CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF TĂNASE AND CHIRTOACĂ v. MOLDOVA

(Application no. 7/08)

JUDGMENT

STRASBOURG

18 November 2008

THIS CASE WAS REFERRED TO THE GRAND CHAMBER WHICH DELIVERED JUDGMENT IN THE CASE ON 27/04/2010

This judgment may be subject to editorial revision.

In the case of Tănase and Chirtoacă v. Moldova**,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 21 October and 4 November 2008,

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 Janeta Hanganu, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr Vladimir 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. On 17 June 2008 a Chamber of the Fourth Section of the Court to which the case had been allocated decided, in view of the forthcoming legislative elections in Moldova, to give priority to the application (Rule 41 of the Rules of Court) and communicated it to the Government. Under the provisions of Article 29 § 3 of the Convention, the Chamber decided to examine the merits of the application at the same time as its admissibility.

5. The parties submitted observations in writing and subsequently replied to each other's observations. In addition, third-party comments were received from the Romanian Government, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1(b)). The parties replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1971 and 1978 respectively and live in Chişinău. They are both Romanian ethnics and Moldovan politicians.

A. Historical background as submitted by the applicants

7. The Republic of Moldova is situated on a territory which used to be part of Romania before World War II. Its population had Romanian citizenship but lost it after the annexation of the territory by the Soviet Union in 1940.

8. In the Declaration of Independence of 27 August 1991, the Parliament of the Republic of Moldova condemned, *inter alia*, 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.

9. In 1991 the Parliament of the Republic of Moldova adopted a Law on Moldovan nationality 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.

10. Both applicants obtained Moldovan nationality as descendants of persons living on the territory of the Republic of Moldova before 28 June 1940.

11. Also in 1991 the Romanian Parliament adopted a new law on citizenship making it possible for former Romanian nationals and their descendants who had lost their nationality before 1989, for reasons not-imputable to them, to re-acquire their lost Romanian nationality.

12. Initially Moldova did not allow its nationals to possess other nationalities other than in exceptional cases. However, the prohibition remained inoperative as very many Moldovans, especially of Romanian descent, used the provisions of Romanian law to re-acquire their lost Romanian nationality. At the same time, many Moldovans, usually of other ethnic backgrounds, acquired other nationalities such as Russian, Ukrainian, Bulgarian, Turkish and others.

13. In 2002 the constitutional provisions prohibiting multiple nationality were repealed. On 5 June 2003 the Moldovan Parliament amended the Law on Citizenship and repealed the restriction preventing Moldovan nationals from holding other nationalities (see paragraph 43 below). According to the amendments, the holders of multiple nationality have equal rights to those holding only Moldovan nationality, without exception.

14. On unspecified dates the applicants obtained Romanian nationality. Their current Romanian passports were issued in December 2005 and October 2006. Subsequently, they made public their holding of Romanian nationality.

15. The total number of Moldovans who have obtained Romanian citizenship since 1991 is unknown as the Romanian Government have never made it public. It has been estimated that between 95,000 and 300,000 Moldovans obtained Romanian nationality between 1991 and 2001.

16. On 4 February 2007 the President of Romania stated in an interview that there were some eight hundred thousand 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 Moldovans, before the end of 2007.

17. As to the number of Moldovans holding as a second nationality other nationalities than Romanian, this figure is equally unknown. However, it appears to be considerable and it appears 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 one hundred and twenty thousand Moldovans with Russian passports on both banks of the Dniester river. The Moldovan Government indicated in their observations that one third of the population of Transdniestria had dual nationality while a Communist MP, Mr V. Mişin, advanced during the Parliament's debates concerning Law No. 273 (see paragraph 30 below) the number of five hundred thousand as an approximate total number of Moldovans with dual nationality.

B. Overview of the recent political evolution of Moldova as submitted by the applicants

18. During the last decade the Communist Party of Moldova was the dominant political party in the country with the largest representation in Parliament.

19. Beside the Communist Party, there are over twenty-five other political parties with considerably less influence. Their exact number is difficult to tell because of continuous fluctuation. Because of their weaker position, very few of them managed to clear the six per cent electoral threshold in the past legislative elections and to enter Parliament.

20. In the 2001 elections the Christian Democratic People's Party was the only party, besides the Communist Party, from the twenty-seven participants in the elections, which succeeded in clearing alone the electoral threshold by obtaining some eight per cent of the votes. Six other parties which merged into an electoral block (a common list) were able to obtain some thirteen per cent of the votes. The Communist Party obtained some

fifty per cent of the votes and after the proportional distribution of the wasted votes it obtained seventy-one of the one hundred and one seats.

21. In 2002 the electoral legislation was amended. The six per cent electoral threshold was kept while a new nine per cent threshold was provided for electoral blocks composed of two parties and twelve per cent for those composed of three or more parties.

