between holding a job which required single citizenship and retaining their multiple citizenships but working in a different post.

58. As regards the argument that the law resulted in unequal treatment of Moldovan citizens, the court considered that the principle of equality should not be confused with the principle of uniformity. Those holding multiple nationalities were not in the same position as those holding single Moldovan nationality and the two cases were therefore not comparable.

### G. Political developments following the 2008 electoral reform

59. On 5 April 2009, legislative elections were held. The Communist Party obtained 60 seats in Parliament. The three opposition parties gained 41 seats altogether: the Liberal Democratic Party and the Liberal Party obtained 15 seats each; and the Our Moldova Alliance obtained 11 seats. Of the 101 MPs elected, 21 held more than one nationality or had pending applications for a second nationality and were therefore affected by the provisions of Law no. 273. All 21 MPs were members of opposition parties.

60. In the April elections, the applicant was elected to the Moldovan Parliament. In order to be able to take his seat, he was required to initiate a procedure to renounce his Romanian nationality. He did this by way of a letter addressed to the Romanian Embassy in Chişinău announcing that he was forced to initiate the renunciation of his Romanian nationality, but indicating that he reserved his right to withdraw the letter after the judgment of the Grand Chamber in the present case.

61. On 22 April 2009, the Constitutional Court validated the applicant's mandate, taking into consideration his letter to the Romanian Embassy.

62. The Communist Party subsequently sought to elect a President of the Republic. However, on two separate occasions they failed to obtain the 61 Parliamentary votes required for the election of the President. Accordingly,

on 15 June 2009, Parliament was dissolved. Fresh parliamentary elections were called for 29 July 2009.

63. Prior to the dissolution of Parliament, it once again amended the electoral legislation, lowering the electoral threshold from six to five percent and lowering the mandatory rate of participation from fifty-one per cent to one third of registered voters. The opposition expressed concern about the amendments, arguing that they were intended to help the Christian Democratic People's Party, an ally of the Communist Party in the previous Parliament, clear the electoral threshold and enter Parliament.

64. In the meantime, a prominent figure from the Communist Party and Speaker of the previous Parliament, Mr Marian Lupu, quit the Communist Party and became the leader of a small party, the Democratic Party, which had not cleared the electoral threshold in the April 2009 elections.

65. In the elections of 29 July 2009, five parties cleared the electoral threshold. The Communist Party obtained 48 seats. The Liberal Democratic Party obtained 18 seats; the Liberal Party obtained 15 seats; the Democratic Party obtained 13 seats; and the Our Moldova Alliance obtained 7 seats. The latter four parties formed a coalition called the Alliance for European Integration. The coalition had 53 seats in total and thus a majority in Parliament.

66. The applicant was re-elected. His mandate was subsequently confirmed by the Constitutional Court, upon production of the documents showing that he had initiated a procedure to renounce his Romanian nationality (see paragraph 60 above).

67. The majority elected Mr Mihai Ghimpu as Speaker on 28 August 2009. On 11 September 2009, the President of Moldova, Mr Vladimir Voronin, resigned. Under the Moldovan Constitution, Mr Ghimpu, in his capacity of Speaker, assumed the role of acting President until the election of a President in due course.

68. Since 25 September 2009, Moldova has been governed by the Alliance for European Integration coalition. On that date, Mr Vlad Filat was formally appointed Prime Minister and a number of ministers were also formally appointed. The applicant was appointed Minister of Justice. Under Moldovan law, the applicant will retain his mandate as a member of Parliament for six months following his appointment as Minister.

69. On 10 November 2009 Parliament made a first attempt to elect Mr Marian Lupu as President. Mr Lupu was not elected as the required 61 votes in favour were not obtained. The Communist Party refused to participate in the vote. A second attempt to elect a President was made on 7 December 2009. Again, the attempt was unsuccessful as a result of the failure to obtain the 61 votes required.

70. Under the Moldovan Constitution, in light of the failure of the coalition to elect a President, fresh Parliamentary elections will have to be held.

# II. RELEVANT DOMESTIC LAW

## A. The position of international treaties in Moldova

71. Article 4 of the Constitution of the Republic of Moldova reads:

> "(1) Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties to which the Republic of Moldova is a party.
>
> (2) Wherever inconsistencies appear between human rights conventions and treaties signed by the Republic of Moldova and its own national laws, international regulations shall prevail."

72. Article 8 of the Constitution provides that:

> **"**(1) The Republic of Moldova is obliged to respect the United Nations Charter and the treaties to which it is a party ..."

73. The relevant provisions of Law no. 595 concerning the International Treaties of the Republic of Moldova read, in so far as relevant:

> "**Section 19. Compliance with international treaties**
>
> International treaties shall be complied with in good faith, in accordance with the principle *pacta sunt servanda*. The Republic of Moldova cannot invoke the provisions of its internal legislation as a justification for non-compliance with an international treaty to which it is a party.
>
> **Section 20. The application of international treaties**
>
> The provisions of the international treaties which, according to their wording, are susceptible to be applicable without there being need for enactment of special legislative acts, shall have an enforceable character and shall be directly applied in the Moldovan law system. For the realisation of other provisions of the treaties, special normative acts shall be adopted."

## B. The Law on Moldovan Citizenship

74. According to section 24 of the Law on Citizenship of the Republic of Moldova (Law 1024 of 2 June 2000), as amended on 5 June 2003, multiple nationalities are permitted in Moldova and the acquisition by a Moldovan national of another nationality does not entail loss of the Moldovan nationality.

75. Section 25 provides that Moldovan citizens who reside lawfully and habitually in the territory of Moldova and hold the nationality of another State shall enjoy the same rights and duties as the other citizens of Moldova. Law no. 273 inserted an exception to the principle in section 25 of equal treatment of all citizens "in cases provided for by law".

76. Section 39 provides for an oath of allegiance to be sworn by those granted citizenship of Moldova through naturalisation of reacquisition of nationality. The oath states that:

> "I (surname, first name), born (time and place of birth), swear to be a faithful citizen of the Republic of Moldova, to respect its Constitution and other laws and not to take any actions that would prejudice the interests and territorial integrity of the State."

## C. The right to vote and stand for election

77. On the right to vote and to be elected, the Constitution provides, in so far as relevant:

> **"Article 38. The right to vote and to be elected**
>
> (3) The right to be elected is guaranteed to Moldovan citizens who enjoy the right to vote, within the conditions of the law.
>
> **Article 39. The right to participate in the administration**
>
> (1) The citizens of Moldova shall have the right to participate in the administration of public affairs in person or through their representatives.
>
> (2) Every citizen shall have access, in accordance with the law, to public functions."

78. Law no. 273 set out amendments to the electoral legislation. Section 10 of the draft law adopted by Parliament on 7 December 2007 but not promulgated by the President, proposed that the Electoral Code be amended to include the following:

> "Candidates for the office of MP shall be at least eighteen years old on the day of the elections, shall have exclusively Moldovan citizenship, shall live in the country and shall fulfil the conditions provided for in the present code."

79. Section 9 of the final version of Law no. 273, which entered in force on 13 May 2008, introduces the following provisions into the Electoral Code:

> "(1) Candidates for the office of MP shall be at least eighteen years old on the day of the elections, shall have Moldovan citizenship, shall live in the country and shall fulfil the conditions provided for in the present code.
>
> (2) At the moment of registering as a candidate, any person holding the citizenship of another country shall declare that he or she holds another citizenship or that he or she has applied for another citizenship.
>
> (3) At the time of validation of the MP mandate, the person indicated in paragraph (2) shall prove with documents that he or she has renounced or initiated the procedure of renunciation of the citizenship of other States or that he or she has withdrawn an application to obtain another citizenship.

(4) A failure to declare the fact of holding another citizenship at the moment of registering as a candidate for the office of MP or the fact of obtaining another citizenship during the exercise of a MP mandate, shall be sufficient grounds for the Constitutional Court to annul the MP mandate at the request of the Central Electoral Commission."

80. The position of Transdniestria is set out in section 21 of the Law:

" ... (3) The incompatibilities provided for in the present law shall apply to persons living in Transdniestria only in so far as they are stipulated in the legislation concerning the special legal status of Transdniestria."

81. Limited parliamentary debate took place on this particular provision of the Law. The only relevant extract is as follows:

"Vladimir Turcan, MP, Chairman of the juridical board for appointment and immunities of the Parliament, in the plenary parliamentary debates on 7 December 2007:

Vladimir Braga, MP:

The citizens who are citizens of the Republic of Moldova and live in Transdniestria will continue to have double nationality and then the effectiveness of the law is marginalised, or, to put it better, we reject the citizens from Transdniestria, who are also citizens of the Republic of Moldova.

