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Promovarea Democrației și a Drepturilor Omului

RAPORT

DREPTURILE OMULUI ÎN MOLDOVA

ДОКЛАД

ПРАВА ЧЕЛОВЕКА В МОЛДОВЕ

REPORT

HUMAN RIGHTS IN MOLDOVA



Retrospectiva anilor 2009-2010

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Chișinău 2011

**LA ELABORAREA RAPORTULUI CU PRIVIRE LA SITUAȚIA DREPTURILOR OMULUI
ÎN REPUBLICA MOLDOVA AU CONTRIBUIT (ÎN ORDINEA CAPITOLELOR):**

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Prezentul Raportului este dedicat situației drepturilor omului în R. Moldova în perioada 2009-2010, și este la a IV-a ediție. Fiecare capitol descrie și analizează principalele încălcări ale unor drepturi și libertăți fundamentale, dar și evoluțiile pozitive în vederea promovării respectării acestora. De asemenea, este făcută și o analiză a modificărilor cadrului normativ, iar în încheiere pe lângă concluzii sunt trasate o serie de recomandări în vederea îmbunătățirii situației drepturilor omului în R. Moldova.

Asociația Promo-LEX aduce mulțumiri tuturor persoanelor și organizațiilor care au contribuit la elaborarea Raportului.

Raportul Drepturile Omului în Moldova 2009-2010 este rezultatul unui proiect realizat în colaborare cu Civil Rights Defenders. Punctele de vedere exprimate în Raport reflectă opinia și poziția autorilor. Acestea nu pot fi interpretate sub nici o formă ca reflectând poziția Asociației Promo-LEX și a Civil Rights Defenders.

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Advancing democracy and human rights

REPORT

HUMAN RIGHTS IN MOLDOVA

2009-2010

Chişinău 2011

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INTRODUCTION

Moldovan authorities signed the first international human rights documents back in the early days of the 1991 independence. Since then, Moldova has acceded to practically all international and regional human rights treaties and instruments. And while key legislation has been adjusted to comply with international standards in quite a short period of time, much remains to be done about the application in practice.

This systematic weakness and lack of a concerted political effort to address it has added to a negative atmosphere and environment inside the country. The poorest country in Europe, Moldova is mired in social, economic and political problems, as corruption, impunity and poverty stand in the way of respect for human rights and fundamental freedoms.

The year of 2009 will go down in history due to the April post-election unrest, and the authorities bear a heavy responsibility for what took place. Firstly, they failed to ensure public order and guarantee security to the peaceful protesters. Secondly, they directly and indirectly perpetrated human rights violations on a massive scale through mass arrests; unfair trials; inhuman and degrading treatment of numerous individuals, and excessive use of force which allegedly led to deaths.

The then opposition took power in September 2009 and made numerous promises about redress. However, despite investigations, gathering of evidence, including film footage, statements by eyewitnesses and victims, no one has been brought to justice for those crimes. Such sanctioned impunity has made ordinary Moldovans demand irreversible reform, in particular of the Moldovan justice system.

In general, in 2009-2010, Moldova saw renewed efforts to implement reforms aimed at ensuring respect for human rights and fundamental freedoms on the territory controlled by the legitimate authorities. Significant efforts were introduced to stop torture. Even if isolated cases were reported, the attitude of the authorities, including the government, shifted greatly in this process.

Since September 2009 the authorities have showed more openness to dialogue and cooperation with the media and civil society. The situation concerning access to information, transparency in decision-making, freedom of expression and the right to elect and be elected has improved.

At the same time, many reforms initiated in 2009 have failed to resolve a multitude of other issues, which negatively influence, directly or indirectly, the situation of human rights and freedoms in Moldova. Inadequate investigations into death in custody undermine the right to life. Ill-treatment and poor detention conditions violate the right to liberty and security of person, and remain pressing issues that need effective and urgent addressing.

Domestic violence, trafficking in persons, discrimination and social exclusion are widespread social problems, which the government is grappling to handle effectively. Disadvantaged groups like women, children, ethnic minorities, disabled per-

sons and refugees continue to face marginalization and a lack of protection. Discrimination remains serious and prevalent. Yet, the specific anti-discrimination law, which was supposed to be adopted back in 2007, keeps being delayed.

The most serious human rights violations continue to occur in Moldova's Transnistrian region. In fact, the Transnistrian issue is the root of many of the country's problems. All governments to date have announced it to be a priority, and all of them have failed to secure effective solutions. More over, the Moldovan authorities have tacitly declined almost any responsibility for the human rights situation in this region.

At best, the Moldovan authorities limit themselves to narrow and sporadic monitoring of abuses in the region, or to initiating criminal proceedings, which are routinely suspended and shelved, contrary to the domestic law.

The Promo-LEX Association insists that human rights are non-negotiable and that there are over 500,000 people in the Transnistria region (citizens of Moldova, Ukraine, Russia and EU) that, in effect, face discrimination. The population of the Transnistrian region does not have access to justice. Half a million people do not have any credible and effective mechanisms to protect their rights and fundamental freedoms.

Instead, the Moldovan authorities and government erroneously treat these problems from the perspective of political dialogue, explaining their inaction with the lack of control over the territory. The Russian Federation has shown no interest in promoting and defending human rights on this territory. On the contrary, Moscow continues to station armed forces on this territory and to offer unconditional financial, economic, military and political support to the unlawful administration of the region.

International organizations, on their part, largely and understandably accept the attitude of the central government, limiting their efforts to monitoring the situation. Thus, for almost 20 years now, the people living in Moldova's Transnistrian region remain hostages to geopolitical games, deprived of effective legal remedies.

Ion MANOLE,
Executive Director, Promo-LEX Association

SUMMARY

Compared to previous years, in 2009-2010, Moldova saw a cautious improvement in terms of protection and respect for human rights. Nevertheless, many systemic problems continue to adversely affect the full exercise of human rights and fundamental freedoms.

This report provides an authoritative account of the human rights situation in the Republic of Moldova during 2009 and 2010. Legal and human rights experts from 9 NGOs have researched and drafted the 16 chapters, in a joint initiative to highlight the most pressing human rights problems. Several of the chapters also provide recommendations.

The failure by the State to properly investigate the cases of deaths continues to be a serious problem for Moldova. Also, ill-treatment in custody remains widespread, in particular by police officers in order to obtain confessions from detainees. Investigations into complaints about ill-treatment are often ineffective. When investigations have concluded that ill-treatment did take place, judges have imposed penalties that are too lenient. Conditions in prisons and preventive detention continue to be a cause for grave concern. The prison sentences for juveniles are still quite severe, and the alternatives that have better effects on children are still rarely applied.

Following the tragic post-election events of April 2009, there has been a modest positive trend in the respect by the Moldovan authorities for the right to liberty and security of the person. In terms of legal reform, the adoption of a new Contravention Code has significantly reduced the use of a custodial sentence. A broad range of alternative sanctions have been introduced, and as a result, the number of persons detained in prisons is constantly decreasing. The prison sentences for juveniles are still quite severe, and the alternatives that have better effects on children are still rarely applied.

The authorities have yet to effectively investigate and impose sanction on those responsible for the abuses committed during the April post-elections violence. This inaction by some officials and representatives of the Prosecutor and some Courts has contributed to a culture of impunity.

In 2010, the Republic of Moldova registered regress in the functioning of the justice system and in the fight against corruption. Although Moldovan law guarantees access to justice, procedural fairness, and the presumption of innocence, these rights are frequently violated in practice. Several factors explain for this non-compliance with the legislation and international law, most importantly corruption, insufficient training of judges, inconsistent judicial practices, and insufficient attention from the administrative judiciary body. During 2009-2010 the judicial authorities took some measures to redress the situation – such as facilitating access to justice, introducing electronically distributed case files, publishing court decisions online, improving the way in which parties are summoned, reducing the number of annulled irrevocable decisions, and creating private bailiffs.

The most serious human rights violations occurred in the Transnistrian region. The local population continues to face discrimination compared to the rest of Moldova in terms of minimum conditions of equality before the law and access to State institutions and services.

During 2009-2010, numerous cases of torture and ill-treatment in detention facilities, illegal arrest and detention, as well as cases of kidnapping were registered. The unofficial collaboration between the constitutional police and illegal Transnistrian militia regarding the de facto extradition of people continued.

The regional administration severely restricts the rights to freedom of expression, assembly and association, as well as freedom of conscience. The case of Ernest Vardanyan – a journalist that was accused by regional administration of “state” treason and espionage for R. Moldova, is a relevant example in this respect.

Cases of unlawful deprivation of property were also registered, and the authorities systematically fail to properly investigate these cases and sanction the perpetrators. Essentially, the region’s population does not have access to justice and fair trials, but are adversely affected by the political situation.

The political crisis in April 2009 led to early parliamentary elections, a constitutional referendum and changes to the electoral law. In addition, the political crisis triggered rushed changes to the electoral law. During the reported period the Central Electoral Commission had begun the testing of the Electronic Register of Voters. Starting with the spring elections of 2009 there is a small but constant increase of voters at elections. On the other hand, the authorities are criticized for consistently ignoring some categories of voters.

Restricted access to information, i.e official documents, remains an impediment to public participation in decision making. There is no mechanism to implement existing legislation, and applicants for access to information continue to receive unfounded refusals to requests, or delayed answers. Information provided by the authorities is often vague, irrelevant and incomplete. Nevertheless, during 2009-2010 no public official has been sanctioned for failing to uphold the law. According to a survey conducted by the Centre “Acces-info” in 2010, the public authorities / institutions that are concealing the most official information are the General Prosecutor’s Office, the courts, the Ministry of Home Affairs, and the Information and Security Service.

While 2009 was marked by the authorities’ intolerance towards criticism and dissenting opinions, 2010 saw a marked openness towards democratic values and principles. Freedom of expression became more respected in 2010, after the adoption of the Law on freedom of expression. Defamation is no longer a criminal offense. The Broadcasting Coordinating Council has also made progress, but political and economic interference is one of the most serious problems of public broadcasting.

Moreover, there were basically no barriers for exercising freedom of assembly in 2010, and the administrative barriers that hampered associations from registering were removed. As a result, the number of associations registered signifi-

cantly increased and in 2010 there were 6 times more associations registered than in 2008. There was also a slight improvement in the registration procedures for religious groups.

A law that entered into force in September 2010 made domestic violence a criminal offence. This was an important step towards ending violence against women. However, widespread ignorance about domestic violence by the authorities, in particular at the local level hampers the enforcement of the relevant legislation. The lack of a uniform judicial practice at the national level adversely influences the implementation of public policies on domestic violence.

Moldova still has no comprehensive non-discrimination legislation, with definitions of discrimination, and provisions on adequate sanctions, compensation and shared burden of proof. Persons with disabilities, people living with HIV/AIDS, sexual minorities, elderly, women, and ethnic and religious minorities face discrimination and ill-treatment.

There are still many families in Moldova that lack identity documents. The problem is aggravating in the Roma communities, where, according to the Ombudsman for Children's Rights, up to 20% of children lack identity documents and, therefore cannot attend school in some communities. Issuance of identity documents for babies born at home also remains problematic.

RIGHT TO LIFE, RIGHT NOT TO BE SUBJECTED TO ILL-TREATMENT

Sorina MACRINICI

In the Republic of Moldova the right to life is guaranteed, however cases of deaths are not investigated properly. In 2010, the European Court of Human Rights (ECtHR) condemned Moldova in three cases for violation of art.2 of the Convention on Human Rights and Fundamental Freedoms (ECHR) (right to life) after failure of effective investigation of the causes of death.

Ill-treatment persists and is a widespread phenomenon in the Republic of Moldova. Most often used by police officers in order to obtain self-incriminating statements from detainees. Investigation of complaints of ill-treatment is often ineffective. In cases of condemnation of acts of ill-treatment, the penalties imposed by judges are too lenient. Detention conditions in prisons and preventive detention isolators continue to be bad. During 2009 and 2010, the ECtHR adopted 15 decisions of conviction against Moldova after violation of art.3 of CEDO (prohibition of torture).

1.1. Right to life

The state Republic of Moldova guarantees to every citizen the right to life. The death penalty is abolished.¹ However, cases of deaths are not investigated efficiently, objectively and in a reasonable time.

On 15th of March 2009, a policeman shot the young man Alexei Vlas, 29 years old, in a block in Chisinau, without firing a warning shot. The Ministry of Internal Affairs declared that the policeman shot the young man after he was wounded in the leg with a knife. However, witnesses claimed that the police officer confused Alexei with someone else and shot in the head and then to feign self-defense, he injured one of his legs. A protest against police brutality was organized in Chisinau a few days later.² Non-governmental organizations have called the authorities to conduct a rapid, objective and balanced investigation, on the circumstances of death of the young man A. Vlas and make public information about the development of investigations.³ However, the authorities did not respond to these requests.

Following post-election demonstrations and violence in April 2009, at least four people were found dead in suspicious circumstances in Chisinau, including Valeriu Boboc, Ion Țîbuleac, Eugen Țapu and Maxim Canișev.

Valeriu Boboc, 23 years old, was found dead on the night of 7th to 8th of April 2009. He was transported by policemen to Emergency Hospital of Chisinau, where doctors discovered the death. The next day an autopsy was performed, after which it was found that the young man had injuries to the head, body, internal bleeding and broken ribs. Initially, the General Prosecutor's Office announced that V. Boboc had died because he was intoxicated with gas. But several witnesses claimed that he was beaten to death by policemen. At the request of family and lawyers, on 15th of June 2009, the body was

1 Art. 24 of the Republic of Moldova Constitution.

2 <http://www.azi.md/ro/story/1807>

3 <http://www.promolex.md/index.php?module=news&cat=0&item=154>

exhumed and examined by a British expert, who found that the young man died of blows, possibly with rifle butts. On the basis of videos, filmed by cameras on the Government building, the police attacked protesters with force on 7th of April 2009. On 6th of April 2010, Ion Perju was arrested, a former employee of the General Commissariat of Police in Chisinau, who was accused of intentional serious bodily or health injury, which caused the death of the victim (art. 151 Criminal Code). The trial continues.

Ion Țîbuleac, 22 years old, on 8th of April 2009, he was thrown into the yard of the Emergency Hospital of Chisinau, and doctors discovered his death. Initially, the General Prosecutor's Office declared that the young man did not participate in protests and that his death occurred because he was electrocuted and fell from a high voltage pylon. In April 2010, after a criminal case on the death of I. Țîbuleac was opened, his body was exhumed as to perform a new post mortem. In May 2010, the Centre for Forensic Medicine announced that, following repeated investigations it was found that I. Țîbuleac died after he fell from a height of about 20 meters. Investigations found that the young man had multiple fractures to legs, spine and chest. Prosecution in this case continues.

Eugen Țapu, 26 years old, was found dead on 15th of April 2009. According to the autopsy report of 16th of April 2009, the death of the young man would have occurred about 2-3 weeks before. The General Prosecutor's Office declared that E. Țapu would have been strangled with shoelaces from shoes, though he weighed about 80 kg and on his neck were not seen any traces. Maxim Canișev, 20 years old, was found in Lake Ghidighici on 18th of April 2009. Forensic doctors found that the young man had died on 8th of April, 2009, having spine trauma. The General Prosecutor's Office said that M. Canișev threw himself into the lake in March 2009. The General Prosecutor's Office said that there is no connection between the deaths of E. Țapu and M. Canișev and protests of April 2009.

In 2010, the ECtHR has adopted three conviction decisions against Moldova after violation of art.2 of ECtHR (right to life) in cases *Răilean v. Moldova*, *Iorga v. Moldova* and *Anușca v. Moldova*. ECtHR noted that the state has a positive obligation to take necessary and reasonable measures to provide evidence of the accident that led to the death of a person, and this obligation is one method and not the result. In these cases, the ECtHR found violation of right to life in terms of its procedural aspect, considering that the investigation was not "effective" within the meaning of its jurisprudence for the following reasons: long-term investigation; the applicant was deprived of the opportunity to exercise his procedural rights that he was not informed about his procedural rights and adopted decisions, and he was unable to challenge these decisions, late access to the file only after termination of prosecution; applicant was not recognized as representative of the victim, which did not allow him access to the file, to challenge the prosecution officer and to challenge the ordinances adopted by this case; the autopsy was performed only after half a year after discovery of the body with no explanation for this term.

In the Transnistrian region was registered a case of alleged murder of Alexander Stomatii who performed military service in the so-called Transnistrian army. On 2nd of May 2010, he was found dead after being shot in the neck and forearm. Shortly before

that, A. Stomatii told to his parents that he is threatened with death by his superior, after seeing the superior beat another soldier.⁴ Initially, the Transnistrian authorities declared that the young man committed suicide. In this case, the organization Promo-LEX submitted an application to the ECtHR in November 2010, citing, inter alia, the violation of right to life and not be subjected to torture. In early June 2011, the alleged murderer was convicted and dismissed from the courtroom by applying for amnesty.

1.2. Right not to be subjected to ill-treatment

1.2.1. Legal framework

The Republic of Moldova is party to the most major European and international instruments that prohibit torture and ill-treatment. In 2005, Penal Code has been supplemented with art. 309/1 that criminalizes the torture. Definition of torture corresponds to art.1 of the United Nations Convention against Torture and other punishments or treatments with cruelty, inhuman and degrading (CAT). Moreover, “torture” is included as an aggravating circumstance in a few articles of the Penal Code. In order to implement the provisions of the Optional Protocol to CAT in 2008 was created the National Mechanism for the Prevention of Torture, including on the one hand ombudsmen, and on the other hand - Advisory Board, consisting of an appointed ombudsman and members civil society.

1.2.2. The phenomenon of ill-treatment

Ill-treatment

Ill-treatments are often used by police officers in order to obtain self-incriminating statements from detainees.⁵ This behavior is caused, inter alia, by quantitative indicators used for many years to assess the performance of police stations. According to a study by the Soros Foundation-Moldova in 2010,⁶ the last five years, about 27,000 (15%) of men said they were beaten after being detained by police.

The UN Committee against Torture expressed the concern about “numerous and reasonable allegations on wide application of torture and other forms of ill-treatment against persons in police custody”⁷ and urged the authorities to condemn publicly and unequivocal torture. The Committee also expressed concern that the alleged ill-treatments are used to obtain confessions and information as evidence in criminal proceedings, despite the legislative and organizational changes made by the Republic of Moldova.

According to art.94 Code of Criminal Procedure, evidence obtained by application of ill-treatment cannot be admitted as evidence in the trial. However, international organizations⁸ noted that they had received numerous complaints as these

4 Report on human rights practices in Moldova in 2010, conducted by the U.S. State Department, 8th of April, 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154439.htm>

5 The Report of UN Special Rapporteur on torture and other cruel forms, inhuman or degrading treatment or punishment, Manfred Nowak, Mission in the Republic of Moldova, 12th of February 2009, (A/HRC/10/44/Add.3) p. 11, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf?OpenElement>

6 “Analytical Report on victimization. Highlights for criminal policy in Moldova”, Soros Foundation-Moldova, 2010, p. 75, <http://soros.md/files/publications/documents/Victimisation%20Survey.pdf>

7 The conclusions of UN Committee against Torture, 29th of March 2010 (CAT/C/MDA/CO/2), p. 3.

8 The conclusions of UN Committee against Torture, 29th of March 2010 (CAT/C/MDA/CO/2), p. 10.

statements are taken into account in the trial and officials who obtained self-incriminating statements were punished due to this.

Victims of ill-treatment and witnesses are frequently intimidated and witness protection requests are often rejected by magistrates.⁹ Also, witness protection is provided by the Ministry of Internal Affairs, leading to inefficient mechanism in cases of application of ill-treatment by police.

In cases of complaints against police abuse, medical examination takes place with delays and its quality is questioned by the victims. Forensic doctors tend to record only visible lesions without a description of the facts version exposed by victims and no further investigation. Also, a possible psychological trauma is not considered by physicians. This leads to insufficient documentation, given that in recent years, application of ill-treatment methods have evolved and leaves no visible physical marks. Forensic doctors need special training on documenting ill-treatment under international standards and the Istanbul Protocol.¹⁰ Moreover, the Forensic Center must be properly equipped.

During 2009 and 2010, the ECtHR adopted 12 decisions of conviction against the Republic of Moldova after violation of art.3 ECHR, which refers to mistreatment of applicants by police (*Gurgurov v. Moldova*, *Buzilov v. Moldova*, *Pădureț v. Moldova*, *Brega v. Moldova*), inadequate investigation of complaints of maltreatment (*Breabin v. Moldova*, *Petru Roșca v. Moldova*, *Parnov v. Moldova*, *Popa v. Moldova*, *Mătășaru and Savițchi v. Moldova*); inadequate punishment of persons who have tortured (*Valeriu and Nicolae Roșca v. Moldova* and *Pădureț v. Moldova*) and granted by the national courts of insufficient compensation for violation of article 3 ECHR (*Ciorap (No.3) v. Moldova*).

International experts¹¹ and civil society have recommended several times to create an independent authority to investigate promptly and thoroughly complaints of ill-treatment. In November 2010, General Prosecutor's Office adopted an order that appointed special prosecutors to investigate allegations of mistreatment in all territorial and specialized offices. According to this order, the prosecutor involved in the investigation of ill-treatments is not engaged in investigative activities to ensure their independence. A special section to combat torture was created within the General Prosecutor's Office. However, it is not clear which are the powers and responsibilities of this department.

Impunity

In practice, ill-treatment are rather classified as "abuse of power or exceeding of work duties" (art.328 (2) c) Criminal Code), except as "torture" (art.309/1 Penal Code).

Also, torture is a less serious offense, and organization or instigation of acts of

<http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.MDA.CO.2.pdf>

9 "Under the cover of impunity. Report about reactions of Moldavian authorities to police violence during the post-election protest in April, 2009", Soros Foundation-Moldova, 2009, pp. 61-62.

10 <http://soros.md/files/publications/documents/ENTRECHING%20IMPUNITY%20%20By%20Clarisa%20Bencomo.pdf>
"Istanbul Protocol. Manual of Effective Investigation and Documentation of Torture and other cruel, inhuman or degrading treatment or punishment", 2004, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

11 The Report of UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission in the Republic of Moldova, 12th of February 2009, (A/HRC/10/44/Add.3), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf?OpenElement>

torture and in the presence of aggravating circumstances is regarded as serious crime.

The limitation period in case of committing the offense of torture is five years, respectively, 15 years for organizing or inciting acts of torture or in the presence of aggravating circumstances. ECtHR found a violation of art.3 ECHR in case *Pădureț v. Moldova* (decision of 5th of January 2010) because the accused person of torturing the applicant was released from criminal responsibility by applying the limitation period. ECtHR stressed that no limitation should be applied to cases of torture by state agents.

According to the General Prosecutor's Office annual report for 2009,¹² in 2009, was initiated 66 prosecutions of ill-treatment, in 104 cases was willing not to start the criminal prosecution and eight criminal cases were submitted in court.

According to the General Prosecutor's Office annual report for 2010,¹³ in 2010, prosecutors have initiated 110 prosecutions of allegations of ill-treatment, of which 48 under the art.309/1 Penal Code. In 2010, prosecutors transmitted in the courts 45 cases of ill-treatment. In other 59 cases criminal proceedings were discontinued. On 1st of January 2011, 87 cases were pending prosecution. During 2010, the courts have pronounced 12 sentences of conviction in cases of ill-treatment.

Although the Criminal Code provides that ill-treatment is punishable by imprisonment, in practice, judges conditionally suspend the execution of the prison sentence on the grounds that rehabilitation of torturers is possible without depriving them of their freedom. In the first four months of 2009, only one of 16 convicted of ill-treatment was effectively imprisoned after conviction.¹⁴ Such mild punishment is contrary to ECHR standards.¹⁵ ECtHR found a violation of art.3 ECHR in case *Valeriu and Nicolae Roșca v. Moldova* (decision of 20th of October 2009) because the suspended sentence for ill-treatment does not provide a sufficient deterrent to prevent such acts in future.

1.2.3. Violations of April 2009 and their investigation

Events of April 2009

The situation regarding torture and ill-treatment in Moldova in 2009 was marked by parliamentary elections that took place in April 2009, which were followed by violent clashes between security forces and protesters. On 7th of April 2009, during post-election demonstrations, were burned and destroyed the buildings Presidency and Parliament.

According to official data, between 7th and 12th of April 2009, police detained at least 571 people. Meanwhile, about 68 people were detained by police, but not registered in registers of police commissariats.¹⁶ A lot of people were arrested after the 7th of April, 2009 claims of being stopped and assaulted on the street,

12 Activity Report of General Prosecutor's Office for 2009, p. 40, <http://procuratura.md/file/Raport%202009.pdf>

13 Activity Report of General Prosecutor's Office for 2010, p. 53, <http://procuratura.md/file/4.Raport%202010.pdf>

14 Erik Svanidze, "Combating ill-treatment and impunity and effective investigation of ill-treatment", Chisinau 2009, p. 64.

15 In case *Gafgen v. Germany* (decision of 1st of June 2010), ECHR noted (in para. 124) that, for serious and deliberate acts of brutality by state agents, the incarceration would be more appropriate than a fine or other non-custodial sanctions.

16 Parliamentary Committee Report of Inquiry to elucidate the causes and consequences of events of 5th of April, 2009, p.88.

in schools, workplace by police officers dressed in civilian clothes, arose, and then these people were taken to police stations in the car without inscriptions. Most of those arrested were men (95%) and only about 5% were women. The average age of those arrested was 25 years, 9% were minors, 78% aged between 18 and 30.¹⁷ Most of these people have been charged with administrative offenses. During violent demonstrations, 274 policemen were injured.¹⁸

Local¹⁹ and international non-governmental institutions,²⁰ as well as international institutions²¹ who visited Moldova, found numerous cases of torture and ill-treatment of detainees following the events of April 2009.

The alleged mistreatment included physical blows with fists and feet, hitting with batons, with wooden bats, with the butt of the firearm or other blunt objects. Some people have said that ill-treatment they were subjected were sufficiently severe or prolonged, so as to make them lose consciousness at least once and/or resulted in fractures or diseases of the nervous system being sustained. Many people said they were threatened with physical violence or even summary execution, verbally abused and/or subjected to humiliating treatment, an example being to undress in the presence of male police officers of detained women, who being naked were forced to do squats repeatedly for the alleged purpose of checking if they do not hide an object inside the body.²² Arrested people have subsequently said they were forced to go through a “corridor” of police officers who hit him with fists and feet with rubber batons, called in press the “corridor of death”.

Most arrested people are deprived of their right to inform relatives about the detention, to have access to a lawyer (some lawyers were denied access to their customers) and a physician. Medical examination of detainees was superficial and usually happened in the presence of personnel in police stations. Also, the medical examination took place after several days of detention and medical cards are not found in the statements of persons arrested.²³ For this reason, victims of torture and ill-treatment recorded and documented the injuries on their bodies only after they have been released or transferred to prison. In the days after 7th of April, 2009, members of the Consultative Council for the Prevention of Torture were denied access to some police stations,²⁴ despite their right to full access to places of detention.