22. In the 2005 elections out of twenty-three participants, 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 nine per cent of the votes. Three other parties, united into an electoral block, obtained some twenty-eight per cent of the votes while the Communist Party obtained almost forty-six per cent of the votes. After the proportional distribution of the wasted votes, the Communist Party obtained fifty-six of the one hundred and one seats in the Parliament.

23. In July 2005, following persistent criticism by international observers and the Council of Europe, the Parliament amended the Electoral Code, setting the electoral threshold for parties at four per cent and for electoral blocks 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 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.

24. In the local elections of June 2007, the Communist Party obtained some forty per cent of the votes in the local legislative bodies. Since there is no electoral threshold in local elections, it became an opposition party in the majority of the local councils.

25. The mandate of the current Parliament expires on 5 March 2009. According to the Electoral Code the next general elections are to take place within three months from the expiry of the mandate of the current Parliament; however, the exact date of the next elections is unknown on the date of this judgment.

C. The applicants' political activity

26. In 2005 Mr Chirtoacă became the Vice-President of the Liberal Party, an opposition party, and in June 2007, in a confrontation with a candidate of the Communist Party, won the local elections in the capital city of Chişinău with a majority of 61.17% and became mayor.

27. On 18 June 2008 Mr Chirtoacă declared in an interview that he would actively participate in the legislative elections of spring 2009 but that he would not give up his position of mayor of Chişinău even if he was elected. He made it clear that his sole intention was to help his party gather more votes in the elections and remain mayor afterwards. The holding of a

dual mandate is prohibited in the electoral law of Moldova. On 1 September 2008 Mr Chirtoacă reiterated in an interview his intention to participate in the legislative elections without repeating that he would keep his position of mayor after the elections. However, on 13 October 2008 he made a statement similar to that of 18 June.

28. Mr Tănase is a lawyer who entered politics recently. In June 2007 he became member of the Chişinău Municipal Council and subsequently was elected Vice-President of the Liberal Democratic Party, an opposition party created in January 2008.

D. The latest electoral reform

29. On 10 April 2008 the Moldovan Parliament carried out 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.

30. The latter amendment to the electoral legislation (Law no. 273) was adopted in its first reading by Parliament long before that date, on 11 October 2007. According to the draft law prepared by the Ministry of Justice, 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. This provision was not applicable to persons living in Transdniestria. In an explanatory note to the draft the Vice-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..."

31. During the debates in Parliament numerous opposition members requested that the draft be sent to the Council of Europe for a preliminary expertise. However, the majority voted against this proposal. In exchange, the opposition was invited to challenge the new law before the

Constitutional Court of Moldova. No such challenge was made. Numerous MPs from the opposition argued that the proposed amendment was contrary to Article 17 of the European Convention on Nationality but the Vice-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.

32. On 7 December 2007 the draft law in question was adopted by Parliament in a final reading (see paragraph 44 below); however, later the President of the country refused to promulgate it and returned it to Parliament for re-examination.

33. The draft law was further amended and the list of positions in the government and in the public service closed to holders of multiple nationality was reduced. The provisions concerning legislative elections were also amended in the sense that persons with dual or multiple nationality are allowed to be candidates in legislative elections; however, they are obliged to inform the Central Electoral Commission about their other citizenships before registering as candidates and give them up before the validation of their MP mandates by the Constitutional Court (see paragraph 45 below).

34. On 10 April 2008 the new draft law was again put before Parliament by the Law Commission of Parliament and adopted. On 29 April 2008 the President promulgated it and on 13 May 2008 it was published in the Official Gazette, thus entering into force. The other two amendments to the electoral legislation were also enacted and entered into force in May 2008.

E. International reactions to the electoral reform

35. On 29 April 2008 the Council of Europe's Commission against Racism and Intolerance ("ECRI") made public a report dated 14 December 2007 in which it expressed concern in respect of 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."

36. On 27 May 2008 the head of the EU-Moldova Cooperation Council, Slovenian Foreign Minister, Dr Rupel, stated that it was important that Moldova should 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.

37. In a report dated 9 June 2008, the Parliamentary Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe stated, *inter alia*, that:

"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.

...

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."

38. Concern was also expressed in the Parliamentary Assembly's Resolution No. 1619 adopted on 25 June 2008:

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

39. The problem of the electoral reform was also raised on 9 July 2008 by the President of the Parliamentary Assembly of the Council of Europe, Mr Lluís Maria de Puig, 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."

40. On 23 October 2008 the Venice Commission made public a report 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 nationality 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."

II. RELEVANT DOMESTIC LAW

41. The relevant provisions of the Constitution of the Republic of Moldova read:

Article 8. Compliance with international treaties

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

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.

42. 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.