Vladimir Turcan, MP:

Not at all. There is one thing which has to be understood: first, this law does not apply to all citizens. Second, it refers only to those who have positions in public authorities. Third, we deliberately inserted here a clause in the final and transitional provisions: I draw your attention to the fact that the third paragraph refers to persons who live and work in the respective authorities of the left bank, in Transdniestria, that this law does not apply in this case to the said persons and that it will only be applied [to them] in so far as this is provided for in the Law concerning the special status of Transdniestria."

## D. Access to the Constitutional Court

82. According to Article 38 of the Code of Constitutional Jurisdiction of the Republic of Moldova the Constitutional Court may be seized only by the President of the country, the Government, the Minister of Justice, the Supreme Court of Justice, the Economic Court, the Prosecutor General, the MPs, the parliamentary factions and the ombudsman.

# III. RELEVANT INSTRUMENTS OF THE COUNCIL OF EUROPE

## A. The European Convention on Nationality

83. The preamble of the Council of Europe's European Convention on Nationality ("ECN"), which entered into force in general and in respect of Moldova on 1 March 2000, explains the purpose of the ECN and provides, in so far as relevant:

> "Recognising that, in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals;
>
> ...
>
> Noting the varied approach of States to the question of multiple nationality and recognising that each State is free to decide which consequences it attaches in its internal law to the fact that a national acquires or possesses another nationality;
>
> ..."

84. Article 15 of the ECN sets out possible cases of multiple nationality other than those which arise where individuals acquire multiple nationalities automatically at birth or a second nationality automatically upon marriage. It provides as follows:

> "The provisions of this Convention shall not limit the right of a State Party to determine in its internal law whether:
>
> a. its nationals who acquire or possess the nationality of another State retain its nationality or lose it;
>
> b. the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality."

85. On the rights and duties related to multiple nationality, Article 17 provides:

> "Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party.
>
> The provisions of this chapter do not affect:
>
> a. the rules of international law concerning diplomatic or consular protection by a State Party in favour of one of its nationals who simultaneously possesses another nationality;
>
> b. the application of the rules of private international law of each State Party in cases of multiple nationality."

### B. The Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe (CDL-AD (2002) 23 rev)

86. The Venice Commission has adopted a Code of Good Practice in Electoral Matters. The Explanatory Report to the Code of Practice reads, in so far as relevant, as follows:

> "6b. [U]nder the European Convention on Nationality persons holding dual nationality must have the same electoral rights as other nationals.
>
> ...
>
> 63. Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.
>
> 64. In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged) as stability of some of the more specific rules of electoral law, especially those covering the electoral system *per se*, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results, and care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.
>
> 65. It is not so much changing voting systems which is a bad thing – they can always be changed for the better – as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests."

## IV. LAW AND PRACTICE IN THE COUNCIL OF EUROPE MEMBER STATES

87. On the basis of the information available to the Court, it would seem that, apart from Moldova, three countries (Azerbaijan, Lithuania and Bulgaria) clearly ban dual nationals from being elected to Parliament. In Azerbaijan and Lithuania, it is in any event prohibited to hold dual nationality; in Bulgaria, holding dual nationality is permitted. The Constitution of a fourth country, Malta, provides that a person shall not be qualified for election to the House of Representatives "if he is a citizen of a country other than Malta having become such a citizen voluntarily or is under a declaration of allegiance to such a country"; it is not entirely clear whether the provision applies to non-nationals or to multiple nationals. In any case, there are no known examples of the provision being enforced and it is not clear whether it was intended that the limitation remain in force after the law was amended to permit dual nationality in Malta in 2000.

Romania, which permits dual nationality, lifted its ban on dual nationals becoming MPs in 2003.

88. In Latvia, there is no prohibition on members of Parliament having dual nationality but a person with dual nationality cannot be elected president. It should be noted that dual nationality is prohibited in principle under Latvian law, although it is allowed in certain limited circumstances. Monaco restricts citizens from becoming members of the *Conseil National* if they hold public or elected office in another State. Portugal prohibits non-resident dual nationals from becoming members of Parliament for the constituency covering the territory of their other nationality.

89. In short, three States of the Council of Europe – Moldova, Bulgaria and Malta (subject to the ambiguity outlined above) – currently allow dual nationality but prohibit dual nationals from becoming MPs. In addition, Lithuania and Azerbaijan, which prohibit dual nationality, also prohibit dual nationals becoming MPs. Of these four other countries, Lithuania, and Azerbaijan have not signed the ECN; Bulgaria has lodged a reservation in respect of Article 17 of the ECN; and Malta has signed, but not ratified, the ECN.

90. Twenty-seven States other than Moldova allow dual nationality. In 19 member States, dual citizenship is prohibited in principle. Dual nationality is prohibited in Ukraine.

91. Lithuania, Latvia and Estonia prohibit dual nationality. According to the census for the year 2000, there were around 200 dual nationals in Estonia. There are around 700 dual nationals in Lithuania. No figures are available for Latvia. Around a quarter of the population of Latvia and Estonia is ethnically Russian.

92. In the States of the former Yugoslavia, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia allow dual citizenship, although Croatia and Slovenia seek to exclude it for naturalised citizens. In Bosnia and Herzegovina and Montenegro, dual nationality is permitted only in respect of States with which a bilateral agreement has been concluded. The populations of most of these States are ethnically mixed. Montenegro (43% Montenegrin; 32% Serb; 8% Bosniak; 17% other) and Bosnia and Herzegovina (48% Bosniak; 37.1% Serb; 14.3% Croat; 0.6% other) have the most ethnically mixed populations, followed by the former Yugoslav Republic of Macedonia (64.2% Macedonian; 25.2% Albanian; 10.6% other). The numbers of dual nationals in these countries is not known. None of these States prohibit dual nationals from standing for Parliament.

93. In the twenty-seven member States of the EU, sixteen allow dual nationality, five prohibit it or allow it only in exceptional circumstances (the Czech Republic, Denmark, Greece, Lithuania and Poland) and six (Austria, Estonia, Germany, Latvia, the Netherlands and Spain) allow it in certain circumstances, to varying extents. Two States – Lithuania and Bulgaria – prohibit the election of dual nationals to Parliament. Further limitations

exist in three States (Latvia, Malta and Portugal – see paragraphs 87 to 88 above).

# THE LAW

94. The applicant alleged that the prohibition on Moldovan nationals holding other nationalities sitting as members of Parliament following their election interfered with his right to stand as a candidate in free elections and to take his seat in Parliament if elected, thus ensuring the free expression of the opinion of the people in the choice of legislature. He relied on Article 3 of Protocol No. 1, which provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

95. He also complained under Article 14 taken together with Article 3 of Protocol No. 1 that he had been subjected to discrimination in comparison with Moldovan nationals holding multiple nationalities and living in Transdniestria. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

## I. PRELIMINARY OBJECTIONS

### A. Victim status

#### *1. The Chamber's conclusions*

96. The Chamber referred to the Court's previous case-law to the effect that it was open to a person to contend that a law violated his rights in the absence of an individual measure of implementation if he was required to modify his conduct or was a member of a class of people who risked being directly affected by the legislation. It considered that the applicant was directly affected by Law no. 273 because, if elected, he would have to make the difficult choice between sitting as an MP or keeping his dual nationality. Indeed, awareness of that difficult choice could have an adverse effect on the applicant's electoral campaign, both in terms of his personal investment and effort and in terms of the risk of losing votes with the electorate. The

Chamber therefore dismissed the Government's objection that the applicant lacked victim status.