In April 2010, the Government established a Committee to identify victims of

17 Parliamentary Committee Report of Inquiry to elucidate the causes and consequences of events of 5th of April, 2009, p. 90.

18 Ibid., p. 97.

19 “Under the cover of impunity. Report about reactions of Moldavian authorities to police violence during the post-election protest in April, 2009”, 2009, Soros Foundation-Moldova, <http://soros.md/files/publications/documents/ENTRENCHING%20IMPUNITY%20%20By%20Clarisa%20Bencomo.pdf>, <http://www.lhr.md/rapoarte/do/raport.idom.credo.tortura.2009.pdf>

20 “Torture and other ill-treatment by police: is still “normal” in Moldova”, Amnesty International, 2009, <http://www.amnesty.org/en/library/asset/EUR59/009/2009/en/1b2df020-bf3d-4bfb-9bb9-c7ea620d562a/eur590092009eng.pdf>

21 Report conducted by the European Committee for Treatment and Prevention of Torture and Inhuman and Degrading Punishment (CPT) on visit in Moldova from 27 and 31 of July 2009, 14th of December 2009, (CPT/Inf (2009) 37), <http://www.cpt.coe.int/documents/mda/2009-37-inf-eng.pdf>

22 Report by Thomas Hammerberg, Commissioner for Human Rights of the Council of Europe, following the visit in the Republic of Moldova from 25-28 of April, 2009, 17th of July 2009, (CommDH(2009)27), para. 13, <https://wcd.coe.int/wcd/com.intranet.InstraServlet?Index=no&command=com.intranet.CmdBlobGet&IntranetImage=1348627&SecMode=1&DocId=1428664&Usage=2>

23 Report conducted by the European Committee for Treatment and Prevention of Torture and Inhuman and Degrading Punishment (CPT) on visit in Moldova from 27 and 31 of July 2009, 14th of December 2009, (CPT/Inf (2009) 37), p. 15.

24 Report on the activity of the National Mechanism for the Prevention of Torture in 2009, p. 14.

the April 2009 events and mechanisms to help them. On 15th of October 2010, the Government adopted the Decision No.956 “on helping people who have suffered from the events of 7th of April, 2009”²⁵ and decided to grant compensation to 14 civilians and four police officers. However, these actions were not sufficiently disclosed and, therefore, very few victims of torture have received such aid. The main rehabilitation centre in Chisinau remains the Rehabilitation Centre for Torture Victims “Memoria”, an NGO which is financed from abroad.

Investigation of police brutality of April 2009

Prosecutor’s Office recorded 108 complaints on police brutality that has demonstrated in April 2009. Of the total number of complaints, 58 cases were initiated prosecutions, of which 29 cases - under the art.309/1 of the Criminal Code, and in 17 cases - under 328 (2) (a) Penal Code. 27 criminal cases against 43 police officers were sent to court.²⁶ However, these statistics are different in various official sources. Moreover, a major part of torture victims assisted by NGOs such as the Rehabilitation Centre for Torture Victims “Memoria” and others have complained of ill treatment in April 2009 because they were afraid and had no confidence in the justice system.

Only 14 police officers were suspended from their duties during prosecution, and this measure remained valid only for nine of them, after challenging the suspension of the magistrates. Investigations took place very slowly and lawyers have complained of deficiencies of prosecutions conducted by prosecutors. Only one judge was fired from errors in the examination of causes related to the events of April 2009 (for conducting trials inside police stations and issuing illegal arrest warrants without evidence). Other two judges were extended the mandate due to the expiry of five years.

In late April 2011, ten police officers were acquitted in connection with the events of April 2009 and concerning on police officer was terminated criminal proceedings in connection with the prosecution of offenses. In December 2010, two police officers (George Vutcariov and Alexandru Mocanu) were convicted by Grigoriopol Court in connection with events in April 2009 Gh. Vutcariov was convicted of abuse of power (Article 328 (2) (a) Criminal Code) and falsifying of public documents (art. 332 Criminal Code) to four years imprisonment and five years of suspension from duties, the execution of the sentence being suspended for a period of five years. A. Mocanu was convicted of abuse of power (Article 328 (2) (a) Criminal Code) to two years imprisonment and two years of suspension from office, the execution of the sentence being suspended for a period of five years. Subsequently, on 27th of April, 2011, the Court of Appeal acquitted both officers on all counts. Court of Appeal decision was appealed to the Supreme Court. The process is still pending.

There are pending cases in which appear official names, namely George Papuc,

²⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336392>

²⁶ UN Human Rights Committee, the information received from the Republic of Moldova on the implementation of the Committee observations (CCPR/C/MDA/CO/2/Add.1), 4th of February 2011, p. 3.
<http://www2.ohchr.org/english/bodies/hrc/docs/followup/CCPR-C-MDA-CO-2-Add1.doc>

former Minister of the Internal Affairs, and Vladimir Botnari, former Commissioner of Chisinau, who has been submitted charges of negligence resulting in serious consequences (art. 329 Criminal Code) on 3rd of March 2010; Iacob Gumeniță, former police chief, who was arrested on 15th of April 2010, is accused of exceeding of duties (art. 328 Criminal Code) and Valentin Zubic, former Deputy Minister of Internal Affairs, which, on 2nd of March 2011, was charged with misconduct in function (art. 329 Criminal Code) resulted in the death of Valeriu BOBOC and other serious consequences.

The Parliamentary Commission of Inquiry to elucidate the causes and consequences after 5th of April 2009 was created in October 2009. However, from inception, it was underfunded and lacked sufficient human resources. As a result, the Commission began to operate effectively in January 2010. The Commission's conclusions are vague and were released much later than originally announced. However, even clear and specific recommendations were ignored by authorities.

1.3. Conditions of detention

Both prisons and preventive isolators of detention within police stations provide detention conditions which contravene international standards. The existence of these conditions of detention is motivated by the lack of financial resources.

The most serious problems in terms of conditions of detention in prisons of Moldova is overcrowding, lack of natural light in the cells, lack of ventilation in the cells, which are imbued with smoke and the remaining moisture, prisoners are not provided with constant drinking water and not able to maintain daily hygiene, the risk of tuberculosis and other diseases of contamination; low temperature in cell during winter time, the walls are covered with mold, inadequate quality and quantity of food that is prepared under inadequate hygienic conditions, access to health-care services, lack of physicians in prisons, lack of medical equipment.²⁷ In prisons in Moldova on 1st of January, 2010, 6535 people were deprived of their liberty, and on 1st of January 2011 - 6.324 persons deprived of their liberty.²⁸

The authorities have acknowledged many times that the Penitentiary No.13 of Chisinau is crowded to overflowing and that the Government plans to close this institution. On 10th of July 2008, Parliament adopted Law No.177 on ensuring the construction of a prison.²⁹ The Ministry of Justice was to announce a contest to select an investor who would insure the building of a prison in accordance with international standards, in exchange for acquiring ownership of land that is currently Penitentiary No.13. However, no measure has been taken in this regard. In 2010, were renovated five detention cells for juvenile prison No.13, including the gym. Renovations have cost about 400,000 lei, the money allocated from the Ministry of Justice.

27 Center for Human Rights in Moldova, Report on human rights in Moldova in 2010, p. 142-168, <http://ombudsman.md/md/anuale/>

28 <http://www.penitenciar.gov.md/ro/statistica.html>

29 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=328646>

In 2010, the activity of 11 preventive isolators of detention from police stations was suspended³⁰, and two isolators were closed.³¹ The Government adopted a decision, No.511 of 22nd of June 2010, which has earmarked 2.2 million lei for the repair of 30 isolators of detention in police stations of the Ministry of Internal Affairs. However, in most cases, detention isolator rooms are located in the basement of the police station buildings, so they will never be able to provide conditions adapted to holding people placed in preventive detention.³²

Both the European Committee for Prevention of Torture and Treatments and Inhuman and Degrading Punishment (CPT), following visits in 2007 and 2009, and the UN Special Rapporteur on torture and other cruel forms, inhuman or degrading treatment or punishment, following his visit in 2008, recommended the transfer of temporary detention isolators under the Ministry of Internal Affairs in the Ministry of Justice. However, the Ministry of Justice said it can not take responsibility for the detention isolators because of severe prison conditions and lack of financial resources to fix them. Meanwhile, the Ministry of Justice said that it plans to build eight houses of detention throughout Moldova, which will deal with the conditions of detention in isolation.

During 2009 and 2010, the ECtHR adopted five decisions of conviction against Moldova after violation of art.3 ECHR, which refers to poor detention conditions (*Strășteanu and Others v. Moldovei*, *Gavrilovici v. Moldovei*, *I.D. v. Moldovei*) and the denial of adequate medical care of detainees (*Paladi v. Moldovei*, *Oprea v. Moldovei*). Also, ECHR announced the Moldovan Government several cases³³ in which the applicants complain of the conditions of detention. In these cases, the Government has been asked inter alia if it recognizes that there is a systemic problem in this area.

30 Preventive detention facilities in police stations Ialoveni, Donduseni, Strasenii, Criuleni, Stefan-Voda, Glodeni, Ceadir-Lunga, Dubasari and Calarasi.

31 Preventive detention center of the General Directorate of Operational Services of the Ministry of Interior and the police station of Leova.

32 Centre for Human Rights in Moldova, Report on Human Rights in Moldova in 2010, p. 175, <http://ombudsman.md/md/anuale/>

33 *Segheti v. Moldova*, No.39584/07; *Iudin v. Moldova*, No.7347/04; *Savca v. Moldova*, No.17963/08; and *Strășteanu v. Moldova*, No.18928/08 and No.40699/08.

THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON, PRISONERS' RIGHTS

Vadim VIERU

During the reporting period, the right to liberty and security of the person in Moldova has been violated by state institutions - police, prosecution, detention facilities, who should actually be ensuring compliance with these regulations.

The first part of the chapter focuses on unlawful practices that occurred in 2009, when the police continued to perform, as in previous years, actions of unjustified deprivation of liberty. The chapter reviews the situation in the second half of 2009 and 2010, when the number of illegal detentions decreased significantly as a result of adopting a new *Contravention Code* and the initiation of reforms within the Ministry of Internal Affairs (MIA).

The chapter also focuses on the situation in the Transnistrian region, an area in which the most serious violations of individual rights to liberty and security in Moldova occur. The detention facilities from the region were established by an illegal administration, which for 20 years recorded serious problems in terms of human rights.

In 2009-2010, in Moldova there were several cases that drew national and international attention and emphasized the seriousness of the problems in terms of individual freedom and safety. These are the cases that refer to people kidnapped from the territory in the East of the country by the secret services from the region and the cases where people were illegally handed by the representatives of the constitutional law enforcement bodies to the illegal regional structures.

The second part of the chapter analyzes the situation relating to the rights of detainees in the period of 2009-2010. The chapter will review the positive qualitative and quantitative changes, particularly in ensuring better conditions of detention. Positive changes have occurred due to recommendations of international institutions – notably the Committee of Ministers Recommendation on the European Prison Rules,¹ a Committee of Ministers Recommendation on provisional detention, detention conditions and the application of safeguards against prisoners.² However, the situation of detainees is further worsened in terms of ensuring the minimum conditions of detention under international standards. According to the UN Committee against Torture, the detention conditions in some prisons are still critical.

2.1. Liberty and security of the person in the Republic of Moldova

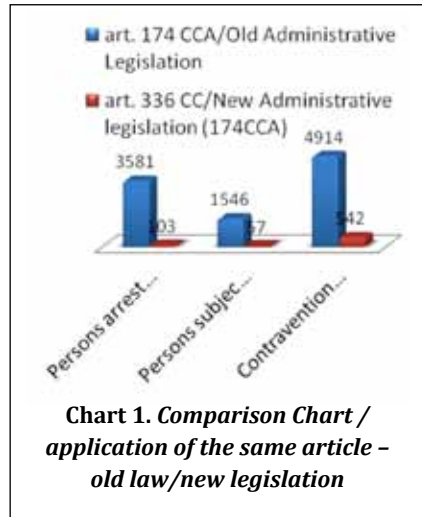
National legislation sets the grounds and procedures of the detention of the person, the period of detention, the guarantees of safety of the detained person and the appeal procedures. However, during the reporting period there were many violations, suggesting that the normative acts are inefficient and imperfect. The Coun-

1 Adopted by the Committee of Ministers of the Council of Europe on 11 January 2006.

2 Adopted by the Committee of Ministers of the Council of Europe on 27 September 2006.

cil of Europe suggested several recommendations regarding the modification of the legislation on the liberty and security of the person, in particular, the abrogation of the old Code of Administrative Offences (CAO) and the adoption of the new Contravention Code. Thus, on 24 October 2008, with Law no.218-XVI was adopted the new Contravention Code (CC) of the Republic of Moldova which has replaced the old CAO.³ The new CC was enforced on May 31, 2009, after numerous violations of the right to liberty and security of the person occurring as a result of the 5 April 2009 violent post-election events. The new law amended rules governing administrative detention and arrest. Under the new provisions, the person may be sentenced up to 15 days imprisonment and the period may be extended to 30 days if they have committed more than one offence.⁴ The CC consists of two parts: Book I - Substantive Law and Book II – Proceedings for Contraventions, both of which are divided into the general and specialized parts. Substantive law is divided procedurally. This brings clarity in rules and prevents abuses by the law enforcement bodies. The CC includes provisions referring to participants, proceedings for contraventions, competent authorities to resolve contravention cases and the procedural measures for constraining and detaining.

As a result of effective implementation of the new CC, in 2009-2010 the number of minutes prepared by the police following the arrest of persons was significantly lower in comparison with the previous years. For example, according to the data provided by the MIA in 2009, under art.336 of the CC *Deliberate failure to obey a legal order or request of a representative of a law enforcement Body*, were issued 368 contravention minutes, 69 persons being arrested and 20 persons were subject to contravention arrest. Under the same article in 2010 were made 174 contravention minutes, 34 persons being arrested and 37 persons were subject to contravention arrest.



In 2008, when the old CAO was applied under article 174 *Deliberate failure to obey a legal order or request of a representative of a law enforcement Body* were drawn up 4914 contravention minutes, 3581 people were arrested and another 1546 people subjected to contravention arrest. Thus, at least quantitatively, the number of contravention minutes, contravention arrests and detentions has decreased significantly. The situation is also similar with other contravention grounds, such as: assault of the law enforcement officer, opposing resistance or breaking the law on assemblies (in 2009-2010 only 4 people were arrested under the new code). Thus, it is possible to conclude that the adoption of the new CC has been beneficial

³ Adopted by the Law of Moldovan S.S.R. on 29 March 1985.

⁴ Section 38 (4) of the Contravention Code of the Republic of Moldova, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=330333>

for ensuring the right to liberty and security of the person.

However, there are still problems with the criminal procedure. In previous reports of Promo-LEX⁵ the need to amend art.166 of the Criminal Procedure Code (CPC) to avoid undue detentions was mentioned, which has not been done.

Certainly we can state that the right to liberty and security of the person was widely violated on April 2009. The actions took place following protests after the elections on April 5, 2009, when demonstrators protested against the election result. The exact number of persons detained, abused or those who died has not been established.

The number of people detained in the post-Election, According to:

1. Ministry of Home Affairs - 206 people in administrative order, 107 persons by criminal procedure;

2.General Prosecutor to the Committee Turcan - 128 people detained by contravention orders, 120 detainees in order of criminal procedure;⁶

3. General Prosecutor to the Committee Nagacevschi - 182 people detained by criminal procedure;

4.Chisinau City Hall to Commission Nagacevschi - 328 people detained by criminal procedure and Criminal code;⁷

5. Soros Foundation Report - 674 people;⁸

6. Human Rights Institute - 467 people.⁹

Public administration, police and courts have violated the right to liberty and security of the person in the process of “restoring the rule of law”¹⁰ by arresting massively a large number of people in the central square and the nearby territory. This shows the extent of the violations and chaos. According to the accounts of persons detained by the MIA, it was found that most people were arrested between 7- 9 April 2009. Arrests also continued on April 10-12. Some detainees have been transferred - in violation of the law – to the police stations in towns to the north and south, at a distance of about 150 km from Chisinau. Those people were not from those localities. These procedures have increased the *de facto* retention time and limited personal freedom. Being released, victims were not provided with transportation or financial resources to return to their homes.

The actions of detention of persons have involved employees of some police stations from various districts of Chisinau, Traffic Police, State Security Service, Prosecutor's Office and employees of other governmental departments. In some cases the Special Police Battalion “Fulger” has been involved with detaining people. Most detentions were made by representatives of police dressed in civilian clothes, without any identifi-

5 Promo-LEX Report- Human Rights in Moldova-2007 - 2008, Chisinau, 2009, p. 17, http://promolex.md/upload/publications/ro/doc_1259134469.pdf

6 Nagacevschi Commission Report, Scribd. Web, p. 87, <http://www.scribd.com/doc/31032609/raport7Aprilie>

7 Idem.

8 Clarisa Bencomo, Entrenching Impunity- Report on the Moldovan authorities' response to police violence during the post-electoral violence in April2009,SorosFoundationMoldova, Chisinau, 2009, p. 10, <http://soros.md/files/publications/documents/ENTRENCHING%20IMPUNITY%20%20By%20Clarisa%20Bencomo.pdf>

9 Nagacevschi Commission Report, Scribd. Web, p. 87, <http://www.scribd.com/doc/31032609/raport7Aprilie>

10 Idem.

cation or markings upon themselves, which is a serious violation of the law. Direct commands towards the actions of law enforcement came from the President of Moldova in office at the time, Vladimir Voronin, exceeding his constitutional powers.¹¹

The art.166 Arrest of the CPC served as the ground for arresting people and taking into police custody. Other grounds for arrest had also nonprocedural reasons¹² not stipulated by the law, actions being illegal, which is clear from the minutes of arrest shown by the Commission of Inquiry to determine the causes and consequences of the April 5 events, led by the MP Vitalie Nagacevski (the Nagacevski Commission).

Contravention sanctions were not applied uniformly based on the degree of contravention injury. Thus, for some cases the length of detention was 45 hours.¹³ The average length of arrest in cases of contraventions was higher compared to the average length of arrest in cases of suspicion of committing a crime.¹⁴ The procedural rights and guarantees during the arrest, provided by legislation,¹⁵ (the right to a lawyer and a fair trial, prohibition of torture and inhuman treatment) have not been observed.

For the first time in the history of the Republic of Moldova, trials on persons detained by the police and suspected in committing contraventions or crimes were tried inside police stations. The judges have invoked the provisions of the art 32 of the CPC of Moldova, which was interpreted extensive and violated the procedural rights of the detainees. Moreover, judges have formally examined the causes and issued several court orders with a similar text in which only personal data were different. It was proven by the large number of judgments issued within several minutes that these cases were examined superficially. Thus, for example, the judge Gh. Moroza examined and issued four judgments and issued four arrest warrants on 10 April 2009, in a record time of only 51 minutes (between the hours 21.10 - 22.01).¹⁶

The case of M.A. Extract from hearings:¹⁷ On 7/8 I was arrested by police at 00.30 people in civilian clothes. They kept me for three days in the Central Police station, ...I was tried in the Police Station ... my trial lasted 30 seconds ...

Regarding the behaviour of some institutions, we find that the General Prosecutor's Office employees did not verify whether the actions of the MIA *direction of the judicial police* were legal, as well as the legality of the former Deputy Minister of Interior V. Zubic's decision to transfer administratively sanctioned persons to the district preventive detention facilities. Similarly, not all allegations of torture and inhuman and degrading treatment were examined. Persons responsible for illegal arrests of the participants in the demonstrations were not sanctioned. This highlights another serious problem in Moldova - the lack of independence of the prosecution institution.

11 Nagacevski Commission Report, Scribd. Web, p. 86, <http://www.scribd.com/doc/31032609/raport7Aprilie>

12 Ex.: "Stefan cel Mare str., in front of Parliament, for verification, for clarification, from the office no".

13 Ex.:art.174/6Code of Administrative Offences (repealed), Insulting the police officer.

14 Ex.: 17 hours - contraventions, 9 hours - suspicion for an offense of robbery.

15 Ex.:art 66,art.67Code of Criminal Procedure of the Republic of Moldova, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=326970>

16 Promo-LEX, Human Rights and Democratic Institutions in the post-election period in Moldova/ April 6th - July 1st, 2009 ,April 6 to June 1, 2009, Chisinau, 2009, p. 56, http://www.promolex.md/upload/publications/en/doc_1258617640.pdf

17 Nagacevski Commission Report, Scribd. Web, p. 100, <http://www.scribd.com/doc/31032609/raport7Aprilie>

The Superior Council of Magistracy (SCM) has not fully examined the complaints of persons arrested or sanctioned administratively that informed the Judges about the actions of maltreatment, yet they did not take any action to prevent torture and ill-treatment. SCM actions were challenged by Nongovernmental organizations.¹⁸

2.2. Freedom and security of the person in the Transnistrian region of Moldova

Although constitutional authorities don't have the *de facto* control over a large part of its territory, guaranteeing the right to liberty and security of person in the Transnistrian region represents an exclusive obligation of the Republic of Moldova. This was reiterated by the decision of the Case Ilascu vs. Moldova and Russia, issued by the European Court of Human Rights (ECtHR) in 2004. For the Transnistrian region of Moldova, the severity of the problem is that the deprivation of liberty of persons is carried out by structures that have assumed responsibilities of law enforcement and justice. The prerogatives of detention and isolation of people in the East of the country are arbitrarily held by the unconstitutional structures such as militia (police), guard people, "ministry of security", "custom", "border", including "military". According to the local standards, they are also invested with the investigation and prosecution tasks.

The victims of the Transnistrian regime are various categories of persons, residents or visitors to the region. Illegal procedural actions taken on people are a farce of financial profit to those who serve the administration in Tiraspol. Many victims say they have paid different amounts of money, or have been requested such amounts for better conditions of detention and for their release from illegal detention.¹⁹

In this part of Moldova, in the absence of any controls or in the absence of any efficient and legal mechanisms for human rights protection, the youths from socially vulnerable families are potential victims. After their arrest (*de jure* it is a kidnapping), they are isolated for a long term (1-6 years) and none of their rights are secured. Sometimes the relatives find out about the "detentions" after a few days or even weeks. Prisoners lack the opportunity to submit complaints, particularly to the constitutional authorities and international institutions. In most cases known by the attorneys and lawyers from both banks, the alleged courts from the region have issued "arrest warrants" for an unlimited period, without taking into account the alleged facts or the mitigating circumstances. Application of alternative measures to the "arrest" is not practiced.

On 10 October 2009, 90 people "arrested" in a detention centre in Tiraspol went on hunger strike as a result of torture and inhuman and degrading treatment. More people were "in custody" for more than 9 days without providing a meeting with their lawyers

A serious problem is the *informal* cooperation between the constitutional police and illegal militia representatives for detaining people. The public opinion is not aware of such cases due to their illegal character. Thus, law enforcement of Moldova

18 Promo-LEX and IDOM tested the existing mechanism of judicial accountability, <http://www.promolex.md/index.php?module=news&item=298>

19 <http://www.promolex.md/index.php?module=news&item=252>

instead of defending and protecting citizens and persons within the Moldova, collaborate with the illegal structures, and sometimes send people to these structures to punish them for alleged acts. Moreover, instead of seeking solutions to ensure the rights guaranteed by the Constitution and international documents to which Moldova is a party, constitutional authorities prefer to become accomplices of serious abuses committed against human rights and fundamental freedoms. Some victims said they were abducted by police from the territory controlled by the Constitutional authorities to the "militia" without any procedural acts required for the arrest. In these cases were filed suits which are currently at the stage of prosecution. However, because the suspected persons continue to work in law enforcement, the public opinion considers that the files have been filed only formally.

In 2009, citizen C.N. was handed over by the police workers to the Transnistrian "militia" near the police station in Bender with the aim to orchestrate a criminal case. Thus, the young man was "sentenced" by the "District Court" of Bender to 10 years of imprisonment. Police were found not guilty to criminal liability, although Promo-LEX filed an official complaint of their action.

Citizen F.I. was kidnapped near a detention facility in Chisinau and was taken by the "militia" in Dubasari and after 5 months was "sentenced" to 8 years of imprisonment by the "courts" in the region.²⁰

Among the victims of this phenomenon are the constitutional representatives of law enforcement. This is alarming and suggests that the authorities are not able to protect any of its representatives. The described situation suggests serious problems in terms of liberty and security of the person and problems relating to the functioning of the legal system in Moldova.

Constitutional authorities have often shown themselves unable to protect victims when the victims requested the protection. In these circumstances, the victims were forced to leave the region for an indefinite period. Meanwhile, they were "wanted" by the illegal structures in the region. Without any support from the constitutional authorities, the victims have no choice but to leave Moldova.

Political captivity continues to be applied in the region. Such cases are the case of Ilie Cazac and Ernest Vardanyan. Both were "accused of espionage" for the Republic of Moldova and were sentenced to 14 and 15 years in prison. Both, Cazac and Vardanyan are citizens of Moldova. Thus, this situation is both comic and dramatic. Two Moldovan citizens were kidnapped, "tried and convicted" in Moldova for espionage for Moldova, by the people who hold Moldovan citizenship and are employees of illegal and unconstitutional structures.

The first cases of abduction or violation of the right to liberty and security of person is registered in the Transnistrian region in 1991. The situation worsened with the outbreak of armed conflict in the region. Such cases continued to occur after the signing of the Moldovan-Russian ceasefire agreement and after the transfer of full powers to the peacekeeping structures.²¹

²⁰ Cases are from the practice of Promo-LEX Association.

²¹ Promo-LEX, Freedom and Security of Person in conflict regions, Chisinau, 2009, p. 16, www.promolex.md/upload/publications/ro/doc_1257436825.pdf

After the control was assumed by the illegal regime, the fundamental rights and guarantees of people from the region became useless. The separatist administration has created an aggressive and unbearable informational environment supported by a militarized system.

2.3. Prisoners' Rights

2.3.1. The prison system in Moldova

Alignment of the legal framework of the prison system to the Council of Europe (CoE) standards is a long-term goal. Reforms are needed both in the legal framework and the institutional one. To this end, a specialized training for staff and technical and material support to various activities is needed.

The detention regime law is determined by the character of violation committed by a person, whether it is criminal or administrative law. Currently there are no clear-cut rules on detention of offenders and prisoners. The Code of enforcement does not make a clear distinction that separates these categories of people.

At the public policy level in the field of the prison system, the Moldovan authorities, in accordance with the recommendations of the CoE²² Committee of Ministers have made amendments to the normative acts, including the adoption of Government Decision No.827 of 10.09.2010 on the organization and functioning of probation enforcement bodies, which created the Central Probation Office of the Department of Penitentiary Institutions; as well as the Regulation of the activity of this structure, which allows broadening of alternative sanctions application.