43. According to section 24 (1 and 3) of the Law on Moldovan Citizenship, as amended on 5 June 2003, multiple nationality is permitted in Moldova and the obtaining by a Moldovan national of another nationality does not entail loss of the Moldovan nationality.

44. The relevant provisions of Law no. 273 adopted by Parliament on 7 December 2007, but not promulgated by the President, read:

Section X

"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."

45. The relevant provisions of Law no. 273, which entered in force on 13 May 2008, provide as follows:

Section IX

"(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."

Section XXI

(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.

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

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."

III. ACTIVITY OF THE COUNCIL OF EUROPE

47. The relevant provisions of the European Convention on Nationality, which entered into force in general and in respect of Moldova on 1 March 2000, provide:

Preamble

"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;"

Article 15 – Other possible cases of multiple nationality

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.

Article 17 – Rights and duties related to multiple nationality

"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:

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;

the application of the rules of private international law of each State Party in cases of multiple nationality."

48. The Explanatory Report to the Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe (CDL-AD (2002) 23 rev), in so far as relevant, reads:

"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.

...under the European Convention on Nationality persons holding dual nationality must have the same electoral rights as other nationals."

49. The Court, having conducted a comparative review of the legislations of forty-two countries, members of the Council of Europe, noted that the majority of them permit dual or multiple nationalities. In some of the countries which ban double nationality, in practice the provisions aimed at preventing multiple nationalities have remained a dead letter (for instance Estonia). There are four countries in which beside a ban on dual nationality, there is a supplementary provision in the electoral laws or Constitutions banning persons with other nationalities from being elected to Parliament. Those countries are Azerbaijan, Bulgaria, Lithuania and

Malta. There are two countries in which dual nationals are ineligible for election to Parliament only in certain circumstances: as Monaco and Portugal. In Monaco persons who possess dual nationality and occupy in a foreign country a public or elected office are ineligible to stand as a candidate. In Portugal, beside the main territory of the country there are two constituencies, one covering the territory of the European countries, and the other covering all other countries and the territory of Macao. A Portuguese national holding, for instance, the nationality of France, will not be able to stand for Parliament in the constituency covering the territory of the European countries. However, he will be able to stand in the other two constituencies.

THE LAW

50. The applicants alleged that the ban preventing Moldovan nationals holding other nationalities from being elected to Parliament interfered with 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. They 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."

51. They also complained under Article 14 taken together with Article 3 of Protocol No. 1 that they had been subjected to discrimination in comparison with other Moldovan nationals holding dual nationality and living in Transdniestria. They relied on Article 14 of the Convention, which 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. ADMISSIBILITY OF THE COMPLAINTS

A. Victim Status

1. Submissions of the parties

(a) The Moldovan Government's arguments

52. The Government argued that the applicants could not claim to be victims within the meaning of Article 34 of the Convention and that their application amounted to an *actio popularis*.

53. In the first place, the applicants had lodged their application with the Court long before the law in question was promulgated by the President and entered into force. Accordingly, the disputed law could not have had any negative effects for the applicants at that time. The more so as the electoral campaign in Moldova had not yet started.

54. Secondly, the disputed legislation did not present any risk or disadvantage to the applicants even now, after its enactment. In this connection, the Government argued that there was no sufficiently direct connection between the applicants and the detriment they alleged they would suffer as a result of the new legislation. Neither the Liberal Party nor the Liberal Democratic Party, whose vice-presidents the applicants are, had ever participated in legislative elections. The Liberal Party had participated in the 2007 local elections and obtained a very modest result nationwide while the Liberal Democratic Party had not participated even in local elections.

55. Moreover, the applicants had not substantiated their intentions to run for Parliament in the 2009 elections and had not provided any evidence to show that their respective parties intended to put their names on the lists of candidates. The letters from their respective parties (see paragraph 59 below) did not prove such an intention as the parties were biased in the applicants' favour and would issue any letter to them for the purposes of their case before the Court. However, even assuming the validity of the letters, their parties could change their mind at any time. Moreover, according to the Government, the president of the Liberal Democratic Party had a personal interest in the case because he was also a Romanian national.

56. A further proof of the *actio popularis* character of the application was Mr Chirtoacă's statement of June 2008. As to his statement of 1 September 2008, the Government argued that it did not reflect his real intentions and that it had been made strictly for the purpose of this case, three days before the applicants' deadline for submitting their observations to the Court (see paragraph 27 above).

57. As to Mr Tănase, the Government submitted that in any event it was not clear whether he qualified to participate in the legislative elections because according to his Romanian passport he had his residence in Romania, while the Moldovan electoral legislation provided that only persons domiciled in Moldova could participate in legislative elections.

58. Lastly, the Government submitted that in any event the applicants could not complain about a hypothetical future violation but only about past violations. So they had to wait until after the legislative elections of spring 2009 before lodging their application.