*2. The parties' submissions*

**a. The Moldovan Government**

97. The Government maintained in their submissions to the Grand Chamber that the applicant was not a victim within the meaning of Article 34 of the Convention because the case was lodged with the Court before Law no. 273 had been promulgated. Relying on *Očič v. Croatia* (dec.), no. 46306/99, ECHR 1999-VIII, they further contended that the applicant's claim was an *actio popularis* seeking review of legislation in the abstract as at the time of his application to the Court, the law in question had never been applied to him to his detriment. The cases to which the Chamber referred to support its conclusion that the applicant was a victim were distinguished by the Government because, in those cases, unlike in the present case, the law being challenged had entered into force. Although the Court had considered an applicant a potential victim of an enacted law which had never been applied to him, it had never before found an applicant to be a victim or a potential victim of a draft law. The Government relied on *The Christian Federation of Jehovah's Witnesses in France v. France* (dec.), no. 53430/99, ECHR 2001-XI), where the Court observed that it had accepted the notion of a potential victim in cases where the applicant was not in a position to demonstrate that the legislation about which he complained had actually been applied to him because of the secret nature of the measures it authorised (*Klass and Others v. Germany*, cited above); where a law punishing homosexual acts was likely to be applied to a certain category of the population, to which the applicant belonged (*Dudgeon v. the United Kingdom*, 22 October 1981, Series A no. 45); and lastly, where the forced removal of aliens had already been decided on but not yet carried out and enforcement of the measure would have exposed the persons concerned to the risk of treatment contrary to Article 3 in the country of destination (*Soering v. the United Kingdom*, 7 July 1989, Series A no. 161) or would have infringed the right to respect for family life (*Beldjoudi v. France*, 26 March 1992, Series A no. 234). The Government argued that State parties had not agreed when ratifying the Convention that draft laws could be challenged before the Court. If such challenges were possible, where there was no possibility at domestic level to challenge a draft law applicants would be encouraged to come directly to the Court, breaching the principle of subsidiarity and leading to a large increase in the number of cases before the Court.

98. The Government further argued that a person with multiple nationalities was allowed to stand for election in Moldova and merely had to show, in order for his mandate to be approved by the Constitutional

Court, that he had initiated a renunciation procedure in respect of nationalities other than Moldovan (see paragraph 79 above). There was no provision in the Electoral Code which allowed an MP's mandate to be subsequently annulled on the grounds that the renunciation procedure had never been completed. In the present case, once the applicant's mandate was confirmed there was no way of annulling his mandate if he did not follow through with the renunciation of his Romanian nationality.

**b. The applicant**

99. The applicant acknowledged that his application to the Court was submitted before Law no. 273 was officially enacted. However, he argued that it had already been passed by Parliament (see paragraph 38 above) and that it was therefore inevitable that the law would be signed by the President and would enter into force sooner or later. The Government were given notice of the application by the Court on 17 June 2008, by which time the contested law was in force (see paragraph 44 above).

100. The applicant also pointed out that, following his election to Parliament, he was not permitted to take his seat until he had begun the procedure to renounce his Romanian citizenship (see paragraphs 60 to 61 and 66 above). Had he refused to initiate the procedure, he would have been unable to sit as an MP.

101. The applicant accordingly invited the Court to find that he was a victim of the contested legislation.

**c. The Romanian Government**

102. The Romanian Government contended that the applicant could be considered a victim under Article 34 of the Convention. Relying on *Klass and Others v. Germany*, cited above, § 34, they argued that a person could be a victim by virtue of the mere existence of measures or legislation, without having to show that the measures or law in question had been applied to him. They noted that when the application was submitted to the Court, the applicant, a politician, had expressed his intention to stand as a candidate in the 2009 elections. He therefore risked being affected by the new law. In the event, he was elected and was required to initiate a procedure to renounce his Romanian nationality. The Romanian Government considered the case of *Očič v. Croatia*, cited by the respondent Government, to be irrelevant to the present application because in that case, the applicant failed to demonstrate that he could have been personally affected by the contested legislation. The Romanian Government further relied on the fact that the Chamber gave its judgment after the law had been enacted. Accordingly, they argued, the application did not concern a mere draft law.

103. The Romanian Government invited the Court to reject the objection of the respondent Government.

*3. The Court's assessment*

104. The Court reiterates that, in order to be able to lodge a petition by virtue of Article 34, a person, non-governmental organisation or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure: the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. However, it is open to a person to contend that a law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or risks being prosecuted or if he is a member of a class of people who risk being directly affected by the legislation (see *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33 and 34, 29 April 2008; *Open Door and Dublin Well Woman v. Ireland*, cited above, § 44; and *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28).

105. In *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III, the Court held that the question whether or not the applicant could claim to be a victim of the violation alleged was relevant at all stages of the proceedings under the Convention (see also *E. v. Austria*, no. 10668/83, Commission decision of 13 May 1987, Decisions and Reports 52, p. 177). The Court recalls that the provisions of the Convention are to be interpreted in a manner which renders its safeguards practical and effective (see, *inter alia*, *Soering v. the United Kingdom*, cited above; and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37). In assessing whether an applicant can claim to be a genuine victim of an alleged violation, account should be taken not only of the formal position at the time when the application was lodged with the Court but of all the circumstances of the case in question, including any developments prior to the date of the examination of the case by the Court (see, *mutatis mutandis*, *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV).

106. With these elements in mind, the Court considers that the question whether an applicant has victim status falls to be determined at the time of the Court's examination of the case where such an approach is justified in the circumstances. In this respect, it refers to its case-law on loss of victim status where it has examined objections raised by respondent Governments that steps taken by or in the respondent State subsequent to the lodging of the application with the Court afforded adequate redress for the alleged violation such that the applicant could no longer be considered a victim for the purposes of Article 34 of the Convention (see, for example, *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III; *Chevrol v. France*, no. 49636/99, § 37 to 43, ECHR 2003-III; *Siliadin v. France*, no. 73316/01, § 54 and 63, ECHR 2005-VII; and *Ramazanova and Others v. Azerbaijan*,

no. 44363/02, § 36 to 39, 1 February 2007). In a number of cases, applications have been ruled inadmissible or struck out of the list where such subsequent steps have provided adequate redress to the applicant, who has accordingly lost his victim status (see, for example, *Conrad v. Germany*, no. 13020/87, Commission decision of 13 April 1988; *Caraher v. the United Kingdom* (dec.), no. 24520/94, ECHR 2000-I; and *Ohlen v. Denmark* (striking out), no. 63214/00, §§ 28 to 31, 24 February 2005). The Court will therefore examine whether the applicant has victim status for the purposes of Article 34 of the Convention, having regard to all the circumstances of the case.

107. In the present case, the Court notes that the impugned law entered into force in May 2008 (see paragraph 44 above). The present application therefore concerns enacted legislation.

108. As to whether the measure has been applied to the applicant to his detriment, the Court observes that, following his election in April 2009, the applicant was obliged to initiate a procedure to renounce his Romanian nationality in order to have his mandate as a member of Parliament confirmed by the Constitutional Court to allow him to take his seat. He has initiated this procedure (see paragraphs 60 to 61 above). Again, following his election in July 2009, the applicant was required to provide evidence of his initiation of the renunciation procedure to the Constitutional Court in order to have his mandate confirmed (see paragraph 66 above). The Court accordingly concludes that the applicant was directly affected by Law no. 273 as he was obliged to initiate a procedure which put him at risk of losing his Romanian nationality. Further and in any event, even before his election the knowledge that, if elected, he would be required to take steps to renounce his Romanian nationality if he wished to take his seat in Parliament undoubtedly affected him throughout his electoral campaign. He may, moreover, have lost votes since the electorate was aware that there was a chance that he would decide not to take his seat if that would mean losing his status as a dual national. Since the applicant was directly affected by the law in question, the Court concludes that the measure has had a detrimental impact on him.

109. As to the Government's argument that Law no. 273 required a renunciation procedure merely to be initiated, and not to be completed, the Court does not consider that this removes the applicant's status as a victim. Although the applicant's mandate has now been confirmed by the Constitutional Court, he was required to send a letter to the Romanian authorities requesting the initiation of a procedure to renounce his Romanian nationality, which he did. It is true that the Romanian Government have not yet taken steps to strip the applicant of his Romanian nationality. However, the conduct of the Romanian authorities is not within the applicant's control and they have made no formal undertaking not to act upon the applicant's request to renounce his Romanian nationality.

Accordingly, they may choose at any time to complete the renunciation procedure.

110. In any event, each time the applicant wishes to stand for election to Parliament he will face the uncertainty of not knowing whether the Constitutional Court will accept that he has complied with the law and whether the Romanian Government will take steps to give effect to his request to renounce his Romanian nationality.

111. The Government's objection as to lack of victim status is therefore dismissed.

## B. Non-exhaustion of domestic remedies

### *1. Chamber's conclusions*

112. The Chamber rejected the Government's objection that the applicant had failed to exhaust domestic remedies in that he had not complained to the Ombudsman, who could in turn have lodged a challenge to Law no. 273 before the Constitutional Court. The Chamber emphasised that the requirement to exhaust domestic remedies applied only to those remedies which were accessible and effective. In the present case, the remedy relied upon by the Government could not be considered effective as it was not open to the applicant to complain directly to the Constitutional Court.