As a result of implementing these and other policies, the number of persons detained in prisons is constantly decreasing, which is positively appreciated, while the detention facilities in Moldova are overcrowded. In the Transnistrian region, the prison reform has not taken place because the region does not support enforcement of international and national recommendations.

However, in Moldova the number of inmates per 100 thousand inhabitants is twice the average of member countries of the CoE. In Moldova (excluding the Transnistrian region) this figure is about 175 people. In the Transnistrian region this indicator is 564²³ people while the region's population is 527.500²⁴ (according to the latest census conducted by the Tiraspol



Chart 2. Total number of inmates in prisons in Moldova in 2006-2010

22 CoE Recommendation 914 (1981), about the criminal policies of the Member States, Recommendation No.R-22 CE (2000) regarding the implementation of European rules on community sanctions and measures, CoE Resolution No.76 on "Alternative to imprisonment".

23 Information Sheet MJ, TMR, <http://guinpmr.narod.ru/index.htm>

24 Census results in Transnistria. The study of languages on the Internet: Best practices and benefits <http://www.languages-study.com/demography/pridnestrovie.html>

administration). In the CoE Member Countries this indicator is an average of 105 persons.²⁵

The budget for 2009 provided financial resources for maintenance and development of prisons in the amount of 251,879.5 thousand lei.²⁶ In 2010, the state budget provided 230,788 lei, the costs being reduced. Although progress has been made in improving conditions of detention, some detention facilities remain overcrowded. According to the Special Rapporteur of the Committee for the Prevention of Torture of the Council of Europe in 2009 showed that the authorities themselves admitted that the № 13 Chisinau prison is overcrowded. On the visit, the prison held 931 people, with the institution capacity being 600.²⁷

Personal hygiene and poor diet remain problematic for the prisoners. The Torture Committee noted this problem several times in reports referring to the Republic Moldova.²⁸ According to the Report the common problems in all prisons for long detention are poor hygienic conditions, poor access to health care and lack of medicines and the risk of contamination with tuberculosis and other diseases. The Report found that budgets for 2009 and 2010 for food almost doubled in comparison with other years and will increase further.

In prisons No.8 and No.12 of the city of Bender was found poor food, poor access to shower - once every 10 or 15 days – due to lack of coal for heating water. It was also found that the Government has made substantial efforts to improve the material basis of prisons in Bender.²⁹ With the signing of Moldovan-Russian ceasefire agreement of 21 July 1992, Bender city became a high level Security Zone and is controlled by both, constitutional forces and also by the illegal structures. Subsequently, the *de facto* control over this town was almost completely taken over by the illegal structures in Tiraspol. Thus, prisons No.8 and No.12 from Bender city have become instruments of blackmail for the administration. These institutions remain the object of pressure against the constitutional authorities, who are forced to provide the normal functioning of these institutions and adequate conditions for detention of persons. Even though Bender Prison No.8 is disconnected from electricity since 2003 and the transportation of food and coal is often delayed and subject to various illegal procedures from the illegal administration, constitutional authorities are able to ensure minimum conditions for detention of persons. Regional administration insists that prison No.8 and No.12 to be evacuated.³⁰ The Bender peace-keeping mechanism, established in the region after the 1992 Moldovan-Russian ceasefire agreement is not able to guarantee the region's citizens rights, freedoms, stability and development.

25 Globally-reported prison population rate per 100,000 of the national population, http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=155

26 State Budget Law for 2009, No.244-XVI of 21.11.2008, Annex7, http://www.fisc.md/common/lege/acte_legislative/legi/244_ro.pdf

27 Report to the Government of Moldova on the visit to Moldova by the European Committee against Torture, p.13, <http://www.cpt.coe.int/documents/mda/2011-08-inf-rum.pdf>

28 Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, p. 12, http://www.un.md/key_doc_pub/doc/romanian/A%20HRC%2010%2044%20Add%203%20torture%20Moldova_ROM.pdf

29 Report to the Government of Moldova on the visit to Moldova by the European Committee for the Prevention of Torture, p.13, <http://www.cpt.coe.int/documents/mda/2011-08-inf-rum.pdf>

30 No access to prisons No.8 and No.12 of Bender continues to be blocked, <http://www.protv.md/stiri/social/accesul-in-penitenciarele-nr-8-i-12-din-tighina-continua-sa-fie.html>

2.3.2. The prison system in the Eastern Region

„Detention facilities” in the Transnistrian region are not part of the penitentiary system of Moldova. Therefore, experts believe that they are nothing but private places of (informal) detention, where due to total impunity, there are serious violations of human rights, people being tortured and held without basic legal assistance, medical assistance and food. Human rights have no borders and the difficulty of the conflict resolution process should not excuse the impunity of the separatist regime by which they transformed the Transnistrian region into a “GULAG”.³¹ Constitutional authorities or other persons do not have free access to these institutions, including international organizations, unless they have the Tiraspol administration permission. Therefore, the detention of persons in prisons in the region can be considered of private nature, where the fundamental rights of persons are violated.

Detention conditions in the Transnistrian region

According to the statements of Promo-LEX beneficiaries, prisoners of a prison in the city of Bender have a very poor diet. Food contains worms and garbage. The inmates refuse to eat the food because it contains chemicals. The toilet in the cell is actually a container with a lid.

In one of the Tiraspol prisons there is only some poor artificial illumination and the sun does not enter the room. In the same cell can be detained people suffering from contagious diseases (such as HIV-AIDS and tuberculosis). There are not enough beds, therefore prisoners get little sleep. There are no mattresses.³²

„The penitentiary system, in the Transnistrian region consists of three prisons, a prison for minors and one for women. In 2009, in total there were 3061 convicted persons. In 2010 the figure was 2968 persons. Of these –178 women detained during 2009 and 165 women detained during 2010; 82 minors in 2009 and 83 minors in 2010.

From unofficial sources, the number of inmates would be much higher, especially in temporary isolation. The average space for a prisoner is supposed to be about 2m².³³

In 2009-2010 there were multiple violations of the rights and freedoms of persons in prisons in the region. Regional administration makes efforts to create barriers to communication of victims with lawyers and national or international human rights organizations. Moreover, the people who notify the public opinion about their problems are pressured.

31 <http://www.promolex.md/index.php?module=news&item=252>

32 Report to the Government on the visit to Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CTP) from 21 to 27 July 2010, p. 14, <http://www.cpt.coe.int/documents/mda/2011-08-inf-rum.pdf>

33 www.pmr.name/catnews/nr2-pridnestrove/38610-v-pridnestrove-namereni-reshit-problemu-plohih-usloviy-dlya-grajdan-v-izolyatorah-vremennogo-soderjaniya.htm

Conclusions and recommendations

In the area controlled by the constitutional authorities, after the events of April 2009, there is a modest positive trend in the reforms and respect for the right to liberty and security of the person by the Moldovan authorities.

An important reform was the adoption of a new law that reduced the number of custodial measures.

However, serious violations took place in April 2009 during protests that followed elections. What is worse is that very few people from among the police and protesters (when there are sufficient evidence) were punished in connection with violent protests after the elections of 5 April 2009. Thus, the Moldovan authorities failed to effectively investigate and bring sanction to those responsible for these abuses. The actions of some officials and representatives of the Prosecutor and some Courts have contributed to the preservation of the phenomenon of impunity.³⁴

In 2010, representatives of the law enforcement and investigation bodies show a more appropriate behaviour and attitude about depriving people of freedom and the need to apply such measures. It is also expected that the dynamics of the reforms started within MIA on the demilitarization of this institution as well as the start of several other reforms will be a temperate one. Due to political instability, any other reforms within institutions of legal reform and security such as Prosecution, Information and Security Service and the judiciary system were not announced.

At the public policy level, more and more alternatives to detention are being offered and applied. This partially resolves the problem of overcrowding of prisons. Moldova should develop public-private partnerships in the prison systems (enterprises within prisons, private prisons) to address the material basis of poor conditions of detention and prison overcrowding on the grounds that the number of prisoners is high compared with the budget of the Department of Penitentiary Institutions. Application of alternatives to detention should be a priority in criminal policy.

In Transnistrian region the situation on liberty and security of person has aggravated. This is manifested by abusive arrests of persons by the regional structures. The constitutional authorities of Moldova failed to comply with its positive obligations to guarantee and protect fundamental human rights. This shows the need for a mechanism that would guarantee access to justice and fundamental rights of the Transnistrian region inhabitants. Constitutional authorities should cease the practice of the constitutional police handing people over to the illegal militia.

³⁴ Clarisa Bencomo, *Entrenching Impunity – Report on the Moldovan authorities' response to police violence during the post-electoral violence in April 2009*, SorosFoundationMoldova, Chisinau, 2009, p. 53, <http://soros.md/files/publications/documents/ENTRENCING%20IMPUNITY%20%20By%20Clarisa%20Bencomo.pdf>

FREE ACCESS TO JUSTICE, RIGHT TO A FAIR TRIAL AND PRESUMPTION OF INNOCENCE

Vladislav GRIBINCEA and Nadejda HRIPTIEVSCHI

Although the legislation of the Republic of Moldova guarantees access to justice, the fairness of judicial proceedings and the presumption of innocence, in practice these norms are frequently violated. Non-compliance with legislation is due to several factors, especially corruption, insufficient training of judges, judges' excessive sensitivity to political realities, inconsistent judicial practices, and insufficient efforts on the part of the administrative judiciary body. Frequent violation of these rights is confirmed by the behavior of judges in April 2009, when several hundred people were arrested and then tried in police stations for numerous violations. Although during 2009-2010 some measures were taken to redress the situation in the domain of justice – such as facilitating access to justice, introducing electronically distributed files, publishing court decisions online, improving the way in which parties are summoned, reducing the number of annulled irrevocable decisions, and creating private executors – things in justice did not change substantially. On the contrary, trust in the justice system has decreased, and according to Freedom House, in 2010, the Republic of Moldova registered regressions in the functioning of justice and the fight against corruption.¹ At the end of 2010, the Government announced major reforms in the judiciary sphere.

3.1. General issues

The Constitution of the Republic of Moldova guarantees access to justice, fairness of judicial proceedings and the presumption of innocence.

Moldova's judiciary system consists of judges, courts of appeal and the Supreme Court of Justice (SCJ). In trial courts there are judges of instruction, who examine complaints against the actions of the criminal investigation body and who authorize arrests and some investigation measures. The Republic of Moldova also has a Constitutional Court, which formally is not part of the judiciary system and which rules on constitutional issues. Judges are appointed in positions on the proposal of the Superior Council of Magistracy (SCM), by the President of the county, initially for a period of five years, and later reappointed by the President until the age of 65. Promotion of judges to courts of appeal, including in the position of president or vice president of the court or court of appeal, is made by presidential decree, at the proposal of the SCM, adopted by the majority of its members. Promotion to the position of judge at the Supreme Court of Justice, including as president or vice president of the SCJ, is made by decision of the Parliament. Selection of candidates for appointment as judges or promotion is done by the SCM, in the absence of clear criteria. The President or the Parliament may reject the SCM proposal, indicating their reasons. SCM repeatedly proposes the application for reconfirmation, just in case when the judge requires it in written form and the request is approved by a vote of 2/3 of the members of SCM. The repeated proposal of SCM is compulsory

¹ <http://hr.md/rapoarte/general/freedom.house/freedom.house.2010.pdf>

for the President/Parliament. SCM is the empowered body to sanction the judges.

The existing reappointment mechanism was adjusted in 2005. During 2002-2005, the President could refuse, without giving reasons, the reappointment of judges in their positions; a refusal which cannot be challenged in court. The president's repeated refusal to reappoint a judge in their position was grounds for the dismissal of the judge. During 2002-2003, around 60 judges were dismissed in this way.² In October 2009, the Republic of Moldova Parliament adopted a declaration which stated that in 2002-2003 a considerable number of honest judges and promoted people obedient to governance, and a body of judges not opposed to intimidation and political pressure from the government, were released from their duties on political criteria.³

Judges are obliged by law to maintain impartiality. In the event of circumstances that might call into question their impartiality, the judge is obliged to abstain from the proceedings. Parties in a trial may require to challenge the judge, this being an application that has to be examined by another judge. Parties often challenge the judges. However, most challenging applications are rejected.

The biggest challenge for the impartiality of the judges is corruption. Wages of judges cannot provide a decent standard of living.⁴ To combat corruption, it has been made compulsory for judges to publish statements of their income and property, and for cases to be distributed randomly in court. Since 2008, judges' statements have been published on the website of SCM. However, the existing mechanism for declaring income and property is confusing and the verification mechanism appears to be ineffective.⁵

According to sociological studies,⁶ in 2002-2008 the trust in justice never exceeded 41%. Usually the average was 29-32% of the population.

3.2. The free access to justice

Art. 20 of the Constitution guarantees to everyone the right to effective remedy from the courts against acts that violate people's rights, freedoms and lawful interests. The same rule provides that no law may restrict people's access to justice.

Although the provisions of the Constitution prohibit restricting access to justice, subsequent laws have excluded the competence of the courts to examine the legality of some administrative documents.⁷ Thus after 2001 decisions of the President and of the Parliament concerning the dismissal of a judge could not be challenged. In April 2010, the Constitutional Court changed its practice, suggesting that acts of dismissal of judges can be appealed at the Constitutional Court.⁸ Despite

2 International Commission of Jurists, Moldova: The Rule of Law in 2004, Report of the Centre for the Independence of Judges and Lawyers, Annex I, p. 6 (2004).

3 Parliament Decision No.53-XVIII, from October 30, 2009.

4 Gross monthly salary of a judge of first instance is about 260 euros, a judge of the Court of Appeal - about 330 euro, and a judge of the Supreme Court of Justice - about 380 euro.

5 Apparently, in 2009, no official was punished for inaccuracies in not declaring the income and property.

6 For example Barometer of Public Opinion, www.ipp.md

7 According to art. 4 of the Administrative Litigation Law can not be challenged in court individual administrative acts issued by Parliament, the President of the Republic of Moldova and the Government pertaining to the selection, appointment and dismissal from public functions exponent of a particular political or public interest.

8 By the Decision of the Constitutional Court No.10, from April 16, 2010.

changing Constitutional Court practice, the Parliament attempted to exclude the appointment and dismissal of judges, as well as of the heads of court, from judicial review. This initiative was soon declared unconstitutional.⁹

Any person may file a civil suit and appear in any court of the Republic of Moldova without necessarily being represented by a professional. Currently, they can be assisted in the process, on their own, by any person, even without legal studies. However, from January 1st, 2012, if a person wants a representative, that person may be assisted in a trial only by lawyers.¹⁰ In criminal cases only lawyers are admitted to represent the interests of accused persons.

The Republic of Moldova has made progress after the entry into force of the Law on State Guaranteed Legal Aid, on July 1st, 2008. The law created a new system of state-guaranteed legal aid. It expanded the right to state-guaranteed legal aid, by specifying the right to a lawyer of any person detained in a penal or administrative process, regardless of the financial status of the person. The possibility of giving-state guaranteed legal aid in civil contraventional cases was also foreseen. Also, the law provided for primary legal aid, constituting a new type of assistance for the Republic of Moldova, aiming to raise the legal awareness of the population. In 2009 and 2010, the new system of state-guaranteed legal aid was working only in criminal cases. State-guaranteed legal aid in civil and contraventional cases shall enter into force on January 1st, 2012. The quality of state-guaranteed legal assistance remained low.

In examining civil actions in court, in most cases, state fees have to be paid. It is at the discretion of courts to relieve natural persons of this fee, if it finds that the person is unable to pay. Up to autumn 2010, the law did not allow state tax exemption of legal persons. This prohibition was removed in September 2010,¹¹ following a decision by the European Court of Human Rights (ECHR).¹² Typically, courts show generosity in granting these exemptions.

Article 53 of the Constitution guarantees the right of people aggrieved by administrative actions or criminal proceedings to reparations by the state. Judges grant moral compensation only in cases provided by law, and the amount of such compensation is very small,¹³ rarely exceeding 1,000 euros. In July 2010, the ECHR sentenced the Republic of Moldova because the courts have awarded insufficient moral compensation for detention in poor conditions and the denial of medical assistance.¹⁴ Despite this conviction, judicial practice has remained unchanged.

3.3. The right to a fair trial

The legislation of the Republic of Moldova contains the vast majority of fair-

⁹ On May 21, 2010 the Parliament completed the Administrative Litigation Law with an appendix providing a list of persons exempt from addressing the court. This list includes judges, court presidents and deputy presidents of the courts. By the Constitutional Court decision No.29 of December 21, 2010, including these categories of persons in the list was declared unconstitutional.

¹⁰ Law No.102, from May 28, 2010.

¹¹ Law No.167, from July 9th, 2010.

¹² ECHR Decision in case *Tudor-Comerț v. Moldova*, November 4th, 2008.

¹³ US Department of State 2010 Human Rights Report: Moldova.

¹⁴ ECHR Decision in case *Ciorap No.2 v. Moldova*, July 20, 2010.

trial guarantees. Judges have to be independent and impartial, and ad-hoc formation of tribunals is prohibited, no one can be held responsible for actions which at the time of their commitment were not considered an offense, judicial proceedings are public, the right to defense and the equality of parties in court is guaranteed by law, judges have to justify decisions, and judgments in the first instance may be appealed. Although such guarantees are in accordance with international standards, in practice, during the period under study, there were many problems.

a. The independence of judges

According to some credible reports, by autumn 2009, although this is not required by law, a practice was established in which the head of state, before the reappointment of a judge after the first five years of their activity, asked the opinion of the police, the prosecutor's general office and the administration of the respective locality. By 2010, the President often refused reappointment of judges. He cited as grounds for refusal arguments which could undermine the independence of judges, such as: inappropriate behavior towards policemen,¹⁵ delivery of some decisions at the expense of authorities¹⁶, and unjustified acquittal of accused persons.¹⁷

In the period of 2008-2009, the General Prosecutor on several occasions required disciplinary sanctions against judges for the delay of editing sentences inconvenient to the prosecutor's office,¹⁸ although motivated decisions are drafted with delay in most cases. Such situations existed also in 2010.¹⁹

After the change of government in autumn 2009, it seems that interference of the executive in the appointment process and promotion of judges was not so intense. However, the 2002-2003 practices of "system cleaning", in conjunction with plenary involvement up to the level of President of the country in the reappointment of judges, with the promotion of people with a tendency to be obedient to the executive, cumbersome procedures, and sometimes the improper reappointment and promotion of judges, as well as the prosecutor's office requests for sanctioning judges, led to a rooting of the tendency among judges to avoid confrontations with the authorities and law enforcement bodies.

b. Judges' impartiality

Since 2006, random distribution of cases in courts has been compulsory. In 2007, the SCM adopted the regulation on the random distribution of cases, based on the rule "the first recorded case - the first distributed case", the file being distributed to the judge or permanent panel, according to the list established at the beginning of each year. However, the Supreme Court of Justice formed permanent panels of judges only beginning in 2010.²⁰ In 2009, the courts of the Republic of Moldova installed a program that allows the random distribution of electronic cases. The

15 Decisions of the SCM No.29/3, from February 26, 2009 and 154/7, from May 21, 2009.

16 Decision of the SCM No.227/11, from June 26, 2008.

17 Decision of the SCM No.30/3, from February 26, 2009.

18 Decisions of the SCM CSM No.204/10, from June 5th, 2008 and No.121/5 from April 30, 2009.

19 According to the activity report of the SCM for 2010, in 2010 the General prosecutor instituted 11 out of 52 disciplinary proceedings against judges.

20 By Order of the President of the Supreme Court No.1, January 10, 2010. Until then, panels of judges were set up for every meeting.

introduction of this program led to resistance on the part of many court presidents. For this reason, the use of the electronic distribution of cases is left to the discretion of the court president. In late 2010, in most courts the distribution of cases was not performed electronically. In 2010, a commission formed of judges found that at the Supreme Court of Justice there were problems regarding the subsequent registration and distribution of civil and economic cases.²¹

Corruption seriously affects justice. A recent study notes that almost half of those who appear in court give bribes. According to the analysis, on average, a judge requests or accepts bribes 4 times per month.²² Despite these statistics, since 2001 no judge has been convicted of corruption.

In 2008, in many cases, judges displayed an overly friendly or adverse attitude to a party. Such attitudes were expressed by inappropriate comments, criticism of statements and qualification of questions as irrelevant, without giving the party the opportunity to explain their relevance.²³ At the end of 2010, no significant change was felt in the judges' behavior. In 2009, according to the activity report of the SCM for 2010, 2,016 complaints were filed against judges, and in 2010 – 2,411. Based on complaints filed in 2010, 52 disciplinary proceedings against 39 judges were initiated. Disciplinary sanctions for 10 judges were applied, and for 29 judges, the proceedings were suspended.

Violation of the rules on the random distribution of cases, corruption among judges, and reserved enforcement of the provisions on the disciplinary responsibility of judges, together with poor reasoning of judgments, fueled suspicions about judge impartiality. At the end of 2010, these fears were sharpened. In November 2010, only 25.1% of the Republic of Moldova population trusted in justice, which is 12% less than in November 2009.²⁴

c. Publicity of proceedings

By law, all court proceedings are public, except the cases when by law or judge decision, the session is declared closed. All judgments are rendered public. Since 2009, courts have websites on which they have to place useful information for litigants, including the agenda of the day and judgments.

In 2008, a major impediment in exercising the right to public hearings was the resistance of some judges, defense attorneys and prosecutors. There were cases in which judges declared the sessions closed, without giving reasons for such decisions, especially when the presence of third parties was not “desirable”. Public access to trial hearing in district courts was often impossible because the cases were

21 On April 9, 2010, the interim-president of the Supreme Court of Justice created a commission formed of judges of the Supreme Court of Justice to evaluate if during the years of 2006-May 2010 at the SCJ was respected the random distribution. According to an informative note from June 1st, 2010, in civil cases, the number of files is given by the chairman of the College while file sharing and not by chancery after appeal registration. Regardless economic cases, the distribution will be made at the discretion of the chairman of the College, without respecting the distribution consecutiveness.

22 Redpath Jean, *Victimization and public confidence survey: Benchmarks for the development of criminal justice in Moldova*, Soros Foundation Moldova, Chisinau, 2010, p.31, <http://www.soros.md/files/publications/documents/Victimisation%20Survey.pdf>

23 the Final Report of OSCE Program of monitoring court sessions in the Republic of Moldova, p. 38, <http://www.osce.org/moldova/70946>

24 Barometer of Public Opinion from November 2010, <http://www.ipp.md/libview.php?l=ro&idc=156&id=558>

examined in the office of the judge, usually too small.²⁵ In 2009-2010 the situation remained unchanged. Thus, on June 16, 2010, a judge of the Buiucani Court of Chisinau forcibly closed his office door in front of journalists who were filming the beginning of a public court hearing on a case of importance.

The list of cases that have to be examined must be displayed in advance on the website of the court. Such information is placed in places for the display of the court. However, information about some cases is missing, which impedes the right of public hearings.

Beginning with January 1st, 2010,²⁶ all judgments must be placed wholly on the website of the court which issued the decision, and the access to decision is free. In general, the courts place the decisions on the website, but with exceptions. Most decisions are missing on the website of the Chisinau Court of Appeal. Also, the placement manner of decisions does not provide effective access to them, because the system does not allow a search by content, judge or other useful criteria.

d. The contradictory character of judiciary proceedings

Under the law, the contradictory character must be ensured both at the judicial phase of criminal pursuit, as well as in civil proceedings. In the case of criminal proceedings, the prosecution is obliged to collect evidence both for and against prosecution. However, in practice, prosecutors are rarely interested to gather evidence with which they do not agree. There were sometimes cases when prosecutors did not attach to the file evidence presented within penal pursuit of the accused that supported his innocence.

In the case of a request for an arrest, the defense has the right to take note of the materials submitted to the court to confirm the necessity of arrest. However, in 2009-2010, prosecutors showed the defense a copy of these materials only at the direction of the judge and only a few pages of the criminal case file. Meanwhile, to the judge, the criminal case file was presented in full. Constant objections of the defense to the transmission of the criminal case file to the judge were usually rejected by the judge, who examined the request for arrest. On the other hand, witnesses asked by the defense party to combat the arrest's necessity are not heard by judges, although this was being criticized by the ECHR even in 2005.²⁷ All of which betrays the attitude of judges and prosecutors towards the defense, namely that the idea is accepted that at the arrest stage, the defense can be put in a disadvantaged situation compared to the prosecution.

After sending the criminal case file in court, the defense has access to material from all the criminal files. However, defense parties face difficulties in bringing defense witnesses, which is a task of the prosecutor's office. Prosecutors sometimes invoke the grounds that defense witnesses could not be found, although they are in the country.

The review of cases in hierarchically superior courts, particularly the Court of Appeal in Chisinau and the Supreme Court of Justice may raise suspicions because

²⁵ The Final Report of OSCE Program on monitoring court sessions in the Republic of Moldova, p. 52.

²⁶ According to SCM Regulation from December 28, 2008.

²⁷ ECHR Decision in case *Becciev v. Moldova*, October 4, 2005.

of adversarial character of proceedings. Thus, panels of three or five judges examine 40-50 civil cases per day. Hearing of the parties takes a few minutes, when rarely they fail in convincing to express the arguments. In criminal cases when the accused has no defender, the court of appeal suggests one of several lawyers present in the courtroom to take the case. Subsequently, the defendant is heard, who usually agrees. The lawyer is given a few minutes to prepare and the file is examined on the same day. Every lawyer present in the courtroom takes in this way 10 to 15 cases daily. The lawyer's pleading is usually limited to a short speech.