(b) The applicants' arguments

59. The applicants disputed the Government's submissions regarding their victim status. Referring to the contention that they had failed to prove the intention of their respective parties to include them on the lists of candidates, they submitted two letters in which the presidents of the Liberal Party and of the Liberal Democratic Party confirmed the parties' intention to include both applicants on the list of candidates.

60. Referring to Mr Chirtoacă's statement of June 2008 in which he told the press that he would participate in the legislative elections but would keep his position of mayor irrespective of the results of the elections, the applicants argued that such a statement was only logical in circumstances in which the law did not allow them to become MPs but only to participate in elections. The applicants pointed to another interview of 1 September 2008 in which Mr Chirtoacă had reiterated his intention to participate in the elections but not the intention to remain mayor after elections.

61. As to the Government's submission concerning Mr Tănase's residence, the applicants argued that his habitual residence was clearly in Chişinău. He possessed property only in Chişinău and shared it with his wife and children. His children attended school in Chişinău. He was a member of the Chişinău Municipal Council and since his election in June 2007 had never missed a meeting of the Council. He was regularly present in the local media. According to the stamps in his passport, during the last three years he had spent only twenty-eight days in Romania.

62. The applicants submitted that the fact that their parties had never participated in legislative elections did not mean that they were barred from doing so in the future. Moreover, the Liberal Democratic Party, having been created in January 2008, had not even had an opportunity to participate in elections. In any event, according to the applicants, both parties had good chances of entering Parliament in 2009.

63. Referring to the Government's contention that the application was introduced before the disputed legislation entered into force and that they had to wait until after the elections before they could consider themselves victims under the Convention, the applicants argued that the legislation was in force at the date of communication of the case and that waiting until after

the elections would render illusory the protection which the Court would be able to afford. In the latter respect, they cited the Court's case-law according to which the Convention protects rights which are practical and effective not theoretical and illusory.

64. The applicants referred to the Court's case-law according to which a person may contend that a law violates his or her rights even in the absence of an individual measure of implementation, if he or she is required either to modify his or her conduct or risk being prosecuted or if he or she is a member of a class of people who risk being directly affected by the legislation. In this respect, the applicants submitted that they had not simply complained about a law which they thought was not good, but they had raised objections about the effects of that law on their own lives. They clearly intended to participate in the forthcoming legislative elections and become MPs and the law in question prevented them from so doing because of their dual citizenship. Romanian nationality was very important for them as it was the nationality of their parents and grandparents and they were not ready to give it up. Therefore, they ran the risk of being directly affected by the impugned legislation in the near future.

(c) Observations of the Romanian Government

65. The Romanian Government endorsed the applicants' position. According to them, the applicants' situation resembled very much that of two female applicants in *Open Door and Dublin Well Woman v. Ireland,* 29 October 1992, § 44, Series A no. 246-A found by the Court to be victims of a domestic court injunction restraining the corporate applicants from providing certain information to pregnant women.

66. Referring to the statements of Mr Chirtoacă that he would not give up his position of mayor even if elected (see paragraph 27 above), the Romanian Government submitted that this was merely a political declaration but not a manifestation of will implying concrete effects.

67. The Romanian Government further argued that the protection of the Court would be illusory if the applicants were expected to wait until after the elections, when they would be directly affected by the impugned legislation, before lodging an application.

68. Finally, the Romanian Government contested the respondent Government's submissions that Mr Tănase did not have his residence in Moldova.

2. The Court's assessment

69. 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, therefore, envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein 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. It is, however, 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; *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28).

70. The Court notes that the first applicant is an active and well-known politician who has clearly stated his intention to stand as a candidate in the legislative elections in 2009 and to take his seat if elected. It also notes that the first applicant has indicated that, for personal reasons, he has no intention to give up his dual nationality. The first applicant is, therefore, directly affected by Law No. 273, since if he is successful in being elected, he will have to make the difficult choice between sitting as an MP and renouncing his dual nationality. Furthermore, since running for Parliament necessitates considerable personal investment and effort, the knowledge that, after the election, he may be required to make this choice will, undoubtedly, affect the applicant from the start of the electoral campaign, and not just in the event that he is elected. Even if he decides to expend the effort and continue with his campaign, he may, moreover, risk losing votes since the electorate will also be aware that there is a chance that he will decide not to take his seat if that would mean losing his status as a dual national.

71. The respondent Government further argued that the first applicant should wait until after the elections and lodge his application then. The Court recalls that the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 33, *Reports of Judgments and Decisions* 1998-I). It considers that accepting the Government's suggestion and deferring the adoption of a judgment until after the elections would render the Convention protection illusory and theoretical.