### *2. The parties' submissions*

#### a. The Moldovan Government

113. The Government argued that the applicant could have requested Mr Filat, who was a member of Parliament and therefore had standing to lodge a request with the Constitutional Court (see paragraph 82 above), to challenge Law no. 273 before the Constitutional Court. Referring to the Chamber's conclusion that a request to the Constitutional Court via the Ombudsman was not an effective remedy, the Government distinguished the present proposal on the grounds that Mr Filat was the president of the political party of which the applicant was vice president; Mr Filat also held dual nationality; and Mr Filat had already assisted the applicant in the present case. Accordingly, they argued, the remedy proposed was accessible to the applicant.

114. The Government emphasised that the present case concerned a matter of constitutionality which could only be remedied by the Constitutional Court. In their submissions on admissibility before the Chamber, the Government had raised the possibility of lodging a case with the Constitutional Court via the Ombudsman. They argued that the

substance of the remedy advanced was the possibility of the Constitutional Court considering the case and that the precise intermediary by which the applicant sought its introduction was irrelevant. Accordingly, the Government argued, the current objection was not a new plea but a reiteration of the previous objection and they were therefore not barred from raising the objection at this stage of the proceedings.

115. Finally, the Government pointed out that a request to the Constitutional Court in December 2008 to consider the constitutionality of the law was successful as the request was admitted for examination (see paragraphs 54 to 58 above). Thus this was clearly an effective remedy, although in the event the court found the law to be constitutional.

**b. The applicant**

116. The applicant argued that the objection raised by the Government was a new objection. It did not depend on facts which were not available when the Court considered the admissibility of the case. Accordingly, relying on *Sejdovic v. Italy* [GC], no. 56581/00, § 41, ECHR 2006-II, the applicant contended that the Government should have raised the possibility of this remedy in their written and oral pleadings on admissibility. He did not consider that there were any exceptional circumstances in favour of relieving the Government of the obligation to comply with this requirement and accordingly he invited the Court to reject the Government's objection.

117. In the event that the Court were minded to allow the objection to be raised at this stage in the proceedings, the applicant argued that a complaint to the Constitutional Court via Mr Filat was not an effective remedy open to the applicant within the meaning of Article 35. He pointed to the fact that it was inaccessible as it was not open to any citizen to lodge a complaint and he was not a member of any of the categories of persons entitled to lodge a complaint until 22 April 2009, when his mandate as a member of Parliament was confirmed. In any event, the applicant had appeared as Mr Filat's representative in the proceedings brought before the Constitutional Court and raised all the issues which had come before this Court. The court ruled that the law was constitutional (see paragraph 55 above). To the extent that the remedy could be considered effective, it had clearly been exhausted.

**c. The Romanian Government**

118. The Romanian Government highlighted that the remedy proposed by the respondent Government had been raised for the first time in their submissions to the Grand Chamber. They argued that it was clear from the Court's case-law that such objections should be made in submissions on admissibility. The Romanian Government further noted that the respondent Government had at their disposal all the facts necessary to have raised this objection at the admissibility stage and had provided no explanation for their failure to do so. Accordingly, there were no exceptional circumstances

justifying the delay in advancing this objection and the respondent Government were therefore estopped from objecting at this stage of proceedings.

119. In the event that the Court allowed this objection to be considered notwithstanding the delay, the Romanian Government contended that the remedy proposed did not satisfy the requirements of Article 35. It was not accessible to the applicant because he had no right directly to address a challenge to the Constitutional Court but had to make a request through an intermediary, who could choose whether to apply to the court to have the contested legislation examined.

*3. The Court's assessment*

120. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems (see, for example, *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II; and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Under Article 35 § 1 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, cited above, § 66).

121. The Court further reiterates that under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII; and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). However, there may in particular cases be exceptional circumstances that dispense the Government from the obligation to raise their preliminary objection at the admissibility stage (see *Prokopovich v. Russia*, no. 58255/00, § 29, ECHR 2004-XI (extracts); and *Sejdovic v. Italy*, cited above, § 41).

122. The Court considers it unnecessary to examine whether the Government were estopped from raising this objection at this stage in the proceedings as, in any case, the Court finds the remedy now proposed to be one which the applicant was not required to exhaust. The Court recalls the finding of the Chamber, which is not contested by the respondent Government, that the possibility of lodging a complaint with the Ombudsman, who in turn could challenge the law before the Constitutional Court, was not an effective remedy because it was not open to the applicant

to complain directly to the court. The Court sees no reason to disagree with the Chamber's assessment. The remedy currently proposed by the Government is, similarly, not directly accessible to the applicant as he was unable to approach the Constitutional Court directly but had to rely on the exercise of discretion by Mr Filat to lodge a complaint. Accordingly, this remedy was not effective for the purposes of Article 35 § 1 of the Convention.

123. In any event, it is clear that, the Constitutional Court having pronounced on the constitutionality of the law (see paragraphs 54 to 58 above), the remedy proposed has now been exhausted. In the circumstances, the Government's objection is dismissed.

## C. Incompatibility *ratione materiae*

### *1. The parties' submissions*

#### a. The Moldovan Government

124. In their submissions to the Grand Chamber, the Government raised for the first time an objection *ratione materiae* following references to the European Convention on Nationality ("ECN") in the Chamber's judgment. In their view, the Chamber did not consider the right to stand for elections, protected by Article 3 of Protocol No. 1, but instead examined the right to multiple nationalities and the right to acquire a nationality, which were not rights guaranteed by the Convention. The Government challenged the significance accorded by the Chamber to ratification and non-ratification of the ECN. They pointed out that Moldova could simply denounce the ECN and, if it wished, re-ratify subject to a reservation in respect of Article 17.

125. The Government requested the Court to consider this objection as an objection relevant to the substantive questions raised by the case and to deal with it in its examination of the merits.

126. Relying on *Blečić v. Croatia* [GC], no. 59532/00, §§ 63-69, ECHR 2006-III, they contended that they were not estopped from raising the objection at this stage in the procedure as it went to the question of the Court's jurisdiction.

#### b. The applicant

127. The applicant argued that, in principle, this objection should also have been raised before the application was declared admissible and that, accordingly, the Government were estopped from raising it at this stage. However, he accepted that the Court had to satisfy itself that it had jurisdiction in any case brought before it and that it was required to examine the question of jurisdiction at every stage of the procedure.

128. The applicant concluded that the complaint raised by the Government should not be considered a preliminary objection because it related to the interpretation of rights under Article 3 of Protocol No. 1. He invited the Court to consider the arguments raised by the Government in its examination of the substance of the complaint.

**c. The Romanian Government**

129. The Romanian Government referred to their arguments as to estoppel in relation to the objection of the respondent Government regarding exhaustion of domestic remedies and contended that similar arguments applied to the objection of incompatibility *ratione materiae*. Unlike in *Demir and Baykara v. Turkey* [GC], no. 34503/97, 12 November 2008, the respondent Government had clearly indicated that their objection was a reaction to the judgment of the Chamber and that the argument had not previously been raised in substance. Although in *Blečić v. Croatia*, cited above, the Court gave examples of incompatibility objections which could be raised at any stage of the procedure, none of the examples was similar to the present case. Accordingly, in the view of the Romanian Government, the respondent Government was not able to raise the objection at this stage.

130. However, if the Court were to conclude that there was no estoppel, the Romanian Government invited the Court to join the objection to the merits and to consider it in that context. They argued that it was necessary to analyse the undertakings of Moldova in the context of international agreements in order to assess how Moldova had chosen to give effect to rights guaranteed in the Convention. They referred to the Court's consistent case-law to the effect that the Convention could not be interpreted in a vacuum and that regard should be had to other relevant instruments of international law (for example, *Emonet and Others v. Switzerland*, no. 39051/03, § 65, ECHR 2007-XIV; and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI). Thus, in the view of the Romanian Government, the Chamber was correct to refer to engagements assumed by Moldova at European level as relevant to its analysis of the restrictions imposed by Law no. 273. In this regard, the Romanian Government noted that Moldova had ratified the ECN without lodging reservations and that the obligation on States to execute in good faith international treaties to which they were party was a fundamental principle of international law.

*2. The Court's assessment*

131. The Court observes that the Government's objection *ratione materiae* was not previously raised at the admissibility stage and is therefore a new objection. However, it notes that an objection of incompatibility *ratione materiae* is an objection which goes to the Court's jurisdiction and recalls that the Court is obliged to examine whether it has jurisdiction at

every stage of the proceedings. As a result, the Government cannot be considered as being estopped from raising such an objection at this stage (see, *mutatis mutandis*, *Blečić v. Croatia*, cited above, § 67).

132. Like the parties, the Court considers that the objection is closely linked to the merits of the applicant's complaint. It will therefore deal with the objection in its examination of the merits below.