In 2009-2010, as in previous years, one of the most serious shortcomings of the civil proceedings was the notice given to parties about the hearing. Although the Code of Civil Procedure provides that judge shall have the confirmation of receipt of the summons, in practice, judges were not always able to get a confirmation on this, because of non-allocation of funds for summoning of the parties with the notice of receipt. Judges assume that the summonses were sent and received. Parties, who have lost the trial in absence, constantly invoked in their appeal that did not receive the summons, and the hierarchically superior courts often have reversed challenged decisions on these ground. In late 2010, a tendency was noted of citing the parties more often by letters with acknowledgment of receipt.

e. Motivation of judgments

Although the law requires that all judgments be justified, insufficient justification of judgments in the reference period was one of the most serious shortcomings of the Moldovan justice system. Often, judges reproduced the text of the law in court decisions without explaining how this legal provision was being applied in concrete situations. Also, many judges did not feel compelled to combat every essential argument raised by a party, creating the impression that the argument was not even considered. Deficiencies in the reasoning of the judgments of the Republic of Moldova were mentioned by the ECHR as early as 2005.²⁸ In two judgments under the ECHR, the criminal conviction was not based on sufficient evidence.²⁹ However, by 2010, things changed considerably. Although it appears that, once judgments started to be published online, their quality started to grow, the justification for a large number of judgments still leaves room for improvement. Faulty justification of judgments is due to previous practices of summary justification of judgments, the large number of cases under examination, the traditional accent placed by the SCM on the speedy examination of cases, tolerance by the higher courts of poorly reasoned decisions, contradictory practices of the Supreme Court of Justice, and lack of rigorous control on the unification of judicial practice. Bad justification of decisions is also due to the lack of technical legal courses in law universities.

f. Annulment of irrevocable judgments

By 2009, judges of the Republic of Moldova easily annulled irrevocable judgments through an extraordinary means of attack. Apparently as a result of this jurisprudence, the number of applications for annulment of irrevocable civil judg-

28 ECHR Decisions in cases *Becciev v. Moldova* and *Șarban v. Moldova*, both from October 4th, 2011.

29 ECHR Decisions in cases *Grădinar v. Moldova*, April 8th, 2008; and *Vetrenko c. Moldova*, May18, 2010.

ments filed at the SCJ began to reduce,³⁰ and the rate of applications allowed by the Supreme Court declined.³¹

However, the admission rate of applications for civil review in hierarchically lower courts remains high.³²

A particular concern raises the annulment of irrevocable criminal judgments. Although statistics are lacking in this respect, the number of instances of criminal use of extraordinary means of attack is high and their admission rate is high. In June 2010, the Criminal Procedure Code was amended so that the grounds for filing for annulment were exposed in a reading that allows a very broad interpretation.

g. Reasonable period for examination of cases and enforcement of judgments

In general, in the Republic of Moldova long examinations of cases is a rarity. Both in civil and criminal cases, the first session takes place within 6 weeks after notification of the court. Examination of a case of a medium complexity, in all three levels of jurisdiction (fund, appeal and recourse) lasts no longer than 18-24 months, which is below the average of Western European countries. According to the activity report of the SCM for 2010, from the civil cases overdue on January, 1st 2011 (3,376), 6.6% lasted more than 12 months, 2.3% more than 24 months and 1.9% more than 36 months.

Although the period of examining a case is acceptable overall, the persistent problem in the Moldovan system consists in annulments and frequent delays of hearings. Therefore, the examination of a simple case takes an excessively long period of time and complex cases are reviewed in a superficial manner. For example, in 2008 court hearings were postponed because the arrested defendant did not appear, because notice of proof was not presented to the party (due to a lax attitude on the part of the judges towards the applications of delay), because the prosecutors, lawyers, or even the judges were missing from the session, or because of difficulties in bringing the witnesses.³³ There were no significant changes after 2008. Examination of judicial cases is also extended by the excessive practice of the hierarchically superior civil courts of remanding the case for retrial several times. This practice aroused criticism from the ECHR in 2007.³⁴ Unfortunately, the frequency of cases remanded for retrial is unchanged.³⁵

30 According to activity reports of the Supreme Court of Justice, in 2006, the Civil College of the SCJ received 508 applications for review and the Economic College 162; in 2008 Civil College received 544 applications for review and the Economic College 126 (in 2007, were filed with 15% more applications for review than in 2008); in 2009 the Civil College received 517 applications for review and the Economic College 108.

31 According to activity reports of the SCJ, in 2006 were rejected 88% from the applications for review by the Civil College and 78, 4% those examined by the Economic College; in 2008 were rejected 90% from the applications for review by the Civil College and 91% from those examined by the Economic College; in 2009 were rejected 95% from the applications for review examined by the Civil College and 90% by the Economic College.

32 According to Information on court activity for 2009, in 2009, from the total number of applications for review examined by the courts of the Republic of Moldova (1,282), were admitted 20.4% (261).

33 The Final Report of OSCE Program on monitoring court sessions in the Moldova, especially pp. 60-61.

34 Decision of ECHR, in case *Guşovschi v. Moldova*, November 13, 2007.

35 According to Information on court activity for 2009, from 5,146 civil cases examined in appeal in 2009, 1,296 (25%) were remanded for retrial. From 2,369 of the cases examined by the SCJ in the same year, 273 were remanded to retrial, which represent 53% of admitted appeals (518).

Between 2009 and 2010 central authorities were executing judgments within a few months, but for no more than a year, which is not contrary to international standards. One problem however was the execution of judgments by local administrations, 70% of the sources of which are supplied from the state budget. Local authorities have paid amounts based on judgments over several years, usually after the allocation for this purpose of money from the state budget.³⁶

A particular problem was nonperformance by the local administration of court decisions on housing granting.³⁷ On July 28, 2009, the ECHR made a ruling that found that the mechanism of granting state housing in the Republic of Moldova generates systemic violations of the right to a fair trial and suggested its modification.³⁸ At the end of 2009, Parliament thus excluded from legislation the right of the majority of categories to state housing.³⁹ But the pronounced judgments ordered before this date remain unsettled.

To strengthen the enforcement system of judgments, in the summer of 2010 the system of bailiffs was reorganized.⁴⁰ Until then, all bailiffs were state employees and were receiving modest wages, their work often being subject to criticism. With these changes, all bailiffs became private and their honorarium is paid by service users. The period since it was implemented is too short to give an assessment of this reform.

3.4. Presumption of innocence

According to art.21 of the Constitution, any person charged with a crime is presumed innocent until proven guilty. According to art.8 of the Code of Criminal Procedure, all doubts in proving guilt that cannot be removed under this Code shall be construed in favor of the defendant. In October 2010, the law on freedom of expression entered into force,⁴¹ covering in detail how to make public statements or messages that could affect the presumption of innocence. The above regulations meet international standards.

Due to insufficient justification of judgments, it is not clear to what extent doubts on probation are interpreted in favor of the accused. Taking into account the poor quality of criminal cases sent to court and the prosecution tasks,⁴² the reduced rate of settlements⁴³ might suggest otherwise. There were no significant developments on this point.

By 2010, materials on started prosecutions were being placed on the websites of the criminal prosecution bodies and prosecutor's offices. These materials con-

36 Government Decisions No.287, of April 15, 2010, No.647, of July 20, 2010, or No.846, of September 21, 2010.

37 According to the Legislation in force of the Republic of Moldova on January 1st, 2009 a big number of persons had the right to receive free housing from the administration of the locality where they work. Due to lack of funds and housing, this obligation was not enforced. That is why, people addressed in court and courts admitted the actions. In the middle of 2009, pending ECHR were applications against Moldova on the failure of more 300 of such decisions.

38 ECHR Decision in case *Olaru and others v. Moldova*, July 28, 2009.

39 By Law No.90-XVIII, from December 4, 2009.

40 By Law No.113, from June 17, 2010.

41 Law No.64, from April 23, 2010, in force from October 9th, 2010.

42 According to the activity Report of prosecutor's office 2010 (Parliamentary Committee Report), one of the main objectives of the prosecutor's office was directed to "reduce the cases of pronouncing the sentences of acquittal", p. 63.

43 According to the activity Report of prosecutor's office for 2010, p. 64, in 2010 the quota of acquittals was 2.49%.

tain information allowing easy identification by the public of the accused. In these materials the focus is uniquely on the person's guilt, which is contrary to the presumption of innocence. Video materials produced by the prosecution, with similar content, were distributed to the press. At the end of 2010, this practice continued, but the identity of the accused was usually not disclosed.

3.5. Events of April 2009

On April 7th, 2009, during protests in the center of Chisinau against allegedly fraudulent elections, the buildings of the Presidency and Parliament were vandalized and torched. According to official data, during clashes between protesters and police 274 policemen were wounded.⁴⁴ Between the 7 and 12 of April, 2009, police detained at least 571 people.⁴⁵ Most of them were charged of committing administrative offenses.

For the first time in the modern history of the Republic of Moldova, trials regarding detained persons were tried inside police stations.⁴⁶ Six judges went to police stations at the request of prosecutors or policemen. They cited as a reason that bringing defendants to court would have been too burdensome. Other judges refused to move to the police stations and asked police to bring the accused to court premises.

In the police stations, the 6 judges reviewed the applications for criminal arrest of 130 people.⁴⁷ 80% of the requests were admitted, in 18% of cases the arrest was refused, with other preventive measures being applied, and in only 2% of cases were requests rejected.⁴⁸ Along with efforts of arrest, the 6 judges – inside police stations – looked also at accusations of administrative offenses.

The hearings of people and information published by several persons administratively sanctioned in April 2009 show that most of the rights guaranteed by national law to detainees had not been observed.⁴⁹ Court sessions were held in the offices of police stations (to which the public had no access), relatives were not informed about detentions, hearings lasted only several minutes, the defense were given only a few minutes to prepare, those accused of committing offenses were not offered lawyers, and the justification of the judgments was very brief and repetitive. The large number of cases examined in the short term and the elements mentioned above indicate the unfairness of these processes.

Subsequently, three of the six judges were removed from the judiciary system. The SCM concluded that the trial of cases in police stations could not ensure fairness of court proceedings.⁵⁰ No disciplinary sanctions have been applied to those three judges, because the limitation period has expired. Such a selective approach suggests that SCM ceded to pressure from public opinion.⁵¹

44 the Parliamentary Committee Report, p. 97.

45 Ibid., p. 88.

46 Ibid., p. 101.

47 85 of these approaches were examined by 5 judges in a single day. Another 45 applications were examined by another judge within 3 days.

48 the Parliamentary Committee Report, p. 107.

49 Ibid., p. 99.

50 Decisions of the SCM No.8/1 and 9/1 of January 12, 2010.

51 Although it was noticed in the summer of 2009, until November 2009 the SCM did not undertake any measure to investigate the misconduct of judges.

3.6. Reforms in justice

On October 30, 2009, the Moldovan Parliament adopted a declaration on the legal status and necessary actions to improve the situation. In the declaration there is a reference to imperfect legislation, sorting judges during 2002-2003, selective practices of the SCM, the lack of response to the illegal actions of judges, poor training, insufficient social guarantees, and “syndication” of judiciary power. Parliament called for reform of the judiciary system, transparency in the process of appointing judges, their adequate training, and for judges to be appropriately remunerated so as to guarantee their financial security.

The new government formed in autumn 2009 promoted a series of reforms to improve the justice system. In particular, the enforcement mechanism and the organization of advocacy were changed. It is premature to talk about their outcome. The same Government launched the initiative to liquidate economic courts, an initiative which was twice rejected by Parliament in dubious circumstances.

The revised government after the parliamentary elections of November 2010 declared the justice reform as a priority of national policy. The government program included reform of the judiciary organization system and prosecutor’s office, of the Supreme Court of Justice and the Supreme Court of Magistracy. The main part of these changes relate to: the liquidation of the specialized courts and modification of the judicial map; reduction of judges in SCJ and transformation of the Supreme Court into a court of cassation; excluding the initial term of five years of appointment as judges; setting clear criteria for the appointment and promotion of judges; reshaping the immunity of judges; establishing the office of administrator of the court and submitting to this one management functions of the court in exchange for court presidencies; strengthening the system of random distribution of cases; ensuring publication of judgments and extending public access to files; substantially increasing the remuneration of judges; changing the prosecutor’s office’s competences through their focus on criminal justice; changing the procedure for the appointment of the General Prosecutor; etc.

THE RIGHT TO PRIVATE PROPERTY*Natalia CAZACU and Ivan TURCAN*

According to article 46 of the Constitution of the Republic of Moldova and article 1 of the First Additional Protocol to the Convention on Human Rights and Fundamental Freedoms, any natural person or legal entity has the right to protect his possessions. The same article of the Constitution states that “No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law”.¹

During the reporting period, issues approached by citizens in terms of respecting the right to private property and its protection does not differ substantially from those raised in previous years. The following violations persist: the consequences of bad privatization, the ownership of former deportees and political prisoners, ownership in the Transnistrian region of the Republic of Moldova, violation of the ownership of shareholders and associates, reimbursing of money deposits of the depositors of commercial banks “Guineea” and “Investprivatbank “S.A., illegal application of sequestrators. Violations recorded in terms of the right to private property are caused by the imperfect legal framework, unstable political period, imperfect system of justice and not at least, the imperfect mechanisms to protect the right to private property.

The Subchapter “The problem of former deportees” reveals an issue of a category of persons who are targeted by the legislature for many years. Confiscated possessions were not yet returned, the cause being imperfect legal framework and lack of financial resources.

In the subchapter “Reimbursement process of money deposits” shows deficiencies of this process, because banks in liquidation are not sufficient active to cover the sum of all claims and because is not respected the Law on guaranteeing deposits of natural persons in the banking system.

In the subchapter “Copyright” are reviewed violations registered in this area; most are committed by television and at registration of the trademark.

The subchapter “Privatization and nationalization” shows the imperfect drawing up of instruments at the initial stage of the privatization process, which prevents the respect of the right to private property. Privatization of state heritage, started in 1991, continues in the reporting period. In the privatization of state assets an important aspect is good assessment for privatization.

Subchapter “Seizure of possessions” refers to the violation of ownership by using prohibitions on possessions that are in private property. Legislation in force provides that the owner is entitled to tenure, usage and disposal on the possession, but often this regulation is violated by prohibitions or seizures illegally or disproportionately applied by the courts or by bailiffs.

¹ <http://www.parlament.md/CadruLegal/Constitution/tabid/151/Default.aspx>

In the subchapter “Violations of property rights in the Transnistrian region of Moldova” is described in detail the situation in the left bank of Dniester. In this period, constitutional bodies of the Republic of Moldova have not taken measures to enforce the respect of the right to private property for the citizens of Transnistrian region, lacking so, of a legal, constitutional and credible instrument for protection of property.

The ownership is considered one of the most complete real rights. Thus, the legislature has the task to regulate this complex chapter of the civil law, as the safeguarding and protection of private property to comply with European regulations. Although, the Republic of Moldova has created the legal framework of regulation and protection of the ownership so that citizens have national mechanisms for claiming this right, the ECHR convictions on violation of property rights continue in the reference period. These convictions could be avoided if the authorities changed the legal framework, taking into account the recommendations proposed by ombudsmen through the Center for Human Rights and NGO Promo-LEX.²

The Center for Human Rights recommended in its reports on human rights since 2007 the revision of the “Law on indexation of money deposits of the citizens in Banca de Economii” because the art.9 of this law provides, indexation and payment of bank deposits of citizens of the Republic of Moldovan in branches of “Banca de Economii” in the localities of the left bank of Dniester will be examined after restoring financial and budget relations of these settlements with the state budget of the Republic of Moldova. Revision of this law is necessary in order to exclude any difference of treatment before the law, ensuring equally for each person the realization of the right to property.

Both Center for Human Rights, as well as the Association Promo-LEX requested revision of the legal framework that aims to rehabilitate victims of political repressions, because it is not clearly stated the funding source to recover the value of goods that cannot be returned. In the period concerned, there has been no revision of the legal framework, towards the rehabilitation of victims of political repressions, to develop an efficient and fair restitution of confiscated property, as well as the review of the “Law on indexation of savings of the citizens in Banca de Economii» no.1530 from 12th of December 2002.

In 2009-2010, the issues raised by citizens on the Chapter respecting the right to private property and its protection does not substantially differ from those raised in previous years. In their list remains property infringement of former deportees and political prisoners, ownership in the Transnistrian region, ownership of the shareholders and associates, restitution of savings to depositors of the commercial bank “Guineea” and “Investprivatbank” SA, illegal application of sequestrers, expropriation, breach of copyright, and the consequences of bad privatization, etc.

The reference period is characterized by a political instability which aggravated the activity of some commissions, such as the Special Commission for the Control and Monitor of the repayment of depositors’ savings of the Commercial Bank “Guineea” SA and Company “Intercapital.”

2 Recommendations Report on human rights in the Republic of Moldova in 2007, 2008, 2009, <http://www.ombudsman.md/md/anuale/>, Report Human Rights in the Republic of Moldova/ years 2007-2008, <http://www.promolex.md/index.php?module=publications>

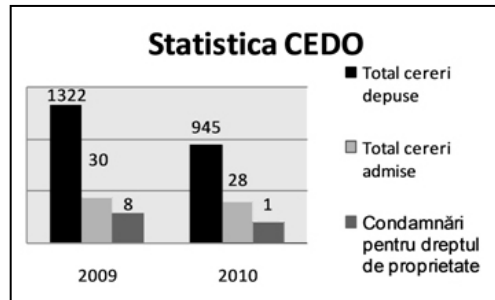
The Bank “Intercapital” failed in 1995, having in that period deposits of about 22 million lei from about two thousand people. Bank “Guinee” failed in 1998, and the injury of 12 thousand depositors was estimated at approximately 20 million lei.

Since the bankruptcy of two banks so far have been created three special commissions within Parliament to elucidate the situation of depositors. Even now, they have not identified the mechanisms that contribute to respect for property rights of depositors. Over the past 12 years, depositors were able to obtain only about 20% of the money.

Special commissions for the restitution of confiscated property, created specifically to regulate the issues of private property restitution of deported, too, have not developed mechanisms for protecting the confiscated private property, and that set previously, found themselves to be inapplicable.

Imperfect legal framework and political instability has aggravated the activity of these committees, while the imperfect justice system have motivated the citizens whose right to property was violated to apply to ECHR.

In 2009, the ECHR has accepted 30 applications, eight of which were related to violations of this article, and in 2010, of 28 applications approved, only one application concerns property infringement. During the reporting period, there is a new conviction from the ECHR on property infringement, which shows a decrease compared with 2007-2008, during which the Republic of Moldova was convicted 62 times for violating the right to private property.



National authorities could avoid condemnation of Moldova by the ECHR in 2009-2010 because they were similar to those on which the Court has previously exhibited.

For example, in 2008, the Republic of Moldova was convicted in the case of SRL “Dacia” versus the Republic of Moldova on the cancellation of privatization of the Hotel “Dacia”. Moldova was forced to return the hotel or to pay to plaintiff the sum of 7,237,700 euros for pecuniary damage. In 2009, Moldova lost another similar case – Bar Partener- A versus the Republic of Moldova for cancellation of privatization. This file was corrected by the parties amicably, the Government paying to the applicant 320,000 euros for moral damage and 8,000 euros for pecuniary damage.

Even if property infringement continuous in the stated period, violating the right to private property is not listed among the most violated rights in Moldova. Rankings conducted by Heritage Foundation with Wall Street Journal placed the Republic of Moldova of the 120 place of 179 countries in terms of economic freedom. According to the study, Moldova has advanced five places compared to last year, scoring 55,7 points.

An important step in respecting the right to private property, are amendments

made in 2008, to the Law on cadastre by offering more guarantees to the investor in constructions. The State Registers record new state real estate and are assigned provisional cadastral numbers. Without provisional registration of the property, the notary does not conclude the investment contract. The Investment contract is subsequently recorded at the State Enterprise “Cadastre” and only after conclusion of these steps; the developer is entitled to request money for the erection of buildings. Thus, the investor is guaranteed the exclusive right to the property and also is resolved the old problem of multiple sales. However, to date, the mechanisms for implementing these changes at the level of cadastral procedures and notary operations were not exposed clearly.

4.1. The problem of former deportees

The problem of former deportees is in legislative attention for many years and even though in 2006 the state amended the Law on rehabilitation of victims of political repression, the mechanism of restitution of confiscated, nationalized property or otherwise taken from these individuals was not improved. Ombudsmen examining this issue over several years advocated for the revision of some main and important matters of the legislation in force.³ They warn that the amendments do not specify clearly the financial source of recovering the value of goods, and documents necessary for this procedure are difficult to obtain and present the main difficulty faced by applicants.

Applications for restitution of property or value recovery of victims of political repression are examined by specialized committees. They are created by the authorities of local public administration of districts, in Chisinau and Balti municipalities and the autonomous territorial unit of Gagauzia, where rehabilitated people lived when they were repressed.

Although these committees were created in 2006, when the Legislature has tended to improve the mechanism for the return of property seized or nationalized, they proved to be ineffective. In that period, committees had a formal character. I received no response to a request from 10th of June, 2011 submitted to the Government of the Republic of Moldova on the activity of these committees, the number of reviewed applications and the status of these committees.

A special category of people, victims of political repression are people who until deportation lived in the Transnistrian region of the Republic of Moldova. They have less chance to exercise their right to property because the constitutional authorities of Moldova have explained that their problem can be solved by solving the Transnistrian conflict.

4.2. The restitution process of money deposits

Return of money deposits to depositors of commercial bank ‘Guineea’ S.A. and Company “Intercapital” must be monitored by the Special Commission created by Parliament in 2006. A Commission was required to study the records of the liqui-

3 Report on Human Rights in the Republic of Moldova in 2007, 2008, 2009, <http://www.ombudsman.md/md/anuale/>

dation procedure, to identify and analyze the causes of delay in return of money deposits.⁴ Until now, the Commission has not identified and analyzed the causes of delay in return of money deposits of depositors, not analyzed files of liquidation procedures and has not submitted a report to Parliament on the restitution process of money deposits. According to information received from the National Bank of Moldova and liquidator of the commercial bank “Guinee SA, the Commission did not meet during the reporting period and has not held meetings with the depositors of these institutions. The National Bank continued to receive complaints from depositors of the commercial bank “Guinee S.A., which shows that the problem of money deposits is, and mechanisms proposed by state for addressing these categories of people are ineffective. The new parliament did not elect members of this commission in 2010 and the Commission currently does not work.

In the mentioned period the right to private property was violated of the depositors’ “Investprivatbank” S.A. On 19th of June 2009, the National Bank of Moldova has withdrawn the license of the Commercial Bank “Investprivatbank S.A. for performing financial business, which led to the initiation of insolvency proceedings of the B.C. “Investprivatbank” S.A. Natural persons have been returned the deposits. Legal entities that had opened accounts and beneficiaries of bank services have not been returned money from accounts. According to the National Bank of Moldova, B.C. “Investprivatbank” S.A. has paid to natural persons 96,5% percent of total amount of deposits of natural persons, which is 606,1 million lei. To achieve this, B.C. “Investprivatbank” S.A. has received a loan from the Commercial Bank “Banca de Economii”. Currently, the insolvency administrator is trying to sell bank assets to the highest possible price to pay debts to creditors. Assets registered on the name B.C. “Investprivatbank” S.A. will not be sufficient to pay all claims. But the insolvency administrator has not appointed a deadline that will end the sale of heritage of the B.C. “Investprivatbank” S.A., because the organized auctions fail due to a lack of buyers.⁵ A negative aspect of paying claims to lenders is that debtors of B.C. “Investprivatbank” S.A. has initiated insolvency proceedings and payment of loans was suspended, and the assets of these companies will be sold in the insolvency process. A bankruptcy process can take up to three years and it is unclear whether all claims will be covered as a result of sale of assets.

4.3. Copyright

In 2010 a new Law on Copyright and related rights was adopted, which cancels that from 1994. The new legal instrument was adopted in accordance with European norms and practice of other states. The law was drafted by the State Agency for Intellectual Property in order to establish effective mechanisms of protection of copyright and related rights as well as adjusting national legislation to the rules laid down by international conventions and European Directives.⁶

4 Parliament Decision No. 9-XVI from 09.02.2006 on establishment of a special Committee on the control and monitoring the return of money deposits of commercial bank depositors „Guinee” SA and Company “Intercapital”.

5 <http://www.ipb.md/rom/section/424/>

6 Directive No.2004/48/EC on the enforcement of intellectual property, Directive 2001/29/CE of the European Parliament and of the Council from 22nd of May, 2001 on harmonization of certain aspects of copyright and related rights in information society, Singapore Treaty on Trademark Law from 2006.

According to representatives of the Association for protection of copyright and related rights “APOLO”, almost all television broadcasts pirated movies. About 80% of films broadcasted on 17 monitored television stations are pirated.⁷

On 9th of March 2011, the Company “MOSFILM” of the Russian Federation has sued the television company “Cotidian” S.A., which owns the TV channel TVC 21 of the Republic of Moldova, saying that it had violated the copyright because it broadcasted the movies „Операция Ы и другие приключения Шурика” and “Осенний Марафон”.⁸ Currently, the dispute is the judicial phase of proceedings and the parties requested time to negotiate a transaction of reconciliation.⁹

Due to the lack of qualification, the courts often do not apply uniform the legislation, leading to the issuance of decisions that violate the copyright. An example of this manner is the case in 2010 of the American company „Facebook”.

„Facebook” is in dispute with Elena and Ilie Toma who required from the State Agency for Intellectual Property the registration of trademark “Facebook”, although the American company, according to International Convention¹⁰ has priority to register the trademark “Facebook” worldwide. The magistrates of the Court of Appeal and those of the Supreme Court have rejected the request of the American company. Judges have complained that the request of Toma’s family is just in the registration stage, but that young Moldovan did not know about the existence of the site “facebook.com”.

4.4. Violations of property rights in the Transnistrian region of Moldova

Under the legislation of the Republic of Moldova, ownership on real estate has to be registered at the Cadastral Office in the real estate registry. Ownership on real estate is recognized at the time of registration. Meanwhile, real estates located in the Transnistrian region, municipality of Bender and some localities of the Causeni district are not registered at the Cadastral Office. The legal document that guarantees and defends the property right on this territory of the Republic of Moldova is missing today. In the Transnistrian region are operating structures that records ownership of real estate, but considering the fact that the documents issued by these bodies are not recognized by the Constitution authorities and are not under their jurisdiction, the citizens of this region cannot confirm ownership of the owned real estate.

In the Transnistrian region it is not possible to buy land for private ownership. Large companies have to conclude lease contracts with municipal authorities. Therefore, no legal person is exempt from any refusal at the end for extension of the lease contract.¹¹

7 <http://www.infotag.md/reportaje/587441/>

8 Case from practice Brodsky Uskov Looper Reed & Partners.

9 http://ca.justice.md/services.php?court=2&key=2EC7FB04-5D55-E011-8D77-00215AE0E2B3&case_number=02-2-3847-23032011&lang=ro

10 Geneva Convention of 1952 on copyright.

11 Article 18, Land Code of Transnistria, <http://www.justice.idknet.com/web.nsf/767eb8a58ad76a2bc22574d5002acf15/5b2060263cf177f8c22575d700383ae4!OpenDocument>

At present, for violations of private property, people in Eastern of the Republic of Moldova can not address the constitutional courts. Alleged instance Transnistrian region are filled with “judges” appointed by the leader of the Tiraspol administration, and local provision on the guarantee of property rights is purely declarative. Thus, the property of citizens and residents of the Transnistrian region is not guaranteed, they are deprived of a legal, constitutional and credible instrument. As a result, regional courts often issue decisions that violate property rights of citizens, without appointing the reason the person was deprived of property.

4.5. Privatization and nationalization

The Privatization Agency under the Ministry of Economy and Trade oversees the privatization process of state heritage. This agency accomplishes the state policy in administration and privatization domain of public property, privatization activities and exercises ownership functions of state heritage.