72. The respondent Government questioned the fulfilment of statutory conditions by Mr Tănase. In particular, they drew the Court's attention to the mention in his Romanian passport concerning his domicile in Bucharest. The Court dismisses this allegation as it clearly appears from the first applicant's submissions and from the documents submitted by him that his only residence is in Chişinău and not in Bucharest.

73. In these circumstances, the Court concludes that Mr Tănase can claim to be a victim, within the meaning of Article 34 of the Convention, and the Government's objection must therefore be dismissed in respect of him.

74. As to Mr Chirtoacă, the Court notes that under the Moldovan legislation it is impossible for him to cumulate the functions of Mayor and MP. From Mr Chirtoacă's press statements (see paragraph 27 above) it appears clearly that he has no intention to abandon his position as Mayor of Chişinău for that of MP. Accordingly, the Court considers that he is not affected by those provisions of Law No. 273 which he impugns and that he cannot claim to be a victim in the present case.

B. Domestic remedies

1. Submissions of the parties

(a) The Moldovan Government's arguments

75. According to the Government Mr Tanase failed to exhaust available domestic remedies, namely by lodging a complaint with the Ombudsman who, in his turn, could challenge the disputed provisions of the law before the Constitutional Court. The Government submitted copies of requests made by the Ombudsman before the Constitutional Court in the past and argued that a complaint to the Ombudsman was an effective domestic remedy.

(b) Mr Tanase's arguments

76. Mr Tanase argued that a complaint to the Ombudsman was not an effective remedy under domestic law because there was no legal obligation for the Ombudsman to accept such a complaint and refer it to the Constitutional Court. The Ombudsman had a purely discretionary power to do so. The applicant presented statistical data according to which in 2007 the Ombudsman received 1,714 complaints, whereas in only three of those cases was the Constitutional Court notified.

(c) Observations of the Romanian Government

77. The Romanian Government pointed to the fact that under Moldovan law the Ombudsman could reject a complaint and that persons in the applicants' position did not have direct access to the Constitutional Court. They considered the situation to be similar to that in the cases of *Pantea v. Romania* (no. 33343/96, ECHR 2003-VI (extracts)) and *Sabou and Pircalab v. Romania* (no. 46572/99, 28 September 2004) where the Court rejected the Government's preliminary objection concerning non-exhaustion

of domestic remedies. In those cases also it was found that under Romanian law the applicants did not have direct access to the Constitutional Court but could only have access through the intermediary of the ordinary courts who were authorised to notify the Constitutional Court. Moreover, under Romanian law, an appeal lay against decisions of the ordinary courts dismissing complaints concerning constitutionality while the decisions of the Moldovan Ombudsman were final.

2. The Court's assessment

78. The Court recalls 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, the *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

79. 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, the *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports* 1996-IV).

80. The Court notes that, in the present case, it was not open to Mr Tanase to complain directly to the Constitutional Court (see paragraph 42 above) since he did not fall within the categories of persons or bodies entitled to file a case with the Constitutional Court. The Court concludes that Mr Tanase's application cannot be declared inadmissible for non-exhaustion of domestic remedies and, accordingly, the Government's objection is dismissed.

C. Conclusion on admissibility

81. The Court finds that the present application is inadmissible in respect of Mr Chirtoacă. As to the part concerning Mr Tănase (hereinafter “the applicant”), the Court considers that it raises questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits, and that no grounds for declaring it inadmissible have been established. The Court therefore declares admissible this part of the application. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider its merits.

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

A. Submissions of the parties

1. The applicant's arguments

82. The applicant submitted that Law No. 273 was inaccessible and its effects unforeseeable, and that it violated his right to stand for election by limiting the access to Parliament of Moldovan nationals holding other nationalities. He stressed that he did not intend to give up his Romanian nationality, which he had obtained on the basis of his birthright. In his opinion, the measure applied on the eve of the 2009 elections was anti-democratic and disproportionate.

83. Referring to the Government's comparative law submissions, the applicant argued that in Azerbaijan, Bulgaria and Lithuania dual nationality was prohibited in general, while the rest of the countries referred to by the Government were not relevant at all for the purpose of the present case.

84. The applicant argued that the interference at issue must be assessed in the light of the political evolution of Moldova and, in that context, stressed the ethnic identity of the people of Moldova and Romania and the very large proportion of the population of Moldova holding or aspiring to hold Romanian nationality.

85. He further submitted that Law No. 273 was part of a larger plan of the Communist Party to diminish or exclude the chances of the opposition in the forthcoming elections and referred to the raising of the electoral threshold from 4 to 6%, the banning of electoral blocks and other measures which, in his view, served the electoral interests of the Communist Party. The applicant also submitted that all these measures had been criticised by the Council of Europe.