### D. Conclusion

133. The application cannot be rejected as incompatible *ratione materiae* with the provisions of the Convention; for failure to exhaust domestic remedies; or for lack of victim status. The Court therefore dismisses the respondent Government's preliminary objections, with the exception of its objection of incompatibility *ratione materiae*, which is joined to the merits.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

### A. The Chamber's conclusions

134. The Chamber accepted that the impugned provisions were formulated in clear terms and that they pursued the legitimate aim of ensuring the loyalty of MPs to the Moldovan State. However, it considered that the means employed by the Government for the purpose of ensuring loyalty of its MPs to the State were disproportionate. There was therefore a violation of Article 3 of Protocol No. 1.

135. In its assessment of the proportionality of the measure, the Chamber took into consideration the practice of other States of the Council of Europe and other methods available to the Government to ensure loyalty of MPs, such as requiring them to swear an oath. It also considered the provisions of the ECN and the comments of ECRI and the Venice Commission on the new law. Even in the specific context of Moldova's political evolution, the Chamber was not satisfied that the prohibition on multiple nationals sitting as MPs could be justified, particularly in view of the fact that such a far-reaching restriction had been introduced approximately a year or less before the general elections.

## B. The parties' submissions

### *1. The Moldovan Government*

136. The Government explained by way of preliminary remarks that all that was required under Law no. 273 was that an individual prove that he had initiated a procedure to renounce the citizenship of any other State (see paragraph 79 above). Further, as noted above (see paragraph 98), once the Constitutional Court had confirmed the mandate of a member of Parliament, there was no mechanism whereby the mandate could subsequently be revoked: the law made no provision for such a procedure.

137. The Government reiterated its submissions before the Chamber that the interference was lawful and that it pursued the legitimate aims of ensuring loyalty, defending the independence and existence of the State and guaranteeing the security of the State. They pointed to the findings of the Constitutional Court as to the consistency of the law with the Moldovan Constitution and international conventions (see paragraph 55 above). They contested the Chamber's conclusion that the measure was not proportionate, arguing that the Chamber had failed to give adequate weight to their submissions on the special historical context of Moldova which in their view necessitated restrictions on those with dual nationality becoming members of Parliament. They pointed out that when the ECN was ratified in 1999, the number of Moldovans holding dual nationality was insignificant as it was not permitted under the law in force at the time (see paragraph 22 above). Accordingly, no reservation in respect of Article 17 was thought necessary. They further explained that in 1999, Moldova was not a parliamentary republic as it is today, but a semi-presidential republic. The legislature therefore played a greater role in the State today than it did then. Although of the other Council of Europe States which banned dual nationals from sitting as MPs, Azerbaijan, Lithuania and Malta had not ratified the ECN and Bulgaria had lodged a reservation to Article 17, Moldova could simply denounce the ECN and, if it wished to do so, re-ratify subject to a reservation in respect of Article 17. This would place it in the same position as Bulgaria.

138. The Government also criticised the Chamber for drawing significance from the fact that Moldova had failed to submit the draft law for consideration by relevant international authorities and had failed to abide by the recommendations of ECRI and the Venice Commission (see paragraphs 40, 45 and 51 above). Referring to *Boicenco v. Moldova*, no. 41088/05, 11 July 2006, the Government pointed out that the Court had in the past found a violation even where the law in question had been submitted to Council of Europe experts and had been amended to comply with their recommendations. Conversely, in *Yumak and Sadak v. Turkey* [GC], no. 10226/03, 8 July 2008, Turkey's failure to comply with

recommendations of Council of Europe experts did not lead the Court to find a violation of the Convention. The Government also contested the relevance of the report of the Venice Commission, given that it had not been published by the date on which the law was adopted.

139. As to the other methods of ensuring loyalty proposed by the Chamber, the Government argued that an oath would be insufficient as any dual national Moldovan would also have sworn an oath to their other State of nationality. Accordingly, an oath was merely declaratory and was ineffective at ensuring loyalty.

140. Finally, the Government noted that 21 out of 101 members of Parliament elected in the April 2009 elections were dual nationals. They argued that this gave rise to serious concerns as far as Moldovan independence, security and statehood were concerned.

141. The Government invited the Court to find that there was no violation of Article 3 of Protocol No. 1 in the present case.

*2. The applicant*

142. The applicant maintained that the restrictions in Law no. 273 violated his right to stand as a candidate in free elections which ensured the free expression of the people in the choice of the legislature. He argued that the requirement that he initiate a procedure renouncing his Romanian nationality in order to be able to take his seat in Parliament curtailed the rights guaranteed by Article 3 of Protocol No. 1 to such an extent as to impair their very essence and deprive them of their effectiveness, as the right to stand for election would be rendered meaningless without the right to sit as a member of Parliament once elected (referring to *M v. the United Kingdom* (dec.), no. 10316/83, 7 March 1984).

143. The applicant reiterated his complaint that Law no. 273 did not satisfy the requirement of lawfulness because it was inconsistent with the provisions of the Constitution and the ECN, which was ratified by Moldova in 1999 and was therefore part of the internal legal order (see paragraphs 71 to 73 above).

144. The applicant further alleged that Law no. 273 did not pursue a legitimate aim because the aim of ensuring loyalty towards Moldova was not the genuine motivation behind the enactment of the new law. By way of example, Mrs Larisa Savga had been re-appointed a member of Government following the April elections, even though it was well known that she also held Romanian nationality. He also referred to unconfirmed press reports that the former President of Moldova, Mr Voronin, had held Russian citizenship while President and received a pension from Russia. Relying upon conclusions of independent analysts, the applicant argued that holding dual nationality did not make Moldovan citizens less patriotic.

145. Finally, the applicant alleged that the law was disproportionate, arbitrary and anti-democratic. He argued that the Convention had to be

interpreted in a manner which rendered the rights it contained practical and effective. To this end, it had to be read as a whole and in such a way as to promote internal consistency between its various provisions. Relevant rules and principles of international law had to be taken into account. Any emerging consensus among European States was a relevant factor for consideration by the Court (see *Demir and Baykara v. Turkey*, cited above, §§ 66 to 85). Applying these principles, the applicant concluded that the Court should not ignore the obligations assumed by the Government under the ECN when assessing the proportionality of the restrictions under Article 3 of Protocol No. 1. The same applied to the recommendations and findings of other international organisations. The applicant also pointed to the fact that Moldova was the only Council of Europe State which allowed multiple nationalities but banned those who were multiple nationals from standing for national elections. He argued that this demonstrated an absence of international acceptance for the approach of the Government.

146. The applicant further contended that it was disproportionate of the Government to restrict the right to sit as an MP to individuals with only Moldovan nationality in light of their previous policy of encouraging Moldovan nationals to acquire other nationalities. The Government had admitted that a significant number of Moldovans had acquired a second nationality for social and economic reasons (see paragraph 39 above), a fact which, in the applicant's view, rendered their new policy even more disproportionate. He emphasised that the Government had provided no example of any threat to the security or independence of Moldova from dual nationals. In the applicant's view, the existence of sanctions for treason was an adequate means of preventing disloyalty. In any case, access to classified information was dependant upon security clearance which was only granted following a thorough investigation by the secret services.

147. Finally, the applicant criticised the adoption of the new legislation less than one year before the 5 April 2009 elections. He argued that the proportionality of the law should be assessed in the general context of electoral reform in Moldova, including the raising of the threshold for gaining seats in Parliament from four per cent to six per cent and the prohibition of electoral blocks (see paragraph 37 above). The election results of 5 April 2009 demonstrated that the new law mainly affected the opposition, as 21 of its 41 members were concerned (see paragraph 59 above). The example of Mrs Savga (see paragraph 144 above) was evidence of the arbitrary application of the new law. In the applicant's submission, it was relevant for the Court whether the effect of rules governing elections excluded a group of persons from participating in the political life of a country, whether discrepancies created by a particular electoral system could be considered arbitrary or abusive and whether the system tended to favour one political party over another (referring to, *inter alia*, *Aziz v. Cyprus*, no. 69949/01, § 28, ECHR 2004-V; and *Yumak and Sadak*

*v. Turkey*, cited above, § 121). The applicant contended that the real aim behind the electoral reform was to diminish the electoral prospects of opposition party and that Law no. 273 was therefore arbitrary and abusive.

*3. The Romanian Government*

148. The Romanian Government contested the legality of Law no. 273. They argued that the law was not foreseeable given the fact that it was not uniformly applied and that different interpretations could be given to its provisions.