The process of privatization of state heritage, started in 1991, had a mass character, in that period being created 45 investment funds for privatization and 10 trust companies, which collected heritage bonds from citizens, investing them in joint-stock. Although the privatization process begun in 1991, some owners of private property certificates cannot currently benefit from assigned value shares, because the certificates have been issued incorrectly. Such case is the case of citizens Ceban Mihail, Ceban Nina, Cebotari Minodora, who were employees of S.A. “Orhei-Vin” and who are the owners of private property certificates. From certificates the assessment of assigned heritage is missing, so the return of the value share in nature is difficult. Thus, the value shares are used by enterprises, created as a result of privatization, and owners of value shares cannot have, use and possess their property, nor receive fair compensation for the use of value shares.

This case is now submitted to the court and is in the stage of judicial proceedings.¹² Former employees of state enterprises claim that the administration of S.A. “Orhei-Vin” has misled them; did not provide them reliable information on the rights of shareholders, obtained revenues, and the actual situation in the company. These situations allowed premises for misuse/ acquiring of nominal values held by shareholders and their improvement for personal purposes.

The Government has no strategy to control the activities in this post-privatization stage.

The process of privatization in the Transnistrian region is governed by Law No.338 from 14.10.2004, which provides property interests of the inhabitants of the Transnistrian region. This legal document does not find application in the region of Transnistria as employees and other persons entitled to claim the goods of some enterprises, cannot participate in privatization. Transnistrian authorities do not respect the rights of citizens who can legally dispose of the assets of enterprises and alienates these enterprises by foreign investors.

In the mentioned period, nationalization or expropriation were not recorded,

¹² Case from the practice of Brodsky Uskov Looper Reed & Partners.

but more assets of the state were privatized, of which five movie theaters for the amount of 2,6 million lei, lands, etc. In 2010, the government auctioned 45 stocks including those of commercial banks “Moldincombank “and” Eurocreditbank “; the hotel Jolly Allon, and enterprises” Vibropribor”, “Giuvaier “, “Energoreparatii”. These assets have not been largely privatized because the price of stocks has been overstated, and the strategy to promote auctions must be improved.

4.6. Seizure of goods

In this period, regarding the chapter infringement of the right to property, we mention illegal application of prohibitions (seizure or seizure of goods) on private property.

In some cases these restrictions are legal but disproportionate, so that for collection of debts are applied seizures disproportionate to the amount of action, on assets that exceed the value of the action. By such actions, is violated the right to property, because the restrictions are recorded in the cadastral offices and the owner can not benefit from their right, although the legislation in force foresees that the person is entitled of possession, use and disposal of the asset.¹³ Due to such prohibitions advantageous transactions of sale-purchase have failed. As for seizure of goods, which are private property, we mention that such cases are usually held in some criminal cases and are seized from owner and recognized as corpus delicti.

There are cases where bans are applied on goods to third parties that have no connection with litigation in which the ban was introduced, although law enforcement agencies or state institutions are able and even obliged to check who owns the property. In the civil case of debt collection in ordinance order Natalia Malanici versus Igor Caradjov was established the seizure of the property belonging to third person Tintari Ana. Although the State Enterprise “Cadastru” confirmed that the debtor Caradjov Igor does not own the real estate, the bailiff applied sequester on the assets of third parties. Executor actions were challenged in the court, the case is pending before the Central Court. Tintari Ana had the intention to sell the property, but because of the illegal seizure cannot have her property.¹⁴

Often in criminal files, natural persons are removed from the prosecution, and goods belonging to them continue to be seized. In the criminal file No.2005021942 of charging the citizen Ion Stepuleac was seized the car “Mercedes-Benz 300 D”, which was acknowledged as corpus delicti. By the ruling of the court, criminal prosecution bodies were obliged to return the car to Ion Stepuleac belonging to him as ownership. The prosecutor challenged the ruling of the restitution of the car, and in the present case being pending.

¹³ Civil Code of the Republic of Moldova, art.315 al(1).

¹⁴ Case from the practice of Brodsky Uskov Loopier Reed & Partners.

Conclusions

The analysis of violating the principles of ownership highlights the inefficiency of the mechanisms guaranteeing the protection of private property. If the court is hearing a case where it is alleged that there is a violation of general principles on private property, it should correctly apply the national law and recommendations of international jurisdiction courts. Citizens have unlimited access to mechanisms to enforce private property rights, but these mechanisms are not effective. Violations of the period 2009-2010 are the same as in previous periods, which proves once again that no measures are taken to avoid them.

a. The problem of former deportees

The problem of this category of citizens will be solved only when, the state will revise the legal framework governing compensation for victims of political repressions. Lack of documents in archives, the lack of specific funding sources, and misinterpretation of law are obstacles impeding the return of their property or recovery of their value by victims of political repressions. Thus, the Law no.86 from 29.06.2006 on amendment and supplement the Law No.1225 from 8th of December 1992 on the rehabilitation of political victims and Rules approved by Government Decision no.627 from 05.06.2007 has to be reviewed. Also, the legislator has to determine to what extent compensations are paid from local budgets accounts and state budget accounts.

Formal character of the specialized committees - which are created by authorities of local public administration of districts, municipalities Chisinau and Balti, and the autonomous territorial unit of Gagauz, on which territory lived rehabilitated people during the suppression – has to be transferred to an efficient one, so that citizens could obtain the right to private property from the first referrals to the authorities, so as to be avoided the displacement of any dispute in courts.

b. Restitution process of money deposits

This process will be more effective if it will be revised the “Law on indexation of money deposits of citizens to Banca de Economii” No. 1530 from 12.12.2002, so that all persons who had deposits, to be treated equally before the law. An important factor in the reimbursement of money deposits is the compliance and correct application of the “Law on guaranteeing deposits of natural persons in the banking system”. The National Bank will closely monitor the activity of commercial banks to avoid instituting insolvency proceedings, and when their insolvency is inevitable, has to monitor the process of liquidation of commercial banks, including the sale of their assets.

c. Copyright

In 2010 the new Law on Copyright and Related Rights Act was adopted, which repealed the Law from 1994, which is a better legal document in the field. Most violations of this chapter, in the reference period were committed by broadcasters that transmit movies by violating the copyright. The Broadcasting Coordinating Council has to oversee strictly the broadcasting program of these broadcasters and to require contracts concluded with the authors of films.

A problem in this chapter deals with the misapplication of law by the courts. This problem can be avoided if there are organized seminars for judges to establish a unique practice in copyright.

d. Violations of property rights in the Transnistrian region of the Republic of Moldova

Violation of property rights in Transnistria will end with conflict resolution. Even if the constitutional authorities of the Republic of Moldova will want to provide more guarantees to the citizens of Transnistria related to property rights, it will be very difficult to implement mechanisms for their application because they will not be accepted by the separatist authorities.

e. Seizure of goods

Seizure of goods takes place largely because of the reform in the enforcement of judgments. Since 2010 bailiffs are private. They try to take as many steps to execute judgments and thus to receive the fee.

These violations can be avoided because the registers of real estate and that of auto transport include the exact information about the property owner. This information is public, and the bodies which use seizure and bans have unlimited access to databases. Application of illegal or disproportionate sequestrations is a problem of an imperfect and corrupt judicial system. Seizure will be made only after the court examined the property, so that the court will find out who is the owner, will dispose his evaluation by the competent authorities, will determine if the activity of owner will not be blocked by applying the seizure, etc. and only then will apply the seizure.

THE RIGHT OF ACCESS TO INFORMATION AND DECISIONAL TRANSPARENCY

Vasile SPINEI

Article 34 of the Republic of Moldova Constitution stipulates that the right of person to have access to any information cannot be restricted. Public authorities are obliged to provide correct information to citizens in public affairs and matters of personal interest. Right to information should not prejudice the protection measures of the citizens or national security. The public, state or private media are obliged to provide correct information to the public. Public media are not subject to censorship. Thus, constitutional rules enshrine and guarantee the right to information as a basis for the adoption of legislative normative acts. Also, in article 39, para. (1) stipulates: "Citizens of the Republic of Moldova have the right to participate in the administration of public affairs, either directly or through their representatives." Also, the Republic of Moldova has two important legal instruments as the Law on Access to Information No.982 - XIV of 11.05.2000 and Law on transparency in decision making process No.239 - XVII of 13.11.2008.

In this chapter we will analyze in what manner are the provisions of these acts complied with and aimed to a democratization of society, what is the authorities' attitude to requests for access to information, how they are applied to various forms and methods of citizen participation, as perceived by representatives of local authorities and those of civil society, various aspects of access to information and transparency in the decision-making process and how problems can be solved.

5.1. Legislation

The Republic of Moldova has signed, ratified and is member to a number of important international documents stipulating key rules on freedom of expression and access to information. However, in general, national legislation creates favourable conditions for exercising the right to information, which is recognized both nationally and internationally. We mention that there were developed and adopted by Parliament in 2010 a number of new provisions, according to the law on transparency in decision-making process No.239-XVI of 13.11.2008. It is about the amending of *the Law on Government No.64-XII of 31.05.1990, the Parliament Regulation adopted by Law No.797-XIII of 02.04.1996, the Law on Budget System and Budget Process No.847-XIII of 24.05.1996, Law on the legislative acts No.780-XV of 27.12.2001, Law on legal documents of the Government and other public and local administration authorities No.317-XV of 18.07.2003, Law on Local Public administration, 436-XVI of 28.12.2006.*

In total, about 500 legal documents and regulations of the Republic of Moldova, practically in all areas (activity of public institutions, economics, culture, science, education, employment, health, environment, external relations, etc.) which contain provisions on access to information. Typically, provisions are in accordance with the Law on access to information. However, certain regulations and special provisions need to be revised, amended and supplemented. In this context, we mention the need to review, amend and supplement - according to international standards and the law on access to information - of the following documents: *Law on State Secret No.245-XVI of 27.11.2008; Law on Commercial Secret No.171-XIII of*

06.07.94, 1994; Law on Protection of Personal Data No.17-XVI of 15.02.2007, Law on Petitions No.190-XIII of 19.07.94, Broadcasting Code No.260 - XVI of 27.07.2006, Law on Counteracting Extremist Activity No.54-XV of 21.02.2003, Law on Advertising No.1227 - XIII of 27.06.97; Repeal of the Press Law No.243-XIII of 26.10.1994.

5.2. Perception of access to information and transparency in decision-making process

Although 2010 was a difficult one, marked by a national referendum, snap parliamentary elections and a post-election uncertainty, the results of monitoring conducted by the Public Association, the Centre "Acces-info" on law enforcement access to information and transparency in decision-making process during the last year, reveals overall a slight improvement compared with previous period.

It should be noted the Government's efforts on developing a series of amendments to various legal acts, which were subsequently adopted by Parliament, establishing a promising partnership between state structures and civil society, implementation of concrete actions in the communication sphere with the public and intra-institutional, development of broadcasting, certain activities of non-governmental organizations in raising public awareness and civic education.

For the first time in the last decade have been declassified several decisions of the Communist Government on the allocation of state budget of some important sums of money for various activities.

However, there was created a web page, where all declassified government decisions were published, which is updated by the Intergovernmental Panel on protection of state secrets. On the website about 60 decisions of previous governments are published, various approaches that have been declassified by the current Cabinet of Ministers.¹ An important event for the society was the transmission from the special deposit of Information and Security Service to the National Archives of several tens of thousands of cases of victims of political repressions in the years 1920 - 1951, documents already available to the public. The fact in itself is "a real change of perspective on the public's right on unrestricted access to information and historical truth," said in an interview for Radio Free Europe, Gheorghe Cojocaru, President of the Committee for study and appreciation of the totalitarian communist regime of the Republic Moldova.²

Both nationally and internationally the fact that the Republic of Moldova has a favorable legal framework to ensure real access to information and transparency in decision making process is recognized. However there are serious shortcomings on the implementation of those provisions. This state of affairs is due to the lack of a complex mechanism of rigorous implementing of the legislation, the irresponsibility of public authorities / institutions and of certain officials and the traditional legal illiteracy of many citizens, distrust, apathy, passivity and their indifference. Thus, current monitoring data show that in the Republic of Moldova there are cases of ignorance, failure to comply with legislation on access to information, the underestimation of the need for application of forms and methods of citizen participation in decision-making process.

¹ <http://www.secret.gov.md/md/start/>

² Access to information and transparency in decision making: attitudes, perceptions, tendencies. Monitoring report, 2010, Center „Acces-info”, <http://www.acces-info.org.md/index.php?cid=146&lid=933>

Is felt the inefficiency of more sporadic actions in raising public awareness, civic education, conducted by state institutions and NGOs in relation to a better understanding of human rights and freedoms and consistent legal illiteracy liquidation. However, the right to information, participation in the decision-making process requires the responsibility of officials of all ranks, and the real motivation of the public. However, as in the previous period, there is not a systematic application of respective legislation by the Government and Parliament.

In November-December 2010, the Centre "Acces-info" interviewed 1880 people, applicants and potential applicants for official information. It should be noted the encouraging results to a crucial question that refers to the level of knowledge by respondents of the Law and on access to information. Thus, 66.1% of respondents said they know about the provisions of this act, "a lot" (2.3%), "much" (12.0%) and 'sufficient' (49.3%). Also, 42.1% of respondents believe that public authorities / institutions inform about this at insufficient intervals, in a fair and timely manner to the public, and - 36.7% feel they do enough. Only 438 respondents (23.3%) said they had sent requests for access to information. Also, 25.6% of respondents said that they were restricted access to information. When asked "How much you think yourself informed on government activity?", 51.0% of respondents gave positive responses and 33.5% responded that on this chapter they are informed "insufficiently" According to the survey, in respondents' opinion, the public authorities / institutions that are concealing the more official information is the General Prosecutor's Office, the courts, Ministry of Internal Affairs, Information and Security Service.

However, during March-June 2010, the Centre "Acces-info" requested information of public interest from 943 public authorities / institutions at central / district / local level, to track the implementation of Law on access to information and the Law on transparency in decision making process.

Frequency of responses to requests is, overall, 34.5 percent. It's a higher percentage than in 2009, when this index was only 22.6 percent. However, the results are far from satisfactory, considering that the law on access to information is already more than a decade old. At the same time, it's remarkable the change of attitude of public and central authorities / institutions to requests for access to information. A possible explanation in this case would be conducting of an intensive activity from the Government both in terms of developing legal documents to support law on transparency in decision making process and the organizational plan, by requiring ministries, administrative authorities, institutions and central organizations to streamline the activity of information, consultation and public participation.

Thus, in comparison with monitoring results from spring 2010 to those in December of that year, we observe a decrease. Thus, compared with the response rate to requests received in the first stage of monitoring - 72% response rate in the second stage compared with 55%, ie 17% less. Except ministries that have increased the response rate - from 81.2% to 93.8% (first phase did not respond at all 3 ministries, and in the second - only the Ministry of Culture did not respond), other subdivisions have recorded reduced rates: administrative authorities, institutions and central organizations - from 95.3% to 73.7% (21.6% less), district and municipal councils - from 95.3% to 50% (45.3% less), city halls in the district centres - from 70.6% to 29.1% (41.5% less).

A cause of these discrepancies may be political instability (development of the referendum and snap elections, period of electing the leadership of the new Parliament and settlement of the new Government), and the lack of an effective mechanism in applying the legislation, namely the Law on access to information and Law on transparency in decision-making process. This mechanism should however not be influenced by political factors.³

According to data of the Centre "Acces-info", over the last ten years, since the Law on access to information, courts of the Republic of Moldova have examined about 600 cases of violation of these laws. Current legislation, including cases concerning access to information on contentious administrative category, does not provide a separate subcategory of this one, which makes it difficult to track statistics of respective files and, therefore, subsequent analysis. If we review non-compliance cases of the law on access to information reviewed by the Supreme Court during 1998-2010, we see that 107 files 49.6% have as grounds that the applicants have not received responses to requests within 15 working days as required by law, 25.3% - were given incomplete information or informal information, 15% unfounded refusals, and those with reference to information with limited accessibility are at a rate of 8.5%. Data is insufficient and they should give some serious thoughts on public institutions that can afford ignoring the law on access to information. In the same vein we mention that the last five years, only the Centre of Journalistic Investigations succeeded in 18 lawsuits against state institutions for restricting access to information, but no public official has been punished for violation of legislation.⁴

5.3. Information, consultation and citizen participation in decision-making process

The Republic of Moldova is only at the beginning of the path concerning the transparency of the decision making process. On the one hand, a number of public authorities / institutions do not trust the results of consultations that will meet the public, they will gather opinions, proposals and recommendations that could really improve the quality of draft decisions. On the other hand, often, NGOs, stakeholders, citizens consider that it makes no sense to be involved in decision-making process, having doubts that their views will be accepted and will influence final decisions. A lack of transparency, along with other factors lead to low confidence of the public in the importance and relevance of legal documents, and the absence of public consultations negatively influence the quality of decisions.

Although the law guarantees the participation of civil society, stakeholders, citizens in public policy making, this activity should be optimized. But we cannot say that there are sufficient effective practices of public involvement in decision making process, and positive examples are more like exceptions than the norm. Thus, are documented a number of weaknesses at public authorities level such as: disagreement benefits of public consultations by the parties involved in the participatory process, lack of minimal procedure, generalized practice, practice consulta-

3 Access to information and transparency in decision making process: attitudes, perceptions, tendencies. Monitoring report 2010, Center „Acces-info”, <http://www.acces-info.org.md/index.php?cid=146&lid=933>

4 Access to information and transparency in decision making process: attitudes, perceptions, tendencies. Monitoring report 2010, Center „Acces-info”, <http://www.acces-info.org.md/index.php?cid=146&lid=933>

tion; lack of knowledge of the staff from a number of public institutions in what concern the organization of public consultations.

In monitoring framework, the implementation of Law on access to information and Law on transparency in the decision making process carried out by the Centre "Acces-info" in the period of March- to June 2010 were requested from the public authorities / institutions a series of data on the use of forms and methods consultation and citizen participation. According to monitoring results, both central authorities / institutions, and those municipal / district / local comply unsatisfactory to the forms of consultation and citizen participation methods, indicators, being in detriment to central authorities / institutions.

Most public authorities / institutions reported that usually consultative meetings, public debates, public meetings with the participation of citizens are held with great difficulty, and the number of suggestions, proposals, recommendations received is extremely small, causes are well known – lack of opportunities for active public information; indifference, passivity, apathy of citizens, lack of experience in the efficient management of public involvement in decision making process.

The law on transparency in the decision-making process provides six ways to conduct public consultations (although they are much more) - debates and public hearings, opinion polls, referendums, calling upon experts opinion in the field, creation of permanent working groups or ad hoc participation of civil society participants. According to data of the Association for Participatory Democracy "ADEPT" in 2010, from 402 monitored draft decisions, development of public consultations in the form of public debate was announced only in nine cases (2%) by one from the Ministry of Internal Affairs, Ministry of Education Ministry of Labour and Social Protection and five public debates at the Ministry of Health. According to the law on transparency in decision making process, synthesis of recommendations on the draft decisions has to be placed on the institution's official website. These recommendations, however, are rarely published on the website. In 22 summaries were included in total 931 recommendations, of which 58% were accepted and 1% - partially accepted. In 94% of cases, the recommendations included in the summaries were made only by the institutions concerned and in 6% of cases - by civil society.⁵ It is noteworthy the very small number of projects subject to consultation and recommendations and proposals received, while the absolute majority of the recommendations usually, have reached not from legally established associations, stakeholders or citizens, but from specialists and experts from other state institutions. It should be noted, however, the extremely big number of decisions taken urgently, without consultation, or are not subject to the law on transparency in decision making process. It is an average of 157 decisions in ministries and 284 decisions in administrative authorities.

Conclusions and recommendations

Democracy is inconceivable without free public access to information, without transparency in decision-making process, bureaucracy, corruption and conservatism, ignorance, are protected from excessive secrecy of governing, the reluctance of some officials, being fuelled by legal illiteracy of the population, indifference, and their apathy.

5 Final report on monitoring compliance with the transparency of decision-making process, April-December 2010, ADEPT, <http://www.e-democracy.md/files/raport-final-transparenta-decisionala-2010.pdf>

Although the Republic of Moldova has in general a good legislation on access to information and transparency in decision-making process, many obstacles stand in the way of practical application of the law. The number of citizens who turn to the Law on access to information and Law on transparency in decision making process as to achieve their constitutional rights is still quite small. Usually, public authorities / institutions do not have sufficient resources and do not know how to organize the participatory process, not all the time the forms and methods of citizen participation are oriented to final results; this process is often organized for the sake of the process and simulation of law enforcement; public participation is often conceived more promptly, like separate actions, and not as a complex and integral process. In fact, the consultation process should have a clear result: a qualitative final decision developed and adopted after extensive public consultation.

Efficient implementation of legislation on access to information and transparency in decision-making process still depends on political stability in the country, by a consistency in which will be created by the Program of Activity of the Republic of Moldova Government "European Integration: Freedom, Democracy, and Welfare, 2011-2014"⁶ This program includes multilateral provisions in obtaining process of transparency in public authorities and institutions activity in all areas, including the liberalization of media space and guarantee freedom of expression, strengthening civil society and public sector cooperation, improving the participatory process, development of information technology, e-Governance in public service.

In order to better assurances of free access to information and streamline the process of citizen participation in decision making process are necessary to perform the more complex actions:

- repeal all provisions which are inconsistent with international standards, with the Constitution and Law on access to information,
- reviewing, amending and supplementing a number of laws in accordance with the requirements of reality,
- creating an appropriate institutional framework, a complex and efficient system,
- development of public administration capacity for implementation of right to information and participation in decision making process,
- establish a systematic control of the Parliament and Government on ensuring de facto the free access to information and transparency in decision-making process,
- improve and streamline the public administration cooperation with civil society, public awareness activities and civic education,
- development of some clear and appropriate information procedures, consultation and public participation, their inclusion in organization regulations and operation of the institutions.

6 The Program of Activity of the Republic of Moldova Government „European Integration, Freedom, Democracy, Welfare, 2011-2014”, <http://www.gov.md/doc.php?l=ro&idc=445&id=3729>

Doina COSTIN

The report presents the evolution of the Republic of Moldova in terms of freedom of expression in 2009 and 2010, by concise evocation of events that occurred in the reporting period and their effects on society. The theme of this chapter per se / by itself implies the tackle of the freedom of press; for this reason each subchapter will expose the problems facing mass-media and journalists in the country. The chapter is structured in three parts that emphasizes the legislative, justice and institutional aspect of the relation state – citizen in regard to freedom of expression.

Subchapter one *“Development of the legal framework”* successively presents laws and amendments to laws adopted by Parliament in the reporting period. In 2010, the Law on freedom of expression and the Law on deetatisation of public periodicals were adopted, legal instruments aimed at ensuring an appropriate legal environment for the development of press in the Republic of Moldova. An expected effect of the Law on freedom of expression is to reduce the high number of violations of the article 10 of the European Convention on Human Rights.

The second part of the study, *“The behaviour of public administration”* investigates the ability of the Moldovan state to establish and maintain a suitably balance between its authority and citizens' right to free expression. In 2009, public authorities failed even in lesser extent to ensure the unfettered respect and exercise of citizens and journalists right to free expression. Or, the worst and most serious cases of restriction of this right were held with participation of representatives of public authorities.

Subchapter three *“Legal Practice”* presents cases with implication for freedom of expression that had the greatest public resonance in the reporting period. The Vardanean case, that is the worst case of violation of journalists' rights and the intimidation of the press in recent years in the Republic of Moldova, has generated a great attention of international and national community, although to a lesser extent. This case proved the inability of Moldovan authorities to ensure the safety of journalists and in general of the citizens on the left bank of the Dniester.

6.1. Evolution of the legal framework

2009 was less significant regarding legislative news compared to the evolutions in previous years, due to the two electioneering periods for parliamentary elections. The trend continued in 2010, which was also an election year. However, in 2010, the Parliament adopted a series of laws essential to the democratic course, among of them, the Law on freedom of expression and the Law on dissemination of public periodicals.

The Broadcasting Code, which entered into force in 2006, has undergone several amendments during the reporting period. The Parliament adopted four laws amending this Code, two laws have sought to align its provisions to provisions of other legal instruments, and the other two laws of amending operated essential changes in broadcasting legislation.

Law amending No.42/20.10.2009 of the Broadcasting Code amended the article 42, 56, 60 in that a quorum of 2/3 of votes required appointing members of Broadcasting Coordinating Council and Observatory Council was replaced by a simple majority.

Law amending No.164/09.07.2010 of the Broadcasting Code amended article 66 paragraph (3), so that the phrase “two licenses” has been replaced by “five license allowed to a broadcaster in an administrative-territorial region or area”.

Law amending No.216/17.09.2010 of some legislative acts introduced in the functions of the CCA the obligation to present monitoring reports of the way of reflecting elections or referendums to the Central Election Commission. This provision was determined by amending the Electoral Code.

Law amending No.222/17.09.2010 of some legislative acts connected provisions of art. 43 and 46 of the audiovisual Code the Law on public function and civil servant status.

The amendment, in 2009, of the Broadcasting Code followed, according to Parliament, the release of the activity of Observatory Council (OC) of the public Company “Teleradio-Moldova”, whose members could be appointed by the Legislation only with a quota of 2/3 of deputies. The Legislative replaced it with a simple majority of 52 votes, while the ruling alliance had at that time in the Parliament 53 seats, and Observatory Council of TRM has been half a year off. By the same amendment, deputies amended the procedure for appointing members of the Broadcasting Coordinating Council (BCC). The amendment has generated at least a reserved attitude of the European institutions and aggressive criticism from the opposition and former administration of public Company.

In 2009, more than half a year, meetings held by the Observatory Council were attended by only 5 members of 9 and later, after a member’s appointment as minister of culture, with 4 members, with no quota to adopt decisions. Another member with valid mandate had refused to attend meetings of the Observatory Council, since 2007, in protest against the editorial policy of TRM management.

Another amendment, concerning the amendment in the number of broadcasting licenses that a broadcaster can hold in an administrative-territorial region or area, has been criticized by civil society on the grounds that it “would facilitate the establishment of monopolistic positions of the broadcasting market, would endanger the diversity of media content, would discourage competition and “berlusconize electronic media”.¹ Since the legal framework for broadcasting is not responsible for the tendencies “of trustees” present in the Moldovan media market, is required amendment and completion of the Broadcasting Code with provisions to regulate the ownership and prohibit concentration of ownership and monopoly in this sector.

1 http://www.ijc.md/index.php?option=com_content&task=view&id=533

Other contraventions of the new Contravention Code which limits the right to freedom of expression are “showing electoral information in unauthorized places” (article 50) “Electioneering on the day preceding Election Day, or on election day” (article 52) “disclosure of confidential information about a medical examination to detect contamination with human immunodeficiency virus (HIV) that causes AIDS” (article 75), “getting or disclosing of information that is trade or tax secret”(article 107) and “infringement of legislation on Advertising “(article 364).