86. According to the applicant, the interference in the present case did not pursue a legitimate aim. He argued that the interest in ensuring the loyalty of MPs towards Moldova was not real and adduced the example of Mr Mikhail Sidorov, a former “Minister of Justice” of the “Moldovan Republic of Transdniestria” and a present Communist MP. The Moldovan Criminal Code contained such offences as high treason, espionage and disclosure of State secrets. Moreover, the authors of Law No. 273 could not point to a single case of disloyalty of a person holding dual or multiple nationality.

87. Referring to the proportionality of the interference, the applicant argued that the restrictions imposed on his right to stand for election were discriminatory as regards other citizens of Moldova not holding dual

citizenship and referred to Article 17 of the European Convention on Nationality.

88. The applicant also argued that Law No. 273 thwarted the free expression of the people in the choice of the legislature since a very large number of electors with dual nationality would be deprived of the right to vote for someone like them.

2. The Moldovan Government's arguments

89. The Government stressed again that the present application was premature at the time of its introduction and that Law No. 273 had been promulgated by the President only some four months later. They also argued that according to Law No. 273, after being elected, in order to have his or her mandate validated by the Constitutional Court, a candidate was only required to prove the initiation of the procedure of renunciation of another nationality. A presumption that the procedure would never be completed could not serve, according to the legislation in force, as a basis for the revocation of an MP's mandate.

90. Referring to the aim of the interference, the Government argued that it served several aims such as ensuring the loyalty of MPs towards Moldova, defending the independence and existence of the State and guaranteeing the security of the State. Lastly, the obligation for candidates to announce their other nationalities when standing for Parliament was intended to serve the legitimate aim of properly informing the electors of all the qualities of the candidates.

91. According to the Government, the granting of other countries' nationality to Moldovan nationals seriously endangered the security of Moldova. The Government contested the applicants' submission that the prime targets of Law No. 273 were Moldovans with Romanian passports and argued that the law was applicable to all citizens of Moldova, irrespective of the second nationality they held. At the same time, in developing the idea concerning the threat to Moldova's security, sovereignty and statehood posed by Moldovan nationals who had nationalities of other States, the Government placed particular emphasis on what they called "Romanian aspiration to assimilate the Moldovan people and then easily to incorporate Moldovan territory". The Government stressed that Moldova was a parliamentary democracy and that the role of Parliament was very important. Moreover, according to Moldovan law, MPs had access to secret information. Thus, it was legitimate to demand from them total loyalty and allegiance towards the State of Moldova.

92. The Government submitted that Moldova was not the only country in Europe to have imposed such restrictions on its nationals. They cited such countries as Azerbaijan, Bulgaria and Lithuania, in which nationals holding other nationalities were also banned from standing for Parliament. They also cited the example of several other countries in which such restrictions

existed in respect of other functions in the State, such as the Office of the President in Finland and Portugal.

93. According to the Government, the interference was also proportionate because the applicants could easily overcome it by giving up their Romanian nationality. The timing of the change to the electoral legislation was compatible with the Council of Europe's Code of Good Practice in Electoral Matters (see paragraph 48 above) as it had occurred one year before the elections, which were to be held some time between March and May 2009. In the Government's view, the fact that opposition MPs did not participate in the vote by which Law No. 273 on 10 April 2008 was enacted was proof of their acceptance of that law. They stressed again that even the President of the Liberal Democratic Party, who, according to them, had Romanian citizenship, had failed to vote against the law.

94. There was no interference with the free expression of the people in the choice of the legislature because electors with dual citizenship could still vote for candidates who, without having other nationalities, would promote their ideas in Parliament. The applicant, in his turn, would still remain a member of his party and would have the possibility to influence his party's leaders with a view to adopting a policy favourable to those with dual nationality.

95. Referring to ECRI's recommendation of 14 December 2007 (see paragraph 35 above), the Government submitted that the Moldovan authorities had taken it into consideration and that it was the reason why the President did not promulgate Law No. 273 immediately. The law had received further amendments, so as to take account of ECRI's recommendations and only after that was it re-voted and promulgated. In the Government's opinion, the current text of the law was in strict compliance with ECRI's recommendation.

96. Referring to paragraph 1 of Article 17 of the European Convention on Nationality, the Government submitted that the restriction in question did not contradict it. They explained that, in their view, once a State had the right under Article 15 of that Convention to decide whether to allow or not dual citizenship, it must be equally open to it to decide whether or not to give nationals with dual citizenship access to certain positions in the State's hierarchy. According to them, this position was also supported by the Preamble to the European Convention on Nationality. They also argued that it was not necessary to make a reservation under Article 17 in order to be able to impose the restriction laid down in Law No. 273.

3. The Romanian Government's arguments

97. The Romanian Government endorsed the applicant's position. They stressed that Law No. 273 was not foreseeable in its effects and that none of the examples of comparative law cited by the respondent Government was relevant. In particular, Azerbaijan and Lithuania were not parties to the

European Convention on Nationality while Bulgaria had made a reservation in respect of Article 17 of that Convention.