149. They further argued that a minimum European standard emerged from an examination of the legislation applicable in the different member States and that this standard did not impose a condition of single citizenship for election to Parliament. Unlike the other Council of Europe States which banned dual nationals from sitting as MPs, Moldova had chosen to assume all of the obligations arising under the ECN. The fact that Moldova had chosen to change its position on the possibility of acquiring dual nationality did not absolve it from complying with its obligations under the ECN. The Romanian Government emphasised that Article 4 of the Moldovan Constitution provided that in the event of a disagreement between international human rights conventions to which Moldova was a party and domestic legislation, the international measures prevailed (see paragraph 71 above). Furthermore, Article 25 of the Law on Citizenship of the Republic of Moldova provided that citizens of Moldova who also held citizenship of another State had the same rights and obligations as other Moldovan citizens (see paragraph 75 above).

150. The Romanian Government also pointed out that, some seventeen years after Moldova gained its independence, the respondent Government asserted a risk to that independence without providing any proof. They emphasised that no causal link had been established between dual nationality and the alleged danger to the independence of the State and that no example had been proffered of a case where a dual national had committed acts which undermined independence or national security.

151. The Romanian Government also argued that the legislation did not pursue a legitimate aim. They did not contest that the protection of the independence and national security of the State could be a legitimate aim which had to be assessed in the context of the historical and political background of the State in question. However, they disputed the submission by the respondent Government that the historico-political situation in Moldova rendered the aim legitimate in the present case. They further emphasised that a number of laws passed between 1991 and 2000 did not impose a condition of single citizenship for candidacy for certain public posts. One example was Law no. 720 of 18 September 1991, regulating presidential elections. The Romanian Government, relying on *Ždanoka v. Latvia* [GC], no. 58278/00, § 135, ECHR 2006-IV and *Ādamsons*

*v. Latvia*, no. 3669/03, § 123, 24 June 2008, argued that even if a condition of single citizenship could have been justified in the early years following Moldovan independence, with the passage of time and the consolidation of democracy, such a condition could no longer be justified. It was therefore difficult to understand the position of Moldova, which for three parliaments had allowed multiple citizens to become members of Parliament but which now, some seventeen years later, considered the possession of another citizenship to constitute a grave danger to Moldova and assimilated dual nationality with treason. They argued that the aim of ensuring loyalty to the State should be realised through the imposition of sanctions for conduct which harms the national interest and not through restricting access of multiple nationals to certain public functions.

152. As regards proportionality, the Romanian Government again emphasised the existence of a minimum European standard which did not impose a condition of single citizenship for election to Parliament. Further, the reports published by ECRI and the Venice Commission (see paragraphs 45 and 51 above), which, as demonstrated by *Shtukaturov v. Russia*, no. 44009/05, § 95, 27 March 2008, were a relevant factor of the Court's consideration, supported the assertion that there was a common European standard in electoral matters. Such reports were important both because of the intrinsic value of the opinion expressed – which was the opinion of impartial legal experts – and precisely because of the weight attributed to them by the Court and the other organs of the Council of Europe.

153. The Romanian Government concluded that Moldova had exceeded its margin of appreciation in this area. In this regard, it was not enough that the applicant was permitted to stand as a candidate. In order for the right to be effective, he had to be able to take his seat (referring to *M v. the United Kingdom*, cited above). The adoption of Law no. 273 impaired the very essence of the rights guaranteed by Article 3 of Protocol No. 1, rendering them theoretical and illusory. In conclusion, the Romanian Government invited the Court to endorse the Chamber's conclusion that there had been a violation of that Article.

## C. The Court's assessment

### *1. General principles*

154. The Court has consistently emphasised the importance of Article 3 of Protocol No. 1 in an effective democracy and, as a consequence, its prime importance in the Convention system. In *Yumak and Sadak v. Turkey*, cited above, § 105, it reiterated that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law. In *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A

no. 113, and *Lingens v. Austria*, 8 July 1986, §§ 41 and 42, Series A no. 103, the Court held that free elections and freedom of expression, and particularly freedom of political debate, formed the foundation of any democracy.

155. The Court's case-law has distinguished between the active aspect of Article 3 of Protocol No. 1, which relates to the right to vote, and the passive aspect, namely the right to stand as a candidate for election (see *Ždanoka v. Latvia*, cited above, §§ 105 and 106). The present case is principally concerned with the latter aspect. However, as noted above (see paragraph 108), the prohibition on multiple nationals sitting as MPs may also have had a secondary impact on the manner in which the electorate exercised their right to vote in Moldova.

156. As regards the passive aspect of Article 3 of Protocol No. 1, the Court has emphasised the considerable latitude which States enjoy in establishing criteria on eligibility to stand for election. In *Ždanoka v. Latvia*, cited above, § 106, the Court explained that:

> "although [the criteria] have a common origin in the need to ensure both the independence of elected representatives and the freedom of choice of electors, these criteria vary in accordance with the historical and political factors specific to each State. The multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area. Therefore, for the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned."

157. Similarly, in *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II, the Court observed that for the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another. However, it emphasised that the State's margin of appreciation in this regard was limited by the obligation to respect the fundamental principle of Article 3 of Protocol No. 1, namely "the free expression of the opinion of the people in the choice of the legislature" (see also *Mathieu-Mohin and Clerfayt v. Belgium*¸ cited above, § 47; and *Melnychenko v. Ukraine*, no. 17707/02, § 55, ECHR 2004-X).

158. In assessing the limitations of the latitude afforded to States, the Court in *Aziz v. Cyprus*, cited above, § 28, noted that:

> "Although ... States enjoy considerable latitude to establish rules within their constitutional order governing parliamentary elections and the composition of the parliament, and ... the relevant criteria may vary according to the historical and political factors peculiar to each State, these rules should not be such as to exclude some persons or groups of persons from participating in the political life of the country and, in particular, in the choice of the legislature, a right guaranteed by both the Convention and the Constitutions of all Contracting States."

159. Applying these principles, the Court considered in *Ždanoka v. Latvia*, cited above, §§ 119 to 135, that historical considerations could provide justification for restrictions on rights intended to protect the integrity of the democratic process by, in that case, excluding individuals who had actively participated in attempts to overthrow the newly-established democratic regime. However, the Court suggested that such restrictions were unlikely to be compatible if they were still applied many years later, at a point where the justification for their application and the threats they sought to avoid were no longer relevant. Subsequently, in *Ādamsons v. Latvia*, cited above, §§ 123 to 128, the Court emphasised that with the passage of time, general restrictions on electoral rights become more difficult to justify. Instead, measures had to be "individualised" in order to address a real risk posed by an identified individual.

160. In *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 62, ECHR 2005-IX, the Court observed more generally that any conditions imposed on the rights guaranteed under Article 3 of Protocol No. 1 must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage.

161. Finally, notwithstanding the wide margin of appreciation afforded to States in this area, the Court has reiterated on numerous occasions that it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with. In this regard, it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see, for example, *Hirst v. the United Kingdom*, cited above, § 62; and *Yumak and Sadak v. Turkey*, cited above, § 109).

*2. Application of the general principles to the present case*

162. The Court recalls that it has found that the applicant can claim to be a victim of Law no. 273 (see paragraph 111 above). It further observes that in both the April 2009 and the July 2009 elections, the applicant was elected as an MP (see paragraphs 59 and 66 above). In order to have his mandate confirmed by the Constitutional Court, he was required to initiate a procedure to renounce his Romanian nationality (see paragraphs 60 to 61 and 66 above). Accordingly, the Court considers that there has been an interference with the applicant's rights under Article 3 of Protocol No. 1. Such interference will constitute a violation unless it meets the requirements of lawfulness, it pursues a legitimate aim and it is proportionate.

**a. Lawfulness**

163. The Court observes that the prohibition on multiple nationals sitting as MPs contained in Law no. 273 was couched in sufficiently clear terms. Once adopted, the law was published in the Official Gazette. Accordingly, the Court is satisfied that the impugned legislation met the requirements of foreseeability. Although there would appear to be an inconsistency between the law and Article 17 of the ECN, which is part of the domestic legal order under the Moldovan Constitution and takes precedence over national legislation (see paragraphs 71 to 73 above), the Court does not find it necessary to resolve the apparent conflict of norms. However, it will consider the impact of the ECN more closely in its examination of the proportionality of the measure below.