Another amendment in the broadcasting law was adopted by the People’s Assembly of Gagauzia, on 4th of December 2009. Under the amendment, the financial plan of the public Company “Teleradio-Gagauzia” must initially be coordinated with the Executive Committee, after the People’s Assembly will approve the budget of the Company. Risk of this amendment, in a manner in which a state authority will additionally review the financial plan of the Company is that funding of public service broadcasting will decrease much below the rigor imposed by Recommendation R (96) 10 of the Council of Europe concerning sufficient funding and exclusion of the use of power of decision of the authorities to exercise directly or indirectly the influence on editorial independence and institutional autonomy.

The new *Contravention Code*, which entered in force in 2009, keep the “injury” and “calumny” as misdemeanours, but excludes in case of “injury” the punishment as administrative arrest for up to 15 days and replaces with an alternative sentence of work for community service. In the case of “calumny” alternative sentence of work for community service is introduced and reduced the sentence from a form of administrative detention to 15 days service. Also in 2009, the Criminal Code was amended. Among other amendments, was excluded art.304 “insulting the judge, the body conducting the criminal investigation or contributes to justice realization.” The art.177 of the Criminal Code “breach of the inviolability of private life” was amended within the meaning to tighten the punishment for gathering and spreading information about personal life in the media in a public speech or deliberate abuse of an official position. Personal data protection came into sight of Moldovan authorities only recently, although this right is as important as the right to information. The authorities report² for the protection of personal data, National Centre for Personal Data Protection, reveals serious deficiencies in other state authorities in the protection of personal data. In this sense, a draft law on personal data protection which meets many problems identified by the authority was elaborated upon.

In 2010, the *Electoral Code* has undergone several amendments, including the activity of reflection of the electoral campaign in media. A number of amendments were made to the proposal of civil society. Thus, the provisions on election agitation and the activity covering the electoral campaign by the media have been separated from art.47; introduced a new article, art.64 first, which enshrines the principles of media activities in election campaign; in art.64 guarantees were included both, for electoral candidates and their access to the media and for editorial independence and

2 <http://datepersonale.md/file/raport2010.pdf>

transparency of the broadcasters' activity; in art. 64 were separated tasks of BCC and those of CEC. However, some provisions of the Election Code do not correlate with the provisions of the Broadcasting Code. Regulations aimed media in electoral campaign of the two laws must be amended together, to exclude legislative inconsistencies.

For example, article 7 paragraph (3) of the Broadcasting Code requires broadcasters to submit at the beginning of the electoral campaign at the Broadcasting Coordinating Council concepts reflecting the electoral campaign, while the electoral Code in art.64 (first) requires broadcasters to submit to the Broadcasting Coordinating Council a statement on editorial policy for the electoral campaign that must include owner's name.

In art. 47 paragraph (1) let. c) of the Broadcasting Code provides that the Broadcasting Coordinating Council adopts the Concept of reflecting the electoral campaign for parliamentary elections, local elections and republican referendum, while the Election Code provides that the CEC is an institution which adopts the Regulation on reflecting the electoral campaign in mass media. Election Code does not oblige the CEC to adopt the regulation under the concept developed by the Broadcasting Coordinating Council.

Adoption of the Law on freedom of expression and the Law on Public dissemination of public periodicals are the evidence of an early partnership between the Parliament and civil society. The respective legislative initiatives belong to a number of NGOs specialized in media and were promoted over several years, but the final result - adoption - was possible only through political will of governing.

Law on freedom of expression No.64 was adopted by Parliament of the Republic of Moldova in 2010. The authors of the law on freedom of expression have pursued the rendering in the domestic legal framework of the European standards on freedom of expression and privacy. The law contains substantive and procedural rules, ensuring to beneficiaries the right to free expression, the necessary conditions for full and unfettered exercise of these rights.

Law on public deetatisation of public periodicals is an important step as to increase the editorial independence and media freedom. The law provides ways in which periodical publications funded by public authorities may be privatized in order to ensure fair competition in the periodical publications, to strengthen the editorial independence and the creation of periodical publications, as well as ensure freedom of expression of media and correctly information of the citizen.

The adoption of these laws is an important step for the Republic of Moldova in terms of EU-conformity of legislation, only their proper implementation can bring results. We believe that this thing is possible only after reforming the judiciary system and the training of the judiciary body.

In addition, the adoption of above mentioned laws have clearly influenced the ascending of the Republic of Moldova in rankings that measure the press freedom worldwide. However, some amendments to the legislation mentioned in this report were based not on the desires of connecting the domestic legislation to the European one,

but rather as moment solutions to some situations of conflict, or to respond to interests.

6.2. The behaviour of public administration

Freedom of expression as a fundamental value of a democratic society was suppressed in 2009, to a greater extent. Persecutions in April 2009 against a large number of ordinary citizens have generated a considerable decline in the segment of human rights in Moldova. Instead, beginning with 2009 is observed a significant improvement in the situation of civil liberties. In 2010, Moldova was ranked on the 75 place in the ranking of press freedom conducted by *Reporters Without Borders*,³ accumulating the best score in the last 10 years, except 2005, when the Republic of Moldova was ranked on the 74⁴ place in the same ranking.

On 6th of April, 2009 what the international press called “Twitter Revolution” took place - protests involving thousands of young people and which degenerated into violence on 7th of April. Young people came out to the Great National Assembly Square to express their discontent and protest against election results on 5th of April 2009. Following these protests headquarters of the Presidency and Parliament were destroyed, after hundreds of people were persecuted for exercising their right to free expression.

In late of April, Human Rights Commissioner of the Council of Europe, Thomas Hammerberg, made public a report⁵ on the protest of 6-7th of April where he noted his findings and recommendations to the authorities of the Republic of Moldova. Among other things, Hammerberg found that most people arrested during the protests have undergone maltreatment. „Large-scale arrests that followed the post-election demonstrations in April 2009, were characterized by failure of respect of certain fundamental rights of arrested persons [...].Most people interviewed by the Commissioner said that they have been stopped (and abused) on the street by plainclothes police officers who would not be legitimately on duty, and then carried away in cars without inscriptions on them (Unmarked); many people said they were unsure if they were detained by law enforcement or were kidnapped.”, was the finding in the report of the European Commissioner for Human Rights.

The attitude of authorities towards the post-election protests in April 2009 and their participants were able to produce a “Chilling Effect”⁶ which seriously discourages the exercise of any right, especially the right to freedom of expression.

Not only ordinary citizens have been subjected to abuse of the public authorities during the events of April, but the press has suffered from their actions. A report on the situation of the press in 2009, published by the Centre for Independent Journalism,⁷ reveals a number of over 60 national and international jour-

3 <http://en.rsf.org/press-freedom-index-2010.1034.html>

4 http://en.rsf.org/spip.php?page=classement&id_rubrique=549

5 Report following the visit in the Republic of Moldova from 25 - 28 April 2009, Thomas Hammerberg, Commissioner for Human Rights Council of Europe, Strasbourg, 17th of July 2009, CommDH(2009)27, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1469277&Site=CM>

6 Term used in law, but in practice of the European Court of Human Rights, which describes situations where the expression or behavior are suppressed as a result of fear of being punished. It creates self-censorship and therefore restricts the freedom of expression.

7 http://ijc.md/Publicatii/mlu/raport_FOP_2009.pdf

nalists whose rights were violated during the 6th to 10th of April 2009. Most foreign journalists who came to Moldova to reflect the elections and protests of April 2009 either were ordered to leave the country or were expelled. Several journalists in the country were subjected to pressure by authorities to be prevented from reporting about protests or law enforcement raids in homes of citizens, in schools, universities and other public spaces. Some journalists were assaulted and beaten. For example, Oleg Brega working for "Jurnal TV" has been beaten and stripped of the photography equipment, in downtown, the night of 8th of April. An employee of the newspaper *Jurnal de Chişinău* was "kidnapped" from the street by people in civilian clothes and taken to police station for questioning. Also in this period was blocked the access to some information and social sites; "sites" "Unimedia" "Jurnal de Chişinău", "Jurnal TV", "PRO TV", as they could not be accessed on 10th of April".⁸

On 7th of May, 2009, the European Parliament condemned by a resolution,⁹ the harassment campaign launched after the events of April by the authorities against journalists, representatives of civil society and opposition parties. MEPs were referred to the pressures exerted by the Ministry of Internal Affairs and Ministry of Justice over non-governmental organizations, political parties and media.

With the coming of a new government in July 2009 actions to investigate the authorities' actions during the protests in April have been undertaken to punish officials who abused power. Also, they have been subject to the control of legality of actions of judges who have tried and handed down sentences against protesters in police offices. These studies and their results have sparked controversial debates in society, and people who were victims of abuse of power were dissatisfied with the outcome of investigations. Rodica Mahu, journalist kidnapped in the street and interrogated by police on 10th of April, filed a criminal complaint against the officers who arrested her, but during the investigation, the criminal case was retrained in contravention. Since the case examination was delayed by several months, the actions of those two officers were recognized by the court as offenders, were prescribed and they could not be sanctioned. In 2010, the court acquitted the policemen accused by prosecutors of robbery and abuse of power in connection with the assault of Oleg Brega and his deprivation of two cameras on the night of 8th of April.

These cases of impunity among the officials whose abuse of power are not unique; the number of cases related to the events of April is extremely high. According to Amnesty International report on human rights in RM in 2009 and 2010,¹⁰ „perpetrators of torture or ill-treatment continued to enjoy impunity because of the imperfect and inefficient system of investigation and lack of political will to hold these responsible to account”. „Culture of impunity among police officers still persist, being encouraged by the low rate of prosecution for torture and ill-treatment, failure to achieve prompt, detailed and impartial investigation, and lack of adequate sanctions”, found the report of Amnesty International.

The community activism clashed with this intolerant attitude from authori-

8 http://ijc.md/Publicatii/mlu/raport_FOP_2009.pdf

9 <http://www.europarl.europa.eu/sides/getDoc.do?language=ro&type=IM-PRESS&reference=20090506IPR55246>

10 <http://www.amnesty.org/en/region/moldova/report-2009>, <http://www.amnesty.org/en/region/moldova/report-2010>

ties' side in 2009, against this form of exercise of freedom of expression. A notorious example is the case of Anatol Mătășaru who in 2008 and 2009 was the protagonist of several actions of protests. Mătășaru is known by original method to protest against corruption within law enforcement bodies, as well as against penal actions brought against his name.

In December 2008, exercising the right to freedom of expression, Mătășaru tried to protest in the Great National Assembly Square, on the National Police Day, bringing a donkey dressed in police uniform and a pig – as a prosecutor. But before the action starts, he was arrested and later fined 200 lei (about 12 EUR). In January 2009, on Prosecutor's Day, Anatol Mătășaru was arrested in front of the Prosecutor's Office. The protester was wearing a pig suit, a megaphone which reproduced the pigs squealing and a placard with inscription: «Today is my professional day». During the protest, Mătășaru was detained on the grounds of not informing accordingly the mayor about the organization of the protest, insulting police and prosecutors. Mătășaru declared he was hit during arrest.

Another case of attack from the representatives of law enforcement bodies took place in July 2010, when Victor Ciobanu, a journalist for "Jurnal TV," was prevented by the use of violence to film a subject of media coverage. The journalist was around the Court of Appeal Chisinau filming, when an employee of the Centre for Combating Economic Crimes and Corruption attacked and destroyed the camera, thereby getting away with the memory card where printed images were stored during the aggression. Later at the police station, the memory card was returned, but with those images deleted. In one case of contravention file, the abuser was investigated under the art. 78 paragraph 1 Code of Offenses and was found guilty of physical assault causing bodily harm without causing the loss of health, being fined 100 lei (about 6 EUR).¹¹

It cannot be overlooked in this chapter the activity of the public broadcasting in the Republic of Moldova. In particular, because both the TRM and the broadcasting regulatory authority, BCC went through a process of reform that produced direct consequences on the rights of media institutions, journalists and media consumers.

It should be noted that by mid 2009 - early 2010, both TRM and Broadcasting Coordinating Council were accused of political partisanship, a violation of legal rules on broadcasting, etc. media consumer manipulation. (See reports of monitoring the activity of the two institutions, published by the Centre for Independent Journalism (CIJ) and APEL). They have been criticized including by European institutions.¹²

An important reference document in relation to the TRM activity by 2010 is the ECHR decision in case *"Manole and others versus the Republic of Moldova"*. ECHR found the existence of censorship on public broadcaster after coming to power of the then governing Party of Communists in 2001. The Court found that during 2001-2006 there was a positive trend reflected in the activities of the President and Government during newscasts and other broadcasts, without providing access to representatives of opposition parties to express their views. Moreover, the Court

¹¹ http://www.ijc.md/Publicatii/mlu/Raport_FOP_ro.pdf

¹² <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0384&language=RO&ring=P6-RC-2009-0262>, Final Report 6-29 July 2009, Mission „Broadcast Media Monitoring”, project financed by the Council of Europe.

noted that there is evidence of a policy of censorship of the discussions or mentioning of certain subjects because they were considered politically sensitive or showed a bad image of the Government. Thus, the Court considered that the plaintiffs, as journalists, editors and producers at TVM, have been affected by as a result of these policies. The Court found that there was a continuing interference in applicants' rights to freedom of expression.

Since 2010, the editorial policy of the TRM has changed on the background of a new management and a renewed composition of the Observatory Council. The changes were reported by the same organizations that traditionally monitor its activity (see monitoring reports issued by the CIJ in 2010 and APEL).

In all these series of reforms which intensified in 2010, BCC was forced to reassess the activity, vulnerability to political and economic influences, passivity etc. In 2010, for the first time under the Broadcasting Code in 2006, Parliament rejected the BCC's annual report for 2009, which amounted to an official recognition of inactivity and inefficiency of the Broadcasting Coordinating Council. For the first time since the establishment of the BCC in 2006, it monitored broadcasters' activity with national coverage in the electoral campaign for parliamentary elections, activity which ended with sanctions against broadcasters who violated electoral and audiovisual rules.

Although, the two main institutions in broadcasting in the Republic of Moldova made essential changes in 2010, many shortcomings still remain with the Chapters of independence and impartiality. The domestic policy of each institution is largely responsible for the way the journalists' right (employees) to freedom of expression is respected, so therefore the right of access to objective, accurate and pluralistic information of media consumers.

6.3. Legal practice

April 2009 events had implications for the judiciary power in the Republic of Moldova, in the sense that it just depended, ultimately, upon safeguarding citizens' rights. It is eloquent in this matter, the comparison of results of Public Opinion Barometer¹³ of March and November 2009 under the theme "Trust in justice." Dynamics of results show a decrease of about 10% in a certain category of respondents who trust in justice and a result of 2.5% of respondents who have trust in justice in November 2009, compared to 3.4% in March 2009. Public trust in the justice declined further in 2010 (chart 1), recording a result of 1.4% of those who have great trust and reaching the 11th place (of 13 institutions) in the top institutions in which citizens have the greater trust (in March 2009, Justice ranks the 8th place in the top of public trust).

a. Lawsuits against media institutions

According to the Report on the media situation in Moldova in 2009,¹⁴ the courts have been pending more than ten cases on protection of honor, dignity and profes-

¹³ <http://ipp.md/libview.php?l=ro&idc=156&id=454>, <http://ipp.md/libview.php?l=ro&idc=156&id=450>

¹⁴ http://ijc.md/Publicatii/mlu/raport_FOP_2009.pdf

sional reputation started against media institutions. Most cases were examined at Buiucani Court - six cases (three against the newspaper "Flux" and one against newspapers „Timpul de dimineață”, „Economiceskoe Obozrenie” and „Moldavskie Vedomosti”). „Moldova Suverană” was standing as the defendant in 2009 on at least seven cases on protection of honor, dignity and professional reputation, initiated by politicians, businessmen, judges, etc. According to the same source,¹⁵ in 2010, pending in the domestic courts were 22 cases on honour, dignity and professional reputation, filed against media institutions. Most cases were examined by the Central Court - 17 causes.

b. Abuses against journalists

In 2010 there were several cases of restriction of journalists' rights, although in comparison with 2009, they were less numerous and less serious. On 17th of June, the judge Sergiu Lazar who examines a case of great public resonance - the case of former Commissioner of Chisinau Iacob Gumenita. Assaulted journalists who asked for access in the courtroom for the hearing against them, without being notified that the hearing had closed. „Covering his face with a court case document, a judge, in robe, stood at the beginning of the process, closed the door, hitting the hand of a journalist holding a camera. The prosecutor investigating the Gumenita's file helped the judge.”¹⁶ Subsequently, in September 2010, Ziarul de Gardă¹⁷ also reported that Judge Lazăr was impatient with journalists who came to the hearing who had come to examine Gumenita's file. The journalist had difficulties in reporting events in connection with another case of great public resonance, the former Minister of Interior, Gheorghe Papuc, and former general police commissioner, Vladimir Botnari,¹⁸ whose name figured in a criminal case related to the events of April 2009.

During the reporting period, a low number of cases in which media institutions and journalists were sued for realized journalistic material were recorded.

VARDANYAN CASE

The most serious case of limiting press freedom and the right to free expression in the reporting period is the case of Ernest Vardanyan, journalist, politician, reporter to the newspaper "Puls" from Chisinau and occasional correspondent of the service in Romanian language of the radio station "Free Europe ", who was arrested, "tried" and "condemned" by the "separatist administration of the Transnistrian region of the RM. On 7th of April 2010, "special services" arrested Ernest Vardanyan, being accused of "state" treason and espionage for RM. Regional "courts" repeatedly extended Vardanyan's arrest for 7 months and finally on 16th of December 2010, to prosecute him in a secret meeting to 15 years of imprisonment with execution of the punishment in a prison with severely regime, for 'country treason'. During his detention, according to relatives and his lawyers, Vardanyan was under pressure and forced to self-denunciation. Vardanyan family lawyers have complained to the ECtHR for violation of the right to liberty and security and the right to freedom of expression.

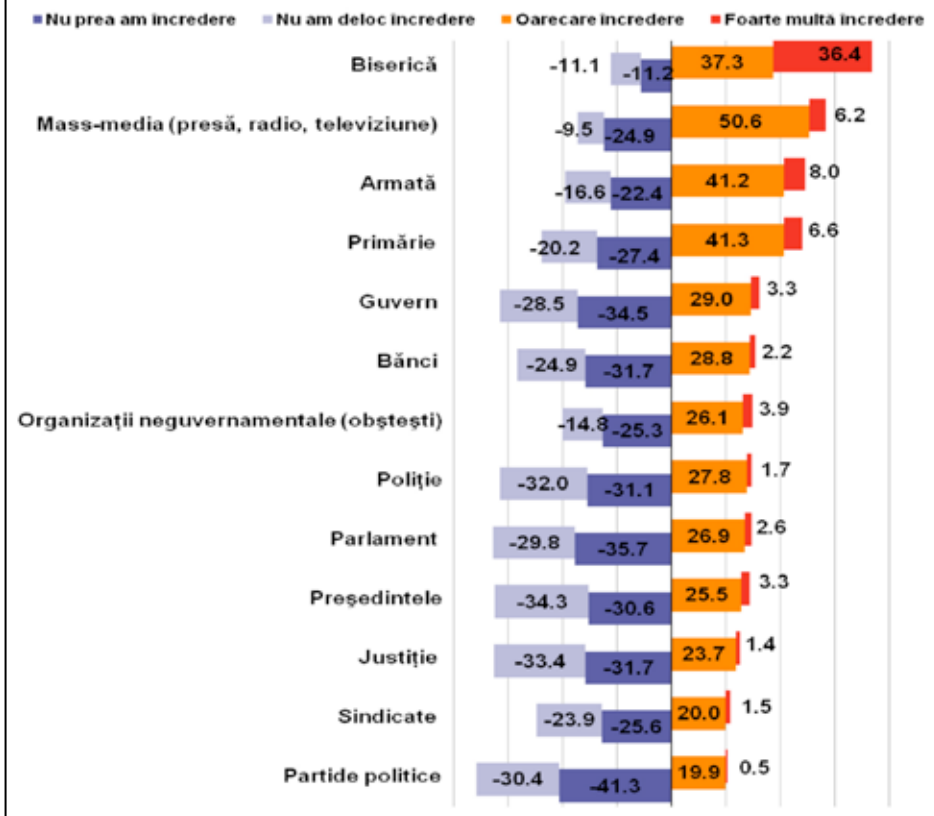
¹⁵ http://www.iic.md/Publicatii/mlu/Raport_FOP_ro.pdf

¹⁶ <http://www.protv.md/stiri/social/jurnalistii-bruscati-de-judecatorul-lui-iacob-gumenita.html>

¹⁷ <http://www.zdg.md/investigatii/fizionomia-ascunsa-a-judecatorului>

¹⁸ Idem.

Figure 1. Public Opinion Barometer, November 2010. Answers to the question: How much do you trust in...?



The Law on freedom of expression, which came into force in October 2010, played an important role in reducing the number of cases on protection of honor, dignity and professional reputation. Also, during this period decreased the number of abuses against journalists, although initially in 2009, there were recorded more and more serious cases of limiting the rights of journalists.

6.4. Media Fact sheet. Transnistrian region

Tiraspol administration controls with rigidity the media space in the Transnistrian region. Only 10-15% of the broadcast media in the region are non-governmental.¹⁹ Alternative views are censored, and people are cautious in expressing alternative views and engage in debate on issues affecting the Transnistrian region of Moldova.²⁰

“State” press: 1 television station (“Pervyi Respublikanskii” / (The First Republican)); 1 radio station (“Radio PMR”); 3 periodicals (*Adevărul Nistrean*/ (the

¹⁹ <http://www.osce.org/ru/fom/14400>, p. 3

²⁰ 2010 US Government Report on Moldova, <http://moldova.usembassy.gov/pdfs/moldova-hr-report.pdf>, pag. 24

Dniester Truth) is the only newspaper published in the “Moldovan” language with Cyrillic script, although is one of the 3 “official” languages; *Pridnestrovie* - in Russian and *Gomin* - in Ukrainian language). Symptomatic, media in region propagates a mainly negative image of Moldova compared to positive image promoted to the Russian Federation by the regime in Tiraspol.²¹

Opposition press: *Dobryi Den* (*Good afternoon*) of Ribnita and *Chelovek i ego prava* (*Man and his rights*), radio stations “Novaya Volna/(The New Wave)”, “Radio Jelannoe”/ (Love Radio) and the television station “Dnestr TV.” Opposition newspaper *Novaya Gazeta/ The New Newspaper* is not published since December 2010, but appears in online version.²² *Profsoiuznye Vesti/Union News* is a publication unaffiliated to power, but less reflects the activity of opposition and rarely publishes materials of political nature.²³

Region administration controls all printing houses in the region, being recorded threatening in with the closure of activity in address to publications unaffiliated to power.²⁴

„Televidenie Svobodnogo Vyбора, TSV”/(Television Free Election) is the only commercial TV station in the region, belonging to local company “Sheriff” - monopoly on the region’s telecommunications market (fixed and mobile telephony, Internet access, cable television).²⁵

Media on the right bank of the Dniester does not have access in region, being controlled, including the levying of exaggerated customs duties of 100%.²⁶ Some TV stations in Chisinau can be perceived on the air in some neighbouring localities on the right bank.

Conclusion and recommendations

Freedom of expression in Moldova enjoys sufficient legal guarantees; becoming more comforting in 2010, after adoption of the Law on freedom of expression. Defamation is not a criminal offense and does not fall under the Criminal Code, but may result in contravention sanctions, including imprisonment for up to 15 days for calumny. However, in judicial practice, contravention defamation is in a small manner, an object of litigation. Despite a favourable legal framework for freedom of expression, in many situations restriction of this freedom went beyond the legitimate aim and the authorities have failed in its assessment of a “pressing social need” which called for application of the limitation on the exercise of freedom of expression. In the year 2009 it was proved unable to enforce state rights and fundamental freedoms, intolerance to criticism and dissenting opinions, as well as democratic immaturity of officials. Repression of free expression at which citizens and journalists were subjected has downgraded the Republic of Moldova in its aspirations for European integration. Instead, 2010 was significant by a declared opening of Chisinau authorities to demo-

21 http://www.ijc.md/Publicatii/mlu/Raport_FOP_ro.pdf , p. 22.

22 <http://novaia gazet a.org.ru>

23 <http://www.osce.org/ru/fom/14400> , p. 6.

24 2010 US Government Report on Moldova , <http://moldova.usembassy.gov/pdfs/moldova-hr-report.pdf> , p.25.

25 <http://www.osce.org/ru/fom/14400> , p. 5.

26 2010 US Government Report on Moldova , <http://moldova.usembassy.gov/pdfs/moldova-hr-report.pdf> . p.25.

cratic value and principles. New political forces have rushed to adopt laws waiting for years in the antechamber of Parliament (eg. the Law on freedom of expression), tried to unlock the activity of the public broadcaster institution, through a broadcasting regulatory authority. TRM has essentially improved the product provided to the media consumer, but arrears are still visible “to the naked eye”. The BCC also has made progress, but the vulnerability of this institution to political and economic interest and interference is one of the most serious problems of public broadcasting.

These conclusions are not valid for the space controlled by the Tiraspol regime. In the left bank of the Dniester, the situation remains worrying. Citizens do not have the freedom to express their opinions about social, political and economic problems; media consumers have no access to objective, accurate and pluralistic information, so that they can show criticism towards the activity of civil servants or to request an account of how public money is spent; journalists and media institutions were subject to censorship and prevented from reflecting events in accordance to professional standards. In relation to these issues, constitutional authorities were unable to ensure protection and respect of these fundamental rights of citizens of the Transnistrian region.

Recommendations are evident by the content of this chapter; largely addressed to public authorities, which are key factors in adopting and implementing these changes. First, it is necessary to continue the legislative reform in broadcasting. The Broadcasting Code, which is still quite recent, needs amendments and additions in the following respects: (i) the legal ownership of the Moldovan audiovisual market; (ii) limiting ownership monopoly in media services; (iii) connection with the broadcasting legislation provisions to provisions concerning the activity of media during the electoral campaign. In the same vein, the press in the Republic of Moldova should be reformed not only by adoption of legislation instruments, but also by ensuring their proper implementation. Therefore, training the judiciary body in the implementation of the Law on freedom of expression and monitoring the implementation of its provisions in the settlement of cases by courts is an urgent measure. Also, public authorities must comply with terms and conditions of the Law on dissemination of public periodicals for their privatization.

With regard to active state duty to ensure protection of fundamental rights, in particular the right to freedom of expression is a necessary accountability of public officials who have limited the citizens or journalists to free expression and their access to information, investigation of impunity cases amongst civil servants who were acquitted in cases of excess of power in connection with events of April 2009, sanctioning officials and law enforcement bodies who show intolerance towards any form of peaceful protest and to prevent their unlawful conduct.