98. The Romanian Government expressed doubt regarding the legitimate aim behind the interference as declared by the respondent Government and pointed to the fact that under the laws of Moldova the President of the country was not required to have Moldovan nationality only. They also argued that it was difficult to believe that a Government which during the seventeen years of the State's existence had not considered it dangerous for its security to have persons with dual nationality in top positions had only recently realised such danger, and then in the absence of any objective reasons to change their mind, such as at least one case of disloyalty by a person with dual nationality.

99. Since Moldova was party to the European Convention on Nationality, the applicant's rights under Article 3 of Protocol No. 1 of the Convention must be examined in the light of its provisions. According to the Romanian Government, Law No. 273 was contrary to the European Convention on Nationality and to the Moldovan Constitution.

B. The Court's assessment

1. General principles

100. The Court emphasises in the first place that Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective democracy and is accordingly of prime importance in the Convention system. Democracy constitutes a fundamental element of the "European public order", and 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 (see, most recently and among many other authorities, *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 105, 8 July 2008).

101. Free elections and freedom of expression, and particularly the freedom of political debate, form the foundation of any democracy (see *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,).

102. Against that background, the Court has observed that Article 3 of Protocol No. 1 comprises two aspects. In its case-law it has referred to the active aspect, i.e. the right to vote and the passive aspect, i.e. the right to stand as a candidate for election (see *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 105 and 106, ECHR 2006-...).

103. In respect of the passive aspect of Article 3 of Protocol No. 1, which is relevant to the instant case, the Court has emphasised that the Contracting States enjoy considerable latitude in establishing constitutional

rules on the status of members of parliament, including criteria governing eligibility to stand for election. Although they 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 (see *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II). The Court has held 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, the State's margin of appreciation in this regard is limited by the obligation to respect the fundamental principle of Article 3, namely "the free expression of the opinion of the people in the choice of the legislature" (see *Melnychenko v. Ukraine*, no. 17707/02, §§ 55, ECHR 2004-X). Any conditions imposed must not undermine or 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 (see, *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 62, ECHR 2005-IX).

104. 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. It has to satisfy itself that limitations 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 *Yumak and Sadak*, cited above, § 109). To that end the Court will examine the existence of interference with the applicant's right and the justification for any interference found in terms of the requirements of lawfulness, legitimacy of aim and proportionality (see, for example, the approach followed in the above-cited *Yumak and Sadak* judgment).

2. Application of the above principles to the present case

105. The Court, having dismissed the Government's objection concerning the applicant's victim status, considers, for the reasons given, that the applicant can claim to be a victim of an interference with his right guaranteed by Article 3 of Protocol No. 1 to the Convention (see paragraph 70 above). Such interference will constitute a breach of Article 3 of Protocol No. 1 unless it meets the requirements of lawfulness, pursues a legitimate aim and is proportionate in its effect.

(a) Lawfulness

106. The applicant disputed the foreseeability of the impugned provisions of Law No. 273; however, the Court considers that those provisions of the law were couched in clear terms and can be said to satisfy the requirements of foreseeability. That being said, the Court notes that there is an apparent inconsistency between the provisions of Law No. 273 and the requirements of Article 17 (1) of the European Convention on Nationality (see paragraph 47 above; and see the comments of the Venice Commission in paragraph 40 above), which is part of the internal legal order and, as a duly ratified international instrument, takes precedence over national legislation. A question may accordingly arise as to the overall lawfulness of the disputed restriction. It is not for the Court to resolve this perceived conflict of norms. However, since the issues relating to the European Convention on Nationality are also relevant to the proportionality of Law No. 273, the Court considers it more appropriate to examine them under that heading. It will therefore revert to this matter in that context.

(b) Legitimate aim

107. The parties also disagreed as to whether the interference served a legitimate aim. The Court recalls that Article 3 is not limited by a specific list of "legitimate aims" such as those enumerated in Articles 8-11 of the Convention. The Contracting States are free to rely on an aim not contained in that list to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances of a case (see *Yumak and Sadak*, cited above, § 109). Accordingly, the Court is prepared to accept the Government's submission that the impugned interference pursued the aim of ensuring the loyalty of MPs to the State of Moldova and that such aim is legitimate.

(c) Proportionality

108. In addressing the question of proportionality the Court notes in the first place that Moldova is the only country which, while allowing multiple nationalities, prohibits persons holding them from being elected to Parliament (see paragraph 49 above). Indeed, the four other countries which ban nationals holding other citizenships from becoming MPs (Azerbaijan, Bulgaria, Lithuania and Malta) prohibit dual nationality in general, and none of them, unlike Moldova, is bound by the provisions of paragraph 1 of Article 17 of the European Convention on Nationality. Bulgaria is the only country which is party to the European Convention on Nationality; however, Bulgaria made a reservation in respect of Article 17.