**b. Legitimate aim**

164. Unlike Articles 8, 9, 10 and 11 of the Convention, Article 3 of Protocol No. 1 does not itself set out a list of aims which can be considered legitimate for the purposes of that Article. Several aims are relied upon by the Government to justify the prohibition introduced by Law no. 273, namely ensuring loyalty, defending the independence and existence of the State and guaranteeing the security of the State. The Court observes that the Constitutional Court found the aim pursued by the prohibition to be securing the loyalty of MPs to the State and concluded that allowing members of Parliament to hold dual nationality was contrary to the constitutional principle of the independence of the mandate of members of Parliament, State sovereignty, national security and the non-disclosure of confidential information (see paragraph 56 above). The Deputy Minister of Justice, explaining the aim of the proposed legislation, said that there may be a conflict of interest in cases where Moldovan citizens had political and legal obligations towards other States by virtue of holding a second nationality (see paragraph 39 above).

165. As regards the aim of ensuring loyalty, a concept invoked by all parties in their submissions before the Court (see paragraphs 137, 144 and 151 above), the Court observes that "loyalty", as invoked by the parties to justify the introduction of the prohibition, is not clearly defined and no explanation of its content has been provided by the parties. However, the parties appear to agree that loyalty in this context is linked to the existence and independence of the State and to matters of national security. The oath of allegiance sworn by Moldovan citizens who acquire Moldovan nationality by naturalisation or reacquisition further refers to the need to respect the Constitution and the laws of the State and to refrain from action which would prejudice the interests and territorial integrity of the State (see paragraph 76 above).

166. For its part, the Court would distinguish at the outset between loyalty to the State and loyalty to the Government. While the need to ensure

loyalty to the State may well constitute a legitimate aim which justifies restrictions on electoral rights, the latter cannot. In a democratic State committed to the rule of law and respect for fundamental rights and freedoms, it is clear that the very role of members of Parliament, and in particular those members from opposition parties, is to represent the electorate by ensuring the accountability of the Government in power and assessing their policies. Further, the pursuit of different, and at times diametrically opposite, goals is not only acceptable but necessary in order to promote pluralism and to give voters choices which reflect their political opinions. As the Court has previously noted, protection of opinions and the freedom to express them is one of the objectives of the freedoms guaranteed by the Convention, and in particular Articles 10 and 11. This principle is all the more important in relation to members of Parliament in view of their essential role in ensuring pluralism and the proper functioning of democracy (see, regarding the importance of freedom of expression for political parties in general, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 88, ECHR 2003-II).

167. As to what loyalty is required from members of Parliament to the State, the Court considers that such loyalty in principle encompasses respect for the country's Constitution, laws, institutions, independence and territorial integrity. However, the notion of respect in this context must be limited to requiring that any desire to bring about changes to any of these aspects must be pursued in accordance with the laws of the State. Any other view would undermine the ability of MPs to represent the views of their constituents, in particular minority groups. The Court has previously emphasised that there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned. Similarly, in the present case, the fact that Moldovan MPs with dual nationality may wish to pursue a political programme which is considered by some to be incompatible with the current principles and structures of the Moldovan State does not make it incompatible with the rules of democracy. A fundamental aspect of democracy is that it must allow diverse political programmes to be proposed and debated, even where they call into question the way a State is currently organised, provided that they do not harm democracy itself (see *Socialist Party and Others v. Turkey*, 25 May 1998, §§ 45 and 47, *Reports* 1998-III; and *Manole and Others v. Moldova*, no. 13936/02, § 95, ECHR 2009-...).

168. With this in mind, the Court turns to consider whether the measure in the present case was genuinely intended to secure loyalty to the State as alleged by the Government. In this regard, the Court observes that Law no. 273 was the third aspect of an electoral reform package, whose other measures consisted of raising the electoral threshold and banning electoral

blocks (see paragraph 37 above). All the measures proposed had a detrimental impact on the opposition, which had previously found it difficult to secure enough votes to meet the threshold to enter Parliament and had succeeded in doing so only through the formation of electoral blocks (see paragraphs 31 and 33 above). The results of the April 2009 election, in which of the 101 MPs elected, 21 were negatively affected by Law no. 273 and all 21 were opposition MPs (see paragraph 59 above), demonstrate the disproportionate effect of the new law. The applicant's allegation that the law exempts from its scope the residents of Transdniestria, a large number of whom hold Russian nationality, raises further concerns about the true aim of the legislation (however, see further paragraph 187 below concerning the ambiguity surrounding this exemption). Finally, the Court considers it significant that the amendments were introduced less than a year before general elections (see paragraph 44 above). Following the April 2009 elections, a further amendment was introduced to the electoral legislation, which was again criticised by opposition parties as being intended to improve the prospects of the governing party and its political allies (see paragraph 63 above). In this regard, the Court refers to the Venice Commission Code of Practice, which warns of the risk that frequent changes to electoral legislation or changes introduced just before elections will be perceived, rightly or wrongly, as an attempt to manipulate electoral laws to the advantage of the party in power (see paragraph 86 above). It is also significant that the Honouring of Obligations Committee and the Parliamentary Assembly of the Council of Europe expressed concern at the changes to the electoral legislation, which they considered restricted opportunities for political forces to participate effectively in the political process and thus weakened pluralism (see paragraphs 47 and 49 to 50 above).

169. Where the authorities introduce significant restrictions on the right to vote or stand for election, and in particular where such changes are introduced shortly before elections take place, it is for the Government to provide to the Court the relevant evidence to support their claim as to the intended aim of the impugned measure. Further, in cases such as the present, where the measure has a significant detrimental effect on the ability of opposition parties to participate effectively in the political process, the requirement that the Government produce evidence to demonstrate that the amendments were introduced for legitimate reasons is all the more pressing. In the present case, the Government have been unable to provide a single example of an MP with dual nationality showing disloyalty to the State of Moldova. Other than brief references in the judgment of the Constitutional Court to movements to undermine the State of Moldova, very little explanation at all has been provided for the change in electoral policy. Further, there would appear to be evidence that the law is not being uniformly applied (see paragraph 144 above).

170. In the circumstances, the Court is not entirely satisfied that the aim of the measure was to secure the loyalty of MPs to the State. It is not, however, necessary for it to reach a conclusion on this question, in view of its conclusions concerning the proportionality of the prohibition (see below). Accordingly, the Court leaves open whether the prohibition on multiple nationals taking seats in Parliament pursued a legitimate aim.

**c. Proportionality**

171. In the first place, the Court observes that very few member States of the Council of Europe prohibit dual nationals becoming MPs (see paragraph 87 above). Of the three countries other than Moldova in which a clear prohibition exists, two do not allow their nationals to hold dual nationality. Further, none of these three States have signed up to Article 17 of the ECN (see paragraph 89 above). The States of the former Yugoslavia, most of which have ethnically diverse populations, all allow dual nationality in at least some circumstances, but none prohibits multiple nationals from standing for Parliament (see paragraph 92 above).

172. The Court considers that a review of practice across Council of Europe member States reveals a consensus that where multiple nationalities are permitted, the holding of more than one nationality should not be a ground for ineligibility to sit as a member of Parliament, even where the population is ethnically diverse and the number of MPs with multiple nationalities may be high. However, notwithstanding this consensus, a different approach may be justified where special historical or political considerations exist which render a more restrictive practice necessary.

173. The Court emphasises the special position of Moldova, which has a potentially high proportion of dual nationals and has only relatively recently become independent. The Court considers that in light of Moldova's history (see paragraphs 11 to 18 above), there was likely to be a special interest in ensuring that, upon declaring independence in 1991, measures were taken to limit any threats to the independence and security of the Moldovan State in order to ensure stability and allow the establishment and strengthening of fragile democratic institutions. The Court notes that, of the other States in the region, a ban in Romania, which allows dual nationality, on dual nationals sitting as MPs was lifted as recently as 2003. Bulgaria currently adopts the same approach as Moldova (see paragraph 87 above). Ukraine continues to prohibit dual nationality (see paragraph 90 above). The restriction introduced by Law no. 273 must be assessed with due regard to this special historico-political context and the resultant wide margin of appreciation enjoyed by the State (see *Ždanoka v. Latvia*, cited above, § 121). Accordingly, the Court does not exclude that in the immediate aftermath of the Declaration of Independence by Moldova in 1991, a ban on multiple nationals sitting as members of Parliament could be justified.

174. However, the Court considers it significant that the ban was not put in place in 1991 but in 2008, some seventeen years after Moldova had gained independence and some five years after it had relaxed its laws to allow dual citizenship. In the circumstances, the Court considers the argument that the measure was necessary to protect Moldova's laws, institutions and national security to be far less persuasive. In order for the recent introduction of general restrictions on electoral rights to be justified, particularly compelling reasons must be advanced. However, the Government have not provided an explanation of why concerns have recently emerged regarding the loyalty of dual citizens and why such concerns were not present when the law was first changed to allow dual citizenship. The Government argued that the numbers involved – around one fifth of current MPs hold or are in the process of applying for a second nationality – are sufficient to justify the approach taken (see paragraph 140 above). The Court acknowledges that the numbers are significant. However, it also emphasises that a large proportion of citizens also hold dual nationality (see paragraphs 26 to 28 above) and that these citizens have the right to be represented by MPs who reflect their concerns and political views.