Although the Transnistrian region is not a territory by the fact controlled by authorities of Chisinau, the state is required to support various projects that would encourage the diversification of sources of information for residents of the Transnistrian region, in order to ensure pluralism of ideas and opinions. In this regard, internationally definite efforts in view of respecting the right to information for this group of people are needed.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION*Alexandru POSTICA*

In the Republic of Moldova, the freedom of conscience is guaranteed. It must be manifested in a spirit of tolerance and mutual respect. Religious cults are free and are organized in accordance to own statutes, under the law. In the Republic of Moldova there is no state religion. Religious cults are autonomous, separated from State and enjoy its support, including the facilitation of religious assistance in the army, hospitals, prisons, asylums and orphanages.

According to the National Bureau of Statistics (NBS) in 2010 as in 2009, about 93,3% of respondents declared themselves Orthodox, and 1,4% - atheists. Others, almost 1 % consider themselves Baptists, 0,4% - Seventh-day Adventist, and 0,3% - Pentecostals. Old Rite Christians and Evangelicals have registered a balance of 0,15%. According to data of NBS, 1,1% of the population practice other religions on the territory of the Republic of Moldova, others than that mentioned above.

Metropolis of Chisinau and All Moldova – canonical subordinated to the Russian Patriarchate - has 1,281 component parts - churches, monasteries, seminars, institutions, according to the Ministry of Justice. Metropolitan Church of Bessarabia and Exarchate of the Realms - canonical subordinated to Romanian Patriarchate - has 312 component parts. Russian Old Rite Church has 16 component parts. Jehovah's Witnesses Cult is formed of 239 component parts, including 31 in the Transnistrian region. According to the Alliance of Baptist, the Baptist Union has 315 churches.

Cults and their components are registered by the Ministry of Justice, the only state institution in the Republic of Moldova that has such powers.

Although, during the years 2009-2010 some representatives of cults and religious trends have complained of a discriminatory attitude, the overall situation regarding the right of conscience had a positive dynamic compared to previous years in terms of how religious cults were treated by the state institutions.

Thus, it must be noted that the central body has done a better job, especially in 2010, regarding the entering of component parts of some religious cults. This fact was noted by the Committee of Ministers of the Council of Europe which issued a resolution in March 2010 on the cessation of monitoring the process of execution of European Court of Human Rights (ECtHR) judgments on the Metropolitan Church of Bessarabia and the True Orthodox Church, in cases referred to the refusal of the authorities to register the cult and recognition as a legal entity.

However, during the period covered by the report, cases of discrimination of some representatives of certain religious trends were registered. Similarly, authorities have not tried nor found solutions for regulation of historical problems such as the restitution of properties to some religious cults nor for properties confiscated during the Soviet occupation.

At the end of 2009 were registered cases of xenophobia and religious hatred, but

they were of low intensity, and authorities have found quick solutions to solve them.

A particular problem was the situation of believers and religious cults in the Eastern region (Transnistrian) of the Republic of Moldova, under the control of secessionist forces. In this region were registered during the years 2009-2010, several cases limiting the rights to religion.

The second half of 2010 was marked by spread actions of a religious cult on the introduction of religion as a compulsory subject in secondary education institutions. This initiative, however, caused many disputes among other religious cults and civil society as a whole.

The report consists of three subchapters that represent a brief overview of the most important aspects of the right to religion in the Republic of Moldova. The first subchapter shows the way the local public and central authorities have charged cults and religious trends during the years 2009-2010. The second subchapter contains information on cult's issues. In the third subchapter are described the most important cases of limiting the right of conscience in 2009-2010.

7.1. Recognition of freedom of conscience

More barriers in recognizing the legal status of religious entities have disappeared with the adoption of a new Law on religious cults and their component parts No.125 from 11.05.2007, as well as due to the simplification of legal procedures for registration of cults. However, authorities could not cope with successful achievement of the objectives of that act.

Regarding the record and state registration of cults and their components it should be noted that after the entry into force on 17.08.2007 of the Law mentioned above, some cults have not made changes in the acts of registration. Therefore, according to the State Register of non-profit organizations, there is no exhaustive list of those entities identified as *religious cult* and names of component parts as *religious communities*. The State Register of non-profit organizations from 31.12.2010 contained about 30 religious cults, three of which being registered in 2009 (Armenian Apostolic Christian Cult of the Republic of Moldova, the Orthodox Eparchy of Eastern of Moldova of Kiev Patriarchate and All Russia - Ukraine; Pentecostal Religious Cult of Believers Evangelical Faith "Kingdom of God") and two religions cults – in 2010 (Old Style Orthodox Religious Cult of the Republic of Moldova; Religious Cult Orthodox Autocephalous Moldovan Church).

The respective register is public and can be accessed on the official website of the Ministry of Justice,¹ but because some religious groups have not updated documents, the register does not contain a complete picture of the situation in the country.

Returning to the issue of registrations, we find that the longest monitoring of carrying out a decision issued by the European Court of Human Rights against the Republic of Moldova is referred exactly to exercising the right to conscience. It is about the monitoring of carrying out the Decisions issued on the case of the Metropolitan

1 www.justice.gov.md

Church of Bessarabia from 2001 on the continuing refusal to recognize this cult. By 2009 have been issued six resolutions and recommendations on the topic of respecting the right to religion, having as reference the state registration of cults. The delegation of the Committee of Ministers of the Council of Europe submitted a Memorandum to the Moldovan authorities - CM / Inf/DH (2008) 47, published on 9th of January, 2009.² This Memorandum provides a number of general measures proposed to authorities as to implement the European standards in exercising the right to conscience. In particular, recommendations are related to the operation of the new body of registration and effective remedies against the refusal of registration. A systemic problem that has seized the Committee of Ministers is the ambiguous procedure of calculating the registration within 15 days. Calculating the period is at the discretion of the Ministry of Justice, which also examines the submitted founding documents.

Objections regarding the quality or totality of the documents of founding allowed to the state body to delay the registration of certain religious cults.

Another obstacle in exercising the right to conscience was the provisions of the art.200, paragraph 3 of the Code on Administrative Offences. According to this rule - in force until 31.05.2009 – were settled fines in the form of penalty from 200 to 400 lei for exercising, on behalf of a registered or unregistered cult, of some ritual practices that contravene the law. Thus, it was not clear which rituals contravene the law and which are the criteria of their establishing.

An eloquent example of this failure is the findings from the case Masaev against Moldova. This decision of the ECtHR was made public on 12th of May 2009 and established the violation of the right of conscience guaranteed by Article 9 of the ECtHR. The petition was submitted by a Muslim, who for over four years failed to register the Islam religious cult. He was fined under the article 200, paragraph 3 of the Code of Administrative Offences with a fine in amount of 360 lei for celebration of Islamic religious rituals without having registered an Islam cult. Therefore, the ECtHR found the violation of the right of conscience regarding Masaev.

During the reporting period were issued five decisions, which the Ministry of Justice dismissed the applications for registration of the component parts of the religious cults, three decisions were issued in 2009 and two decisions in 2010. The Institution's refusal decisions were based mainly on differences noticed in the statutes that representatives of the cults wished to register. It is about the Central General Assembly of Muslims of the Republic of Moldova; a series of Protestant congregations and Spiritual Organization of Muslims in Moldova. The Last mentioned claimed a series of bureaucratic obstacles in terms of their registration.

However on 23rd of March 2010, the Committee of Ministers published the final resolution to terminate the process of monitoring the implementation of ECtHR decisions on the causes of the Metropolitan Church of Bessarabia and the True Orthodox Church on the violation of Article 9 of the Convention. The Committee of Ministers appeared satisfied, in fact, by applying on country the procedures of registration of cults and their component parts.

2 <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1378849&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

A particularly difficult situation in the reported period was registered in the Transnistrian region of the Republic of Moldova, where the illegal administration established obstacles in cults' activities and their component parts. According to provisions of the regional "law", in March 2009, all religious bodies were to be re-recorded until 31.12.2009. Otherwise, they risked being liquidated. In case of liquidation, the followers of these cults are not entitled to exercise their rituals and practices or risk punishment in the form of fines and imprisonment. To re-record, the separatist administration requires representatives of the cults to conduct a set of acts, including some difficult to be obtained, such as evidence of cult practice in the last 10 years at the place of residence. The Transnistrian administration openly supports a single religious entity, namely the local entity of the Orthodox Patriarchate of Moscow, while a number of other religious entities face discriminatory attitudes from the Transnistrian administration which refuses to issue such certificates. Representatives of the religious cult of Jehovah's Witnesses say that from 30 components, have been registered only two.

7.2. Exercising the rights of cults and their component parts

According to the Republic of Moldova Constitution, all religious cults are autonomous and in the country there is no state religion. All religions must be equal in rights. Although, officially there is no religious state cult, many organizations have found that central authorities preferential is to deal with one religious community. Moreover, this attitude can be felt in a legal norm.

According to Article 3/1 par.2 letter z) of the Law on identity documents of the national passport system, the Metropolitan church of Chisinau and All Moldova has a diplomatic passport. Thus, the religious leader has equal rights with certain dignitaries such as the President of the Republic of Moldova, Prime Minister, deputies in Parliaments, etc. Metropolitan regularly participates in major events, along with the central public authorities. In addition, the Metropolis of Chisinau and All Moldova has cars with special license plates. In this case it would be rather about favours granted to a religious cult and not about the appreciation of a distinct religion. Other Orthodox cults of the country do not equally benefit from special treatment from the authorities.

The exercise of civil rights also should be made equally by all religious cults. However, through central public administration actions have been raised disputes between the two Orthodox cults in the country. They have 90% of Orthodox Christian sanctuaries in the Republic of Moldova. The problem of using cult places came with the adoption of the Government Decision No.740 from 11.06.2002 on cult buildings, which established the way the churches and hermitages are to be managed. A special interest presents approximately 700 places of worship included in the state register of historic heritage. This heritage was to be sent to parishes according to a well-established procedure. Contrary to this procedure, the Ministry of Culture and Tourism transferred in early 2003 under a collaboration agreement, all Orthodox religious buildings of worship, to a single worship namely the Metropolis of Chisinau and All Moldova, although some of them belonged to another Orthodox worship – the Metropolitan Church of Bessarabia. This caused a series of disputes between the two religions, which were conducted during 2009-2010,

disputes which continue to the present. In 2009-2010, the Metropolitan Church of Bessarabia has taken steps to clarify procedures for transmission of places of worship to parishes, but all actions were in vain and government has repeatedly refused to clarify the situation regarding the transmission of places of worship to parishes.

Another serious problem raised by several religious cults is the restitution of religious property held by re-occupying of the present territory of the Republic of Moldova in 1944 by Soviet troops. Evangelical Lutheran Church of Moldova, Roman - Catholic Episcopacy of Chisinau, Metropolitan Church of Bessarabia submitted several requests to the central public authorities in view of property restitution, but the requests have been neglected. The government has continually refused to return the archives of the Metropolitan Church of Bessarabia, which creates difficulties in claiming the process of seized assets from this religious entity.

Roman - Catholic Episcopacy of Chisinau initiated legal proceedings for restitution of property, procedures that continue to date.

Some religious communities, mainly Protestant, have complained of bureaucratic procedures for obtaining living permits in the Republic of Moldova for foreigners performing religious or missionary activities. They have the right to be in the country for a period up to 90 days if they have a tourist visa or are citizens of states to which Moldova does not require a visa.

Obtaining residence permits by the missionaries was difficult or even impossible because of conditions difficult to fulfil, such as submission of employment contracts. Thus, employment of foreigners in religious activities, as well as exercise of some activities and religious rituals by foreigners without the consent of public authorities, drew a fine of up to 200 lei with their expulsion from the country. This provision was valid up to 31.05.2009 under the Code on Administrative Offences. So, there was the danger to be held responsible for propagating religion of the representatives of the religions that were not approved by authorities.

On May 31, 2009 the new Code of Offences entered into force. Article 54 provides the possibility to apply a series of penalties for breaching Law provisions on religious cults and their components. However, there is still a rule which establishes penalties for development of religious activity by foreigners in public places without prior notifying of the city hall.

On 4th of June 2009, Central Election Commission (CEC) has registered an initiative group to conduct a national referendum on the introduction of Orthodox religion as a compulsory subject in the curriculum. Some experts considered this decision a mistake of the CEC, since the purpose of the initiative group contravenes the provisions of art.18 Universal Declaration of Human Rights and art.18 of the International Covenant on Civil and Political Rights, which guarantees freedom of parents to choose the nature of education, philosophical and religious principles of their children.³ Therefore, a group of 17 people, representing several NGOs have challenged the CEC decision.

3 Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Human Rights Council Sixteenth session, Distr.: General din 14 February 2011, p. 65.

On 8th of May 2010, Metropolis of Chisinau and All Moldova organized an assembly attended by thousands of clergies and parishioners of several Orthodox parts in order to introduce “Fundamentals of Orthodoxy” in the curriculum. Subsequently, on 16th of May 2010, the Minister of Education said that it will introduce the Orthodox religion as an optional discipline.

On 15th of June 2010, the Court of Appeal Chisinau annulled the decision of CEC from 06.04.2009 by which was formed the initiative group on the introduction of Orthodox religion as a compulsory discipline in the curriculum. Subsequently, the decision of the Court of Appeal from 06.15.2010 was held by Supreme Court decision from 8th of July, 2010.

Simultaneously the procedures mentioned on 2nd of July 2010, the Government of Moldova adopted the Decision on teaching religion in education institutions. Under this legal document, beginning with the school year 2010-2011, in the school schedule of primary and secondary educational institutions is included the discipline “Religion”, which will be taught optionally based on the request of parents or guardians of pupils.

7.3. Misuses in freedom of conscience

Under the art. 24 of Law on religious cults and their component parts, the Ministry of Justice may apply different sanctions to component parts and religious cults for violation of national legislation. In the case of committing serious misconduct, religious cults may even be excluded from the Register.

At the same time art.54 the Code of Offences provides a range of pecuniary sanctions and limits upon the freedom for infringement of the right of religion. Thus, there are foreseen fines of up to 900 lei and unpaid work up of up to 60 hours for community service for certain violations of the right to religion.

In 2009-2010 there were registered many cases of religious intolerance; the victims were representatives of many religions cults. However it should be noted that the number and impact of these cases was lower compared with 2008.

There were related more cases of assault on the followers of the religious cult Jehovah's Witnesses. On 02.01.2009 in the village Lucaseuca, Orhei district two adherents of the cult were verbally abused by the priest within the Metropolis of Chisinau and All Moldova. A similar incident occurred in Tudora village, Stefan Voda district on 06/02/2009. Two adherents of religious worship have been threatened with physical punishment. In both cases the police hesitated to take action of research and punish the perpetrators.

A similar incident occurred in the village Bardar, Ialoveni district on 03/29/2009 with the involvement of the local Orthodox priest wife, who together with three other villagers threatened two followers of the religious cult Jehovah's Witnesses.⁴

4 USA State Department, 2009 International Religious Freedom Report, www.state.gov/g/drl/rls/irf

On 30th of March 2009, representatives of the Village Hall Mereni, Anenii Noi district, refused to issue the authorization to build a house of prayer for the religious community Jehovah's Witnesses, although earlier this community obtained a final decision on the compulsoriness issuance of such a document.

On 11th of April 2009, the Border Guard Service forbade to two parish priests from Cahul, within the Metropolitan Church of Bessarabia, citizens of Romania, to enter the Republic of Moldova. The Border Guard Service has invoked the provisions of Government Decision No.269 from 08.04.2009 which stipulates introduction of visa regime with Romania. Although the priests had valid residence permits for the Republic of Moldova, they were not allowed the entrance into the country. Thus, the parishioners were deprived of the opportunity to benefit from Easter church services.

On 15th of August 2009, hundreds of parishioners and followers of Metropolis of Chisinau and All Moldova demonstrated against the decision of the City Hall of Chisinau to allow the deployment of a public assembly of religious worship Seventh-day Adventists, who planned to conduct a concert in the Square of Grand National Assembly. To avoid a direct confrontation between the two religions, concert organizers have set a different location for the assembly.

On 13th of December 2009, in the second day of the Hebrew celebration Hanukkah, a group of parishioners led by the priest Anatolie Cibric vandalized a Menorah. Its location was approved by the local public authority in Europe Square, in the centre of Chisinau. During the actions of vandalism, the priest said xenophobic statements against Jews. On 14th of December 2009, the Moldovan Government made a statement condemning xenophobic actions and religiously hateful messages of some representatives of religious worships. Metropolis of Chisinau and All Moldova condemned the incident, but also described as improper the installation of Menorah in places with an important historical Orthodox significance. Later, the priest of the Metropolis of Chisinau and All Moldova was sanctioned with a fine of 600 lei for the breach of art.54 CC. However, a criminal case was initiated by the Prosecutor's Office of sector Buiucani, Chisinau.

In the Transnistrian region, the worst persecution occurred against conscripts-believers, who are forced to join in illegal paramilitary structures. An illegal paramilitary structure (the Transnistrian army) is created by the principles of the former Soviet Army, in which democratic values and human rights are not respected. The most numerous cases were reported by Jehovah's Witnesses religious cult, whose believers were often punished and in wanted list by the alleged power structures in the region.

Conclusions

In 2009-2010, there was observed a slight improvement in the registration procedures of religious cults and their component parts, a fact noted by the C.M. of the Council of Europe. Therefore there was noted a positive dynamic for creating best practices to implement the Law on religious cults and their component parts.

Despite the simplification of registration procedures, the State Register of Non Governmental Organizations is not updated at the Chapter religious cults and component parts and cannot serve as a comprehensive source of information.

There have been cases of manifestation of hatred and xenophobia from a majority cult towards the other cults, which led to a polarization of society. In most cases, no proper sanctions were applied.

The lack of progress in solving the property rights of some religious cults was found. Authorities have not submitted any solution to create a policy package that would solve claims for restitution of property confiscated during the Soviet occupation.

The problem of religious activity in the Transnistrian region of the Republic of Moldova was not solved, outside the constitutional control, where there is no guaranteed right to religion.

Florin GISCA

This chapter reviews the most important developments with regard to the freedom of assembly and the freedom of association in the Republic of Moldova for the years 2009-2010. The description and analysis for each of these rights is structured into separate sections, divided into subsections reflecting each aspect separately.

During the period under study, there was an increase in the exercise of the freedom of assembly. In the first half of 2009, police continued their previous practices, which violated the rights of organizers and participants in assemblies. Police showed incompetence in maintaining and restoring public order and security during some demonstrations of force in April 2009, resulting in the death of a person and the injury of dozens of other people.

In 2010, illegal police interventions in assemblies almost disappeared, while the authorities announced the start of a reform of the Ministry of Internal Affairs (MIA). The Ministry initiated several draft laws providing for the restriction of the freedom of assembly and centralizing the functions of insuring and restoring the public order. For the moment, the advance of these drafts has been suspended.

Local public administrations have in most cases correctly fulfilled their responsibilities to facilitate freedom of assembly. However, the City Hall of Chisinau prevented, through legal proceedings, some assemblies of minority groups. Still exist doubts concerning the ability of representatives of the public administration authorities to handle situations of conflict.

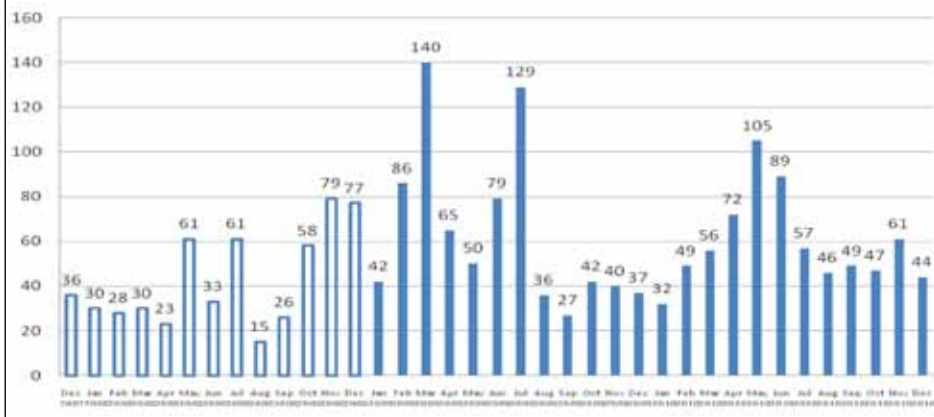
Regarding the freedom of association, bureaucratic barriers to the registration of associations have been removed. As a result, the number of registered associations grew steadily and in 2010 it was 6 times higher than in 2008. In 2010, amendments to the Law on Public Associations which do not affect the legal principle of the operation of associations in the Republic of Moldova entered into force.

8.1. Exercising the freedom of assembly

Between the years 2009 and 2010, we witnessed a growing number of public assemblies, while in 2008 a new law entered into force in line with international human rights standards, which created a more favorable framework for the exercise of the freedom of assembly.

In 2009, in the Republic of Moldova nearly 800 public assemblies took place, more than in 2010 when just over 700 assemblies were registered. In 2008, almost 550 assemblies were registered, of which most (over 400) after the new law¹ on public assemblies entered into force. The highest intensity of public assemblies was registered in the pre-election periods of 2009. A record number of assemblies were

¹ Law on assemblies entered into force on 22.04.2008.

Chart 1. The dynamics of public assemblies during the years 2008-2010

registered in March, before the parliamentary elections on 5th of April, when there were 140 assemblies, especially due to the increased activity of political actors. Periods with less organized public assemblies were usually the months of vacation.

The data presented do not reflect the situation in the Transnistrian region of the Republic of Moldova, where independent monitoring of the situation is not possible. Most of this territory is *de facto* outside the control of the constitutional authorities and the formal framework governing the freedom of assembly is different from the official one of the Republic of Moldova. According to the observations of civil society groups, assemblies taking place in this area are most often events that promote messages in line with the will of the regional administration and it is therefore suspected that they do not represent the unfettered manifestation of the freedom of expression. According to various observations, peaceful assemblies whose messages are directed against the administration are either blocked or dispersed, their organizers and participants sometimes being arrested by the police and security forces.

8.1.1 Actions taken by public authorities to facilitate the exercise of the freedom of assembly

a. Police practices in relation to public assemblies

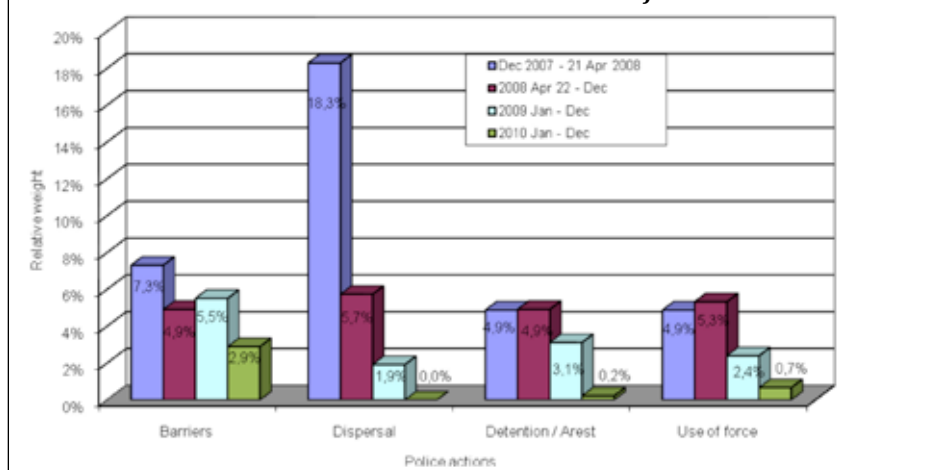
In the first half of 2009, the police did not consistently fulfill their positive obligation to maintain public order and protect the assemblies. Indeed, in many cases, they improperly intervened so as to stop assemblies.

On February 29, 2009, A. M. conducted a peaceful theatrical protest in front of the General Prosecutor's office. 15 minutes after starting his protest, A. M. was arrested by a police patrol who applied force during arrest. The patrol had come to the place of protest especially. Justifying the arrest, police cited the failure of the protester to satisfy conditions of prior notification. A.M. was wearing a pig costume, as an allusion to the police workers' and prosecutor's behavior. Subsequently the court ruled in favor of the remonstrant and the police officers involved were disciplined.

In 3% of all assemblies, police made illegal arrests of participants, and in 2% of the assemblies they applied undue force against peaceful demonstrators. Police thus continued the practices of 2008. However, in 2009, compared with the previous year, these indices were reduced almost by half (see Chart 2).

On February 3rd, 2009, about 40 representatives of various NGOs held a peaceful demonstration calling on the authorities to respect the freedom of assembly. Several plain-clothes policemen were present at the action. At one point, demonstrators were attacked with stun guns by a group of six aggressive people. There were clashes and violence between aggressors and demonstrators. Policemen present on site did not intervene in any manner. A participant at the assembly suffered slight body injuries that required medical assistance. After clashes ceased, the aggressors left unimpeded by police. Despite repeated calls made by protesters, police refused to go to the place of the incident.

Chart 2. Police intervention in the conduct of assemblies



The Ministry of Internal Affairs' subdivisions failed to maintain and restore public order in the protests on 7th of April 2009 in Chisinau, resulting in injuries and devastation. Reports by civil society groups and the Parliamentary Committee set up to evaluate the causes and consequences of the events after the 5th of April, 2009,² show that the 1,000+ policemen present at the demonstrations did not take the necessary measures to counteract and neutralize the violent actions of some 400-600 people. Failure to manage the situation resulted in the partial withdrawal of police, which subsequently made it possible for the buildings of the Presidency and Parliament to be vandalized. The way in which the events of April 2009 developed suggests that the police should develop their skills at controlling crises that can occur at public assemblies.

A change in police behavior in relation to the freedom of assembly began in

² The Report of the Commission of Inquiry to elucidate the causes and consequences of events after April 5th, 2009; Chapter III, http://www.comunicate.md/upload/3944_Raport%20Comisia%20Parlamentara%20Nagacevschi-1.pdf

late 2009. Police operations in the conduct of public assemblies were held when public order had been violated or at the express request of the public authorities. The atmosphere at public assemblies has improved considerably, and participants and organizers feel much less pressure and interference on the part of the police. The change was highlighted in 2010 when cases in which force had been applied decreased from 5,3% in 2008 to 0,7% in 2010, and cases of demonstrators being detained decreased from 4,9% in 2008 to 0,2% in 2010 (Chart 2).

This change is a result of the will demonstrated by those newcomers in the leading positions at the MIA. However, within the Ministry of Internal Affairs or subordinate institutions there were no structural or functional changes. The possibility therefore remains that there may be a return to pre-2009 practices, should there be a negative change in political will.