109. The Court further notes that there are other methods available to the Moldovan Government to secure the loyalty of MPs to the nation, and that

other European countries have adopted such measures, such as requiring MPs to take an oath of loyalty, without having recourse to such radical measures as banning persons holding dual nationality from sitting in Parliament. In this respect the Court wishes to stress that in a democracy, loyalty to a State does not necessarily mean loyalty to the actual government of that State or to a certain political party.

110. The Court further notes that Moldova is a party to the Council of Europe's European Convention on Nationality. Article 17(1) of this Convention guarantees to all persons holding multiple nationality and residing on the territory of Moldova equal treatment with other Moldovans who hold exclusively Moldovan nationality. The Court cannot overlook the fact that bodies of the Council of Europe such as ECRI and the Venice Commission have pointed to the incompatibility between the impugned provisions of the law and the undertakings freely accepted by Moldova when ratifying the European Convention on Nationality (see paragraphs 35, 40 and 48). It is particularly significant that the Venice Commission in its recent opinion has stated:

> "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."

111. The Court is further struck by the fact that in 2002 and 2003 the Moldovan Parliament actually adopted legislation to permit Moldovans to hold dual nationality (see paragraphs 13 and 43 above). At that time the authorities did not appear to have had any concerns about the impact which the grant of this facility would have on the loyalty of those opting for dual nationality. The Government did not mention at the time that the political rights of persons who decided to acquire another nationality would be impaired. Since 2003, and no doubt encouraged by the new policy, a large section of the Moldovan population (see paragraphs 15-17 above), has obtained dual or multiple nationality in the legitimate expectation that their existing political rights would not be curtailed.

112. Since April 2008 that sizeable proportion of the population of Moldova has not only found itself banned from actively participating in senior positions in the administration of the State, failing renunciation of an acquired additional nationality, but will also face limitation on its choice of representatives in the supreme forum of the country.

113. While the Court's case-law has distinguished between the "active" and "passive" rights guaranteed by Article 3 of Protocol No. 1, it cannot be

overlooked that both of those aspects make up, mutually, the decisive components of the guarantee underlying that Article, namely the free expression of the people in the choice of the legislature. For that reason, it is essential to take a holistic approach to the impact which restrictions on either right may have on the securing of the aforesaid guarantee. In other words, there is an interdependence and the Court must be vigilant so as to ensure that impediments to the right to be elected to parliament do not rebound negatively on citizens' right to vote in accordance with their perception of which candidate will best promote their interests in Parliament. The possible negative consequences for the free expression of the will of the people and the value of pluralism cannot be discounted.

114. In the light of the political evolution of Moldova and the historical and political factors specific to it, the Court is not satisfied that Law No. 273 can be justified. The Court's conclusion is strengthened by the fact that this far-reaching restriction was introduced approximately a year or less before the general elections. It cannot overlook the inconsistency of such practice with the recommendations of the Council of Europe in the field of elections concerning the stability of the electoral law (see paragraph 48 above). It would also appear that the promoters of the electoral reform rejected categorically the proposals of the opposition to submit the draft for the Council of Europe's expertise in accordance with Moldova's obligations and commitments and that the Government did not react in any way to the unequivocal signals of concern from the Council of Europe.

115. In view of the above considerations the Court concludes that the means employed by the respondent Government for the purpose of achieving the aim pursued by them were disproportionate. Therefore, there has been a violation of Article 3 of Protocol No. 1 to the Convention.

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

116. The applicant also complained that in banning him from standing for elections and takings his seat in Parliament if elected the authorities had subjected him to discrimination in comparison with other Moldovan nationals. As this complaint relates to the same matters as those considered under Article 3 of Protocol No. 1, the Court does not consider it necessary to examine it separately (see, *mutatis mutandis*, *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 80, 8 April 2008).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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

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

B. Costs and expenses

119. The applicant claimed EUR 3,860 for the costs and expenses incurred before the Court. He submitted a detailed time-sheet and a copy of a receipt proving the payment to the lawyer, by him, of the entire amount claimed.

120. The Government considered the amount claimed excessive and disputed the number of hours worked by the applicant's lawyer.

121. The Court awards the entire amount claimed.

C. Default interest

122. 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

1. *Declares* by a majority inadmissible the application in respect of Mr Chirtoacă;

2. *Declares* unanimously admissible the application in respect of Mr Tănase;

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

4. *Holds* unanimously that there is no need to examine separately the complaint under Article 14 of the Convention;

5. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,860 (three thousand eight hundred and sixty euros) 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 notified in writing on 18 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President