175. The Court further refers to its judgment in *Ādamsons v. Latvia*, cited above, § 123, in which it noted that with the passage of time, general restrictions on electoral rights become more difficult to justify. There, the Court emphasised the need to "individualise" measures, to take account of the actual conduct of individuals rather than a perceived threat posed by a group of persons. In the present case, the Court considers that there are other means of protecting Moldova's laws, institutions and national security. Sanctions for illegal conduct or conduct which threatens national interests are likely to have a preventative effect and enable any particular threat posed by an identified individual to be addressed. The Government have not suggested that security clearance for access to confidential documents is inadequate to ensure protection of confidential and sensitive information. It should be noted that both of these measures are concerned with identifying a credible threat to State interest in particular circumstances based on specific information, rather than operating on a blanket assumption that all dual nationals pose a threat to national security and independence. The Court reiterates that this is the approach preferred where an immediate threat to democracy or independence has passed (see *Ādamsons v. Latvia*, cited above, § 125).

176. Further, and in any event, historico-political considerations should be viewed in the broader context of the obligations which Moldova has freely undertaken under the ECN and the recommendations and conclusions of relevant international bodies. It is appropriate to consider in this context the objection *ratione materiae* raised by the respondent Government (see paragraphs 131 to 132 above). The Court emphasises that it has consistently

held that it must take into account relevant international instruments and reports, and in particular those of other Council of Europe organs, in order to interpret the guarantees of the Convention and to establish whether there is a common European standard in the field. It is for the Court to decide which international instruments and reports it considers relevant and how much weight to attribute to them. Where there is a common standard which the respondent State has failed to meet, this may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases (see, *inter alia*, *Demir and Baykara*, cited above, §§ 85 to 86; and *Shtukaturov v. Russia*, cited above, § 95). In the present case, the Court considers the provisions of the ECN, the conclusions and reports of ECRI and the Venice Commission (see paragraphs 45 and 51 above) and the resolutions of the Parliamentary Assembly of the Council of Europe (see paragraphs 48 to 50 above) to be relevant to its assessment of whether Law no. 273 is proportionate. In particular, in making reference to the ECN, the Court is not seeking to examine the applicant's right to hold dual nationality but rather the right of the respondent State to introduce restrictions on his right to take his seat following his election as a result of his dual nationality and the compatibility of any such restriction with Article 3 of Protocol No. 1.

177. As to the content of such reports and commentaries, the Court observes that the Venice Commission, ECRI, the Parliamentary Assembly of the Council of Europe and the Honouring of Obligations Committee were unanimous in their criticism of the prohibition (see paragraphs 45 to 51 above). Concerns were expressed as to the discriminatory impact of Law no. 273 as well as its impact on the ability of a number of political forces to participate effectively in the political process. The Court further takes note of Article 17 of the ECN and Moldova's undertaking pursuant to that Article to ensure that Moldovan nationals in possession of another nationality have the same rights and duties as other Moldovan nationals (see paragraph 85 above).

178. Finally, the Court recalls that any restriction on electoral rights should not be such as to exclude some persons or groups of persons from participating in the political life of the country (see paragraph 158 above). In this respect, the Court emphasises the disproportionate effect of the law on the parties which were at the time of its introduction in opposition (see paragraph 168 above). Pluralism and democracy must be based on dialogue and a spirit of compromise, which necessarily entails various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 45, *Reports* 1998-I; and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 108, ECHR 2005-XI). In order to promote such dialogue and exchange of views necessary for an effective democracy, it is important to ensure access

to the political arena for opposition parties on terms which allow them to represent their electorate, draw attention to their preoccupations and defend their interests (see *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 67, ECHR 2006-II).

179. The Court must examine with particular care any measure which appears to operate solely, or principally, to the disadvantage of the opposition, especially where the nature of the measure is such that it affects the very prospect of opposition parties gaining power at some point in the future. Restrictions of this nature curtail the rights guaranteed by Article 3 of Protocol No. 1 to such an extent as to impair their very essence and deprive them of their effectiveness. The introduction of the prohibition in the present case shortly before elections, at a time when the governing party's percentage of the vote was in decline (see paragraphs 31 to 44 above), further militates against the proportionality of the measure.

180. In light of all of the above factors, and notwithstanding Moldova's special historical and political context, the Court finds the provisions of Law no. 273 preventing elected MPs with multiple nationalities from taking seats in Parliament to be disproportionate and in violation of Article 3 of Protocol No. 1. The respondent Government's objection *ratione materiae* is accordingly dismissed.

## III. ALLEGED VIOLATION OF ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

### A. The Chamber's conclusions

181. The Chamber considered that the matters raised under Article 14 related to the same matters as those examined in the context of the complaint under Article 3 of Protocol No. 1. Accordingly, it concluded that there was no need to examine the Article 14 complaint separately.

### B. The parties' submissions

#### *1. The Moldovan Government*

182. The Government argued that Section 21(3) of Law no. 273 (see paragraph 80 above) did not exclude Transdniestrian residents from the prohibition on MPs holding multiple nationalities but excluded Transdniestrian institutions from the scope of the law. The Government agreed with the Chamber's finding that no further issues arose under this head.

*2. The applicant*

183. The applicant refuted the Government's explanation of the meaning of Section 21(3), arguing that the text of the law was self-explanatory and applied to those living in Transdniestria, and not to elections to Transdniestrian institutions, which were in any event not recognised by the Moldovan Government. He maintained that in his view, a separate issue arose under Article 14 because Law no. 273 expressly excluded its application to Moldovan nationals living in Transdniestria, although a number of them also held Russian nationality. There was no justification for this difference in treatment.

184. The applicant requested the Court to find a separate violation of Article 14 together with Article 3 of Protocol No. 1.

*3. The Romanian Government*

185. The Romanian Government also disagreed with the more limited interpretation which the respondent Government sought to give to section 21(3) of Law no. 273 on the exception for Transdniestria, which they argued was contrary to general principles of interpretation. Given that the respondent Government did not recognise the institutions and authorities established in Transdniestria, they could not claim that the law passed in Moldova sought to regulate elections to such bodies. They highlighted that ECRI had criticised the distinction as being unjustified (see paragraph 45 above) and invited the Court to accord some weight to this conclusion (relying on *Cobzaru v. Romania*, no. 48254/99, §§ 49-50, 26 July 2007).

186. In conclusion, the Romanian Government invited the Court to find that there was a violation of Article 14, taken together with Article 3 of Protocol No. 1.

**C. The Court's assessment**

187. The Court notes that there is a dispute as to the correct interpretation of section 21(3) of Law no. 273, the wording of which is unclear. It considers that both interpretations advanced by the parties are possible. It is not the role of this Court to rule on the correct interpretation of domestic legislation, which is a matter for the domestic courts.

188. In the present case, in light of the Court's finding that there has been a violation of Article 3 of Protocol No. 1, the Court concludes that there is no need to examine separately the applicant's complaint under Article 14.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

189. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

190. The applicant did not make any claim for pecuniary or non-pecuniary damage.

### B. Costs and expenses

191. The applicant submitted a detailed claim for costs amounting to 5,021.83 euros (EUR) in additional costs and expenses of the proceedings before the Grand Chamber, including the costs of attending the hearing. He provided receipts. Including costs incurred in respect of the proceedings before the Chamber, the applicant claimed the sum of EUR 8,881.83 in total.

192. The Government made no submissions to the Grand Chamber on the applicant's claim for costs.

193. The Court recalls that the Chamber awarded the sum of EUR 3,860 in respect of costs and expenses incurred in the proceedings before it. Further receipts have been provided in respect of the subsequent costs and expenses of the proceedings before the Grand Chamber. The Court accordingly awards the entire amount claimed.

### C. Default interest

194. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the respondent Government's objection *ratione materiae*, and dismisses it;

2. *Dismisses* the respondent Government's remaining preliminary objections;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 14 together with Article 3 of Protocol No. 1 to the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date of this judgment, EUR 8,881.83 (eight thousand eight hundred and eighty-one euros and eighty-three cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses to be converted into Moldovan lei at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 April 2010.

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| Michael O'Boyle | Peer Lorenzen |
| Deputy Registrar | President |