The announced reform process of the MIA is welcome. This should partially solve the problem of skills distribution and the reorganization of structures responsible for ensuring and maintaining public order. However, the vision of reformation is not clear yet and it is unknown whether the reform will be eliminated as a result of excessive centralization, one of the causes of irregularities committed by the police bodies prior to 2010.

Like previous years, police cannot ensure public order and participants' security at public assemblies in the Transnistrian region.

b. The behavior of local public authorities.

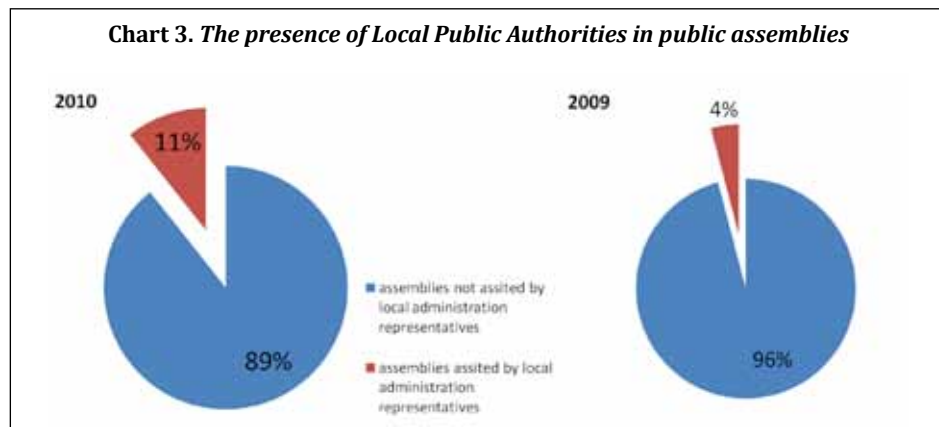
The law on assemblies stipulates the responsibilities for local public authorities (LPA) at the stage of the registration and notification of organizing assemblies. Also, representatives of LPAs are obliged by law to attend assemblies so as to ensure their smooth running.

By law, the local authority has no right to refuse the running of a assembly, but may request that the impose an interdiction. During 2009 and 2010, two cases were registered in which the court decided to prohibit assemblies.

The GenderDoc-M association met the legal procedure for organizing a assembly in the center of Chisinau on the 2nd of May, 2010, with the intention of anti-discrimination towards the LGBT community. The City Hall of Chisinau asked the court to prohibit the running of the assembly in the downtown area. The first court decision (April 28, 2010) met the claim of the City Hall and ordered that the assembly be held away from the city centre. The organizers found this unsatisfactory and gave up holding the action. Court of Appeal pronounced a decision that prohibited the City Hall's application, but the pronouncing date was later than the scheduled date of the assembly (May 13, 2010).

A similar case occurred in August 2009 when, at the request of the Chisinau City Hall, the court ordered that a religious group (The Seventh Day Adventist Christian Church) hold a assembly in Chisinau's periphery, and not in the downtown area, as was requested by the group. In this case however, the religious group did not appeal and first instance decision became final.

Regarding the second important responsibility of the local authorities, they do not allocate sufficient human resources so as to ensure their presence at public assemblies. According to observations made in 2009, representatives of local authorities attended at only 4% of assemblies. In 2010, this rate increased to 11%, especially in the case of high-risk assemblies.



The absence of representatives of local authorities creates gaps of authority at assemblies. This is seen especially in Chisinau, where 80-90% of all assemblies in the Republic of Moldova take place.

Another problem facing local authorities is that, often, the people delegated to attend assemblies do not have the necessary qualifications to manage potential confrontations at public assemblies. Fortunately, due to the predominantly peaceful character of assemblies in the Republic of Moldova, the intervention of local authorities is not required and therefore there are no particular problems in this matter.

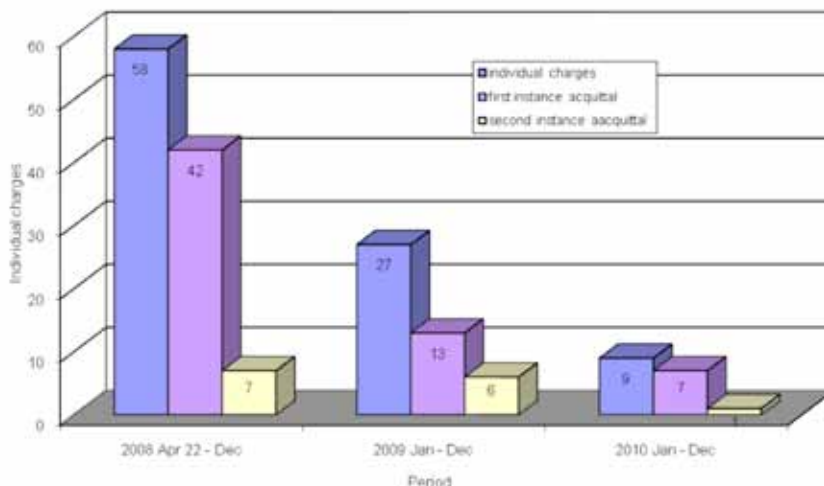
In most cases, local public authorities properly implement the procedural provisions of the law on assemblies. Some small deviations from procedures have been reported in small towns. And this is due to the lack of practice in exercising the freedom of assembly, and consequently the lack of a pre-registration procedure for giving notice of and organizing assemblies.

c. Judicial practice on freedom of assembly

During period under study, a steady decrease was registered in cases relating to the exercise of the freedom of assembly. In 2010, the number of individual charges dropped 6 times compared with 2008. The evolution reflects police practices on the principles of the new law and also represents the effect of the change of approach that took place under the MIA, especially in 2010.

Most charges brought against organizers or participants assemblies were rejected by the courts. Thus, in 2009, out of 27 individual cases, 13 were acquitted in the first instance and 6 in the second instance. In 2010, the number of individual charges reached 9, of which 8 were rejected by the courts.

Regarding the nature of charges in 2009, as in 2008, they largely refer to the

Chart 4. Judicial reasons at the national level on freedom of assembly

violation of certain administrative provisions rather than a regulatory framework. Charges in 2009 in particular cited abuse, putting up resistance to police officers, or hooliganism. Unlike in 2009, in 2010 charges were related both to breaches of the law on assemblies – in aspects such as the place of assembly, organization of the assembly, and installation of temporary constructions – and violation of the Contravention Code, such as offending religious feelings, blocking entries to buildings, disturbing the public peace.

The high rate of charges rejected by courts shows that the charges are not supported by evidence, or have no legal basis. It is to be noted that in most cases in 2009, the call to court had been preceded by the withholding or preventing of accused persons from attending the assemblies concerned.

d. The evolution of the legal framework on freedom of assembly

During 2009 and 2010, the legal framework on freedom of assembly did not change. The basic normative act continues the law on assemblies, adopted in 2008 where the national legal framework was connected to international standards. The general trend in state institutions, over the last two years, was to adjust practices to legal norms.

In 2010, the Ministry of Internal Affairs came up with legislative initiatives that have direct or indirect effects on the freedom of assembly:

- The draft law on carabinieri provides for the transmission of the duties to maintain and restore public order from police to troops of the carabinieri. The draft aims to centralize the functions of ensuring public assemblies in terms of skills and capabilities necessary to carabinieri troops. In this matter, great efforts are needed for their creation.
- Another legislative proposal, discussed in 2010, is about ensuring and re-

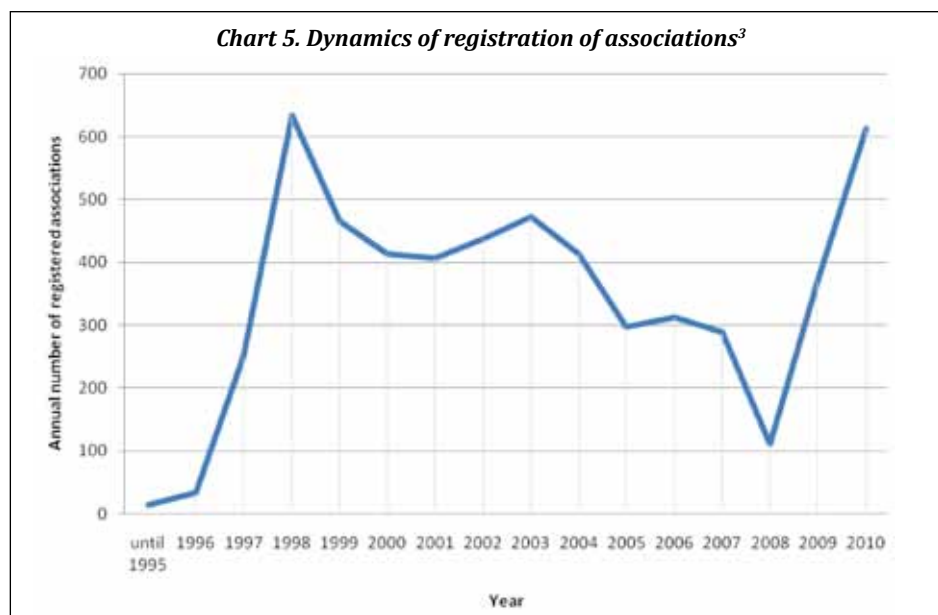
storing law and order. Its provisions shall also apply to the freedom of assembly. These provisions would establish a more restrictive regime for freedom of assembly, and in some respects is in contradiction with the Law on assemblies, and with international standards and practices.

For now, these proposals are in the planning phase and have no effect on the legal framework for the freedom of assembly. According to MIA sources, the promotion of projects was suspended until “clarification” of the political situation. Most likely, these projects will return, especially on carabinieri, as the structural reform of public order progresses.

8.2. Freedom of association

8.2.1. Administrative practice and procedure of registration

In 2007-2008, several groups reported cases in which public authorities created bureaucratic obstacles for registration or re-registration of associations at the national level. Usually, impediments consist of refusals from the authorities on the grounds that not all conditions stipulated by law have been met or that documentation has been submitted incomplete. Thus, in 2008, only 111 national associations at the national level were registered, representing the lowest number of annual registrations since 1997.



In 2009, the aforementioned impediments were gradually eliminated, so that, by the end of the year, the total number of associations registered was 370 (3 times higher than in 2008). In 2010, the bureaucratic barriers were not felt, while the number of registered associations continued to grow, reaching 612, close to a max-

3 State Register of nonprofit organizations of the Republic of Moldova. <http://rson.justice.md/organizations>

imum (633) registered in 1998. This evolution can be explained by the fact that in the period up to 2009 several rejected requests for association were gathered, which were followed up by a removal of obstacles.

Up to and including 2010, 5533 associations were registered in the State Register of nonprofit organizations at national level. According to some unverified data, together with local associations in the Republic of Moldova, currently there are over 7000 registered associations.

A special case is the spiritual group called Falun Dafa (Falun Gong), which started the process of registration to be a public association in 2006. The competent national authorities have repeatedly refused to register the association because it had submitted incomplete documentation. The last refusal was justified on the grounds that the group's logo contains an extremist symbol. In 2010, courts established that the group symbol did not contain extremist elements. Under decision, the symbol had to be excluded from the national register of extremist symbols. However, because of various obstacles at a national level in 2009, the group was registered without any objections at local level by the City Hall of Chisinau.

Although procedural impediments were removed, representatives of small associations are unhappy because of the conditions imposed by the procedures prescribed by law. They consider the registration procedure in particular to be excessively bureaucratic, but also efforts made to manage the associations which require undue time and human resources.

8.2.2. Achieving the freedom of association

Freedom of association is more restrictive in the Transnistrian region of the R. of Moldova. Most of associations working in this region are not registered by the constitutional authorities and therefore cannot benefit from advantages offered by the official status of the Moldovan government in an uncontrolled area. Civic groups are constantly monitored by security structures and to be active must comply with the registration requirements imposed by the regional administration.

The activity of NGOs who do not share the ideology and the message of the authorities in the region are regarded as attempting to undermine the "statehood of the Transnistrian Moldavian Republic". Visits undertaken by members of associations in the region in Chisinau and in European countries enter within the viewfinder of the security structures. Leaders of local associations are being persecuted by these structures, often threatened that their associations will be liquidated if they do not report about external financing, and the projects and contacts they have established. There are cases when they are forced to collect and present information. On the other hand associations that support and promote the "state" ideology are shown a favorable attitude by the administration.

Constitutional authorities of Chisinau register citizens and persons' associations from the Transnistrian region, but allow numerous acts of discrimination against them. For example, tax authorities and other constitutional structures do

not accept as a legal address, addresses of places outside constitutional control. Thus, those in the region are forced to seek fictitious / formal persons to receive legal address and could register a NGO at the national, regional or local level. Because of these difficulties, there are initiatives for the registration of associations that fail.

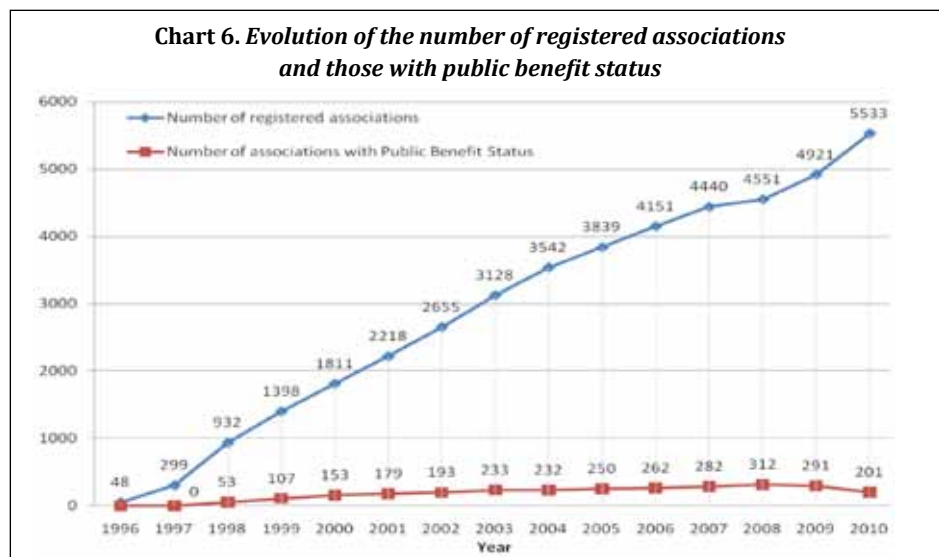
8.2.3. The evolution of the legal framework on freedom of association

On July 30, 2010, amendments to the law on public associations approved by Law No.111 from 06.04.2010 entered into force. The modifications concern mainly the public benefit status (Chapter V of the law) which may be granted on request to public associations. Previous Formula of law already contained references to this status, but the changes make a detailed description of procedures for granting, use and status control. New provisions facilitate the procedure for obtaining status and define the procedural steps.

Public benefit status is granted on request, for a period of 3 years, by assembly certain conditions. Certificates of public benefit serve as a basis for partial or complete exemption of public associations from taxes and other liabilities, and provide financial and material support from the state (Article 322).

The number of associations that have benefited from this status over time did not exceed 9% (2000). In 2010, these associations were almost 4% of the total. The evolution of the status of public associations over the years suggests that most associations do not know or are not interested in the advantages it offers the status. A recent study⁴ shows that the main associations that are interested in becoming a public benefit are those that practice entrepreneurial activities.

Chart 6. Evolution of the number of registered associations and those with public benefit status



4 Assessment of the Impact of Legislative Changes regarding Public Benefit on Public Organizations, Resource Center for human Rights, (CReDO), http://ade.md/docs/2011/Assessment_of_the_Impact_of_Legislative_Changes_regarding_Public_Benefit_on_Public_Organizations.pdf

The graph reflects a continuous growing number of associations registered while the number of associations with public benefit status remains relatively constant. In recent years the number of associations with public benefit status ranged between 200 and 300. The increasing trend up in 2008 has been reversed in recent years. In 2010, the number of associations with public benefit status was 35% lower than in 2008.

Recommendations

- To maintain the trend of improving the achievement of the freedom of assembly, registered in 2010 in the next period it is necessary to maintain the same approach of a tactical, low-level intrusion in peaceful assemblies from MIA subdivisions.
- In the medium and long term, it is advisable to reform police structures of public order, to eliminate systemic assumptions that made possible constant violations of the freedom of assembly in 2009. In this regard, the announced reform of the MIA is welcome, but the vision and purpose are still unclear. Also, less advisable is the planned centralization of the functions of maintaining and restoring public order as responsibilities of carabinieri troops, when these troops do not have the necessary skills and capabilities to ensure the freedom of assembly.
- Concerning the public order, police and other subdivisions of MIA responsible for ensuring, maintaining and restoring public order, it is necessary to strengthen management capacities of confrontations that can occur in public assemblies. It is also recommended that local public authorities undergo professional development so as to be capable of managing conflicts that may arise at assemblies.
- Under the principle of nondiscrimination and free assembly standards, local administration has to guarantee the peaceful exercise of the freedom of assembly for all persons, regardless of their gender, religion or any other. Actions of the local public administration and police (mainly from Chisinau) must ensure the security of peaceful participants and public order at peaceful assemblies by using preventive measures if necessary, but without blocking these assemblies.
- Elimination of discriminatory practices relating to registration of associations for residents of the Transnistrian region of the Republic of Moldova.

Lina ACALUGARITEI

The achievement of the right to education in the Republic of Moldova during the period of 2009-2010 has shown no spectacular developments; the trends of previous years have been largely maintained. There have been some government moves in planning reform systems, by developing a draft Education Code and some strategic documents: the consolidated development Strategy for Education for 2011-2015, the consolidated action plan for the education sector for 2011-2015, and the monitoring frame of education policies.

At the same time old problems remain unsolved – such as the lack of teaching staff and of institution infrastructure, and others – that directly affect the overall quality of education and the realization of the right to education in general.

Against the background of a less homogeneous evolution of education, the literacy rate remains high, the Republic of Moldova being ranked in 17th place out of 177 countries in this area.¹

9.1. The reform of the national education system

The draft of a new Education Code, developed by the Government, represents an attempt to modernize the educational system by replacing the Education Law of 1995, which is outdated and inadequate vis-a-vis the new requirements and standards in the domain. The Ministry of Education proposes the introduction of terminology used in European education systems, and establishes principles of management of the education system and of university research funding.

The main concerns of the draft Code of Education

- ***Organization of district schools and establishment of technical vocational education;***
- ***Introduction of the 3rd cycle of doctoral studies and establishment of the Doctoral School;***
- ***Improving the scholar curriculum: so that children are not overloaded with academic requirements, but the number of the 17 compulsory subjects not to be reduced;***
- ***Establishing a relationship between the labor market and university system; currently this connection is missing;***
- ***Creation of a National Agency for Quality Assurance in higher and research education;***
- ***Application of a transferable credit system;***
- ***Application of the rating for higher education institutions in the Republic of Moldova;***
- ***Financial and managerial autonomy of scientific research within the universities.***

1 Human Development Report, PNUD, 2009.

However, some experts² underline the vulnerability of certain provisions of the draft Code. Reservations refer to the lack of clarity on the relationship between funding from public sources and private sources. Another problematic aspect concerns the introduction of the post-secondary system, so that the appearance of vocational high schools would overshadow the activity of colleges. Another reason for skepticism raises the operation of primary and secondary education institutions of the district level. Also, the relations between the training stages are not clear, such as the relationship between vocational secondary education and vocational post-secondary education, and between vocational post-secondary education and higher education.³

Another initiative to optimize the educational system is foreseen by the Agreement-Memorandum of collaboration with the International Monetary Fund for 2010-2012. The reform essentially forecasts the strengthening of classes, which means: the reorganization of approximately 130 general education institutions by changing their current status and creation of about 50 district schools and assignation to them about 60 schools. As a result, schools should have more autonomy in the use of funds. Also the Government relies on the support of development partners in the creation of infrastructure for access to district institutions (building or repairing roads, to ensure their operation during unfavorable weather conditions) and the purchase of about 80 units of transport for transportation of pupils to school. The same solution is proposed by the Consolidated Strategy Draft of education development for the years 2010 - 2015.

The fate of the draft Code of Education seems to be uncertain, both in terms of the decentralization process that is referenced in the Code and in the process of consultations with relevant institutions, which has been delayed, diminishing the noble intention of reforming the education system.⁴

With regard to restructuring under the Agreement-Memorandum with the IMF for 2010-2012, in conditions where the birth rate continues to decrease, and the phenomenon of migration remains high, the proposed optimization measures are relevant.⁵ What is important, is that the whole process should meet the criterion of proportionality between the purpose and resource allocation, and that the quality of education and children's rights, including those to education, should not suffer.

Although intended for legitimate purposes, the two directions of reform, if they do not meet the international standards in educational policies, can have a negative impact on the educational system and hence to the realization of the right to education in the Republic of Moldova. This may affect the institutional durability of the system, and the quality of education in general.

9.2. The preschool level

State efforts to comply with the right to education at preschool level, in 2009-2010, have proven insufficient to produce substantial reform in this sphere. Implementation of a number of projects supported by development partners brought

² <http://www.info-prim.md/?x=25&y=27475

³ Opinion of Gabriel Paladi Chairman of the Association of Colleges in Moldova.

⁴ <http://tv7.md/ro/shows/video?id=1404>

⁵ School network optimization is also relevant to the reduction of the number of pupils, which will diminish in the study year 2014/2015 with more than 24%, compared to 2006/2007.

some improvements locally, giving an immediate result: an increase in the number of children attending kindergarten. On the other hand, at the urban level, problems remain as acute as in the period 2007-2008.

At policy level, the Government has been proactive, implementing a number of programs intended to improve the existing curriculum with respect to children's needs, to the standards of early development for children aged 0-7 years, and to professional standards for educators.

However, the system's problems outweigh the registered successes:

9.2.1. Access to preschool-education⁶

The situation regarding access to pre-school education is determined both by public policies in this domain and by some social factors specific to the Republic of Moldova. This domain requires a special effort and attention due to the marked emigration of parents, a factor which significantly increases the State's responsibility to protect children left without parental care. In this context, the Government has approved the National Action Plan on the protection of children without parental care for 2010-2011 (Government Decision No.450 from 02.06.2010). This document, although it contains a wide range of measures designed to protect this category of children, makes no reference to pre-school education institutions.

The evolution of the preschool education system.

Early education was established as a national priority by the Government in 2002, when the share of preschool institutions attendance was only 41%. Many kindergartens, especially those from rural areas, were closed at that time. For example, in 2000 1094 kindergartens were functioning. In the next nine years the rate of kindergarten attendance increased to 55%, thus registering a continuous increase in the number of children enrolled in preschool education, compulsory training by school of children of 5-7 years being ensured in about 85%, registering a continuous increase of children enrolled in preschool education.*

**Report: "Common Country Assessment".⁷*

The situation of access to preschool education varies according to urban or rural areas. Fewer children attend kindergartens in rural areas. The reasons are usually the parents' inability to pay the costs of supporting the child in a preschool institution and the belief that at home or with grandparents children will enjoy better care.⁸ In many localities kindergartens are missing entirely. Consequently, about 25% of rural children do not attend kindergarten and therefore do not receive appropriate education for school.

6 The access to preschool education is regulated and prescribed by Article 17 of Law on Education, which provides: "Training of preschool children by school is compulsory from age 5 and is achieved in preparatory groups, in kindergartens or schools, or at the request of parents, in family. The state provides material and financial conditions necessary for the proper functioning of the educational process in preparatory groups. Depending on local conditions, they can be organized in primary schools".

7 The Government of the Republic of Moldova and UN. Chisinau, July 2005, www.undp.md/publications/doc/CPAP_rom_05-04-2007_GATA_NEW.pdf

8 The study „Preschool education in the Republic of Moldova from the perspective of social inclusion and equity”, IDIS Viitorul, p. 5, <http://www.viitorul.org/public/1634/ro/Educatie%20prescolara.pdf>

However, the dynamics of preschool institutions attendance has been positive in recent years. In 2009 the number of children attending kindergartens increased by 30% up to 126,000, compared with 2001. Similarly, seats in preschool institutions increased by 17,000. The preschool enrollment rate in 2009 reached over 70%. The positive dynamics of preschool attendance is explained by the opening of new kindergartens. However, if these measures are sufficient at rural level, then at an urban level the situation is more complicated. Kindergartens are overcrowded, the number of available seats is small, and there is a lack of kindergarten staff sufficiently capable of providing quality child care. Phenomena such as corruption and enrollment of children in kindergartens two years before they begin to attend become major obstacles in realising the right to preschool education.

The situation is determined by more objective factors, including the absence of private kindergartens. In 2009, 1362 state kindergartens were functioning, but no private kindergartens.

Another obstacle in ensuring the right to preschool education is the small number of nurseries. In total there are only 3 nurseries, all in urban areas, thus covering only the needs of 1% of the total number of children.

The effects of this situation can be felt in both the short and long term:

- Limited opportunities for parents, especially mothers, to return to the workplace, a situation which generates the phenomenon of gender discrimination on the labor market;
- Exclusion of children from the early education system, potentially affecting their subsequent integration into society. Being deprived of adequate training for school, children who do not attend kindergarten usually have lower results in the first years of school, which creates situations of marginalization and exclusion from groups.

To ensure better access to preschool education for vulnerable groups, the Government has developed new policies on early education, with technical assistance provided by UNICEF, the World Bank and other development partners. Thus teaching and methodology materials that include vulnerable groups have been created. Moldova is the only country that fully channeled the financial support of the Catalytic Trust Fund⁹ towards the revitalization of early education (about 4,4 million, within the project, “Education for All – Fast Track Initiative” was used to equip more than 300 kindergartens with teaching materials, furniture, games, toys, playgrounds).¹⁰ By this decision, the Government recognizes the deplorable situation that preschool education is in, and takes a proactive approach to its revitalization.

9.2.2. The quality of preschool education

A comparative analysis between the R. of Moldova and EU Member States regarding the number of children enrolled in a group from urban areas indicates

9 <http://www.pascupas.md/projects/455/index.html> and <http://www.edu.md/?lng=ro&MenuItem=8&Article=525>, <http://www.msif.md/online/>

10 Grant provided by the Catalytic Trust Fund – Fast Track Initiative by the World Bank, in total amount of about 8,8 million US dollars.

a lower quality of care and training for preschool children. If the highest average number of children in the EU in a group is about 24 children (in Ireland), in Moldova the figure is 30-35.

Another indicator that measures the quality of preschool education is the number of educators compared to the number of children. While the situation is relatively good in rural areas, as groups are not overcrowded, in urban areas the situation is reversed. On average, a group of 30 children has a single educator and an auxiliary assistant, a fact which contradicts the psycho-pedagogical recommendations in the field and impedes the quality achievement of the educational process.

9.2.3. The free character of preschool education.

Although the support of children in kindergartens is the sole responsibility of the state, de facto the situation is different. Usually, the task of financial compensation of kindergartens' needs (including employee's wages) falls on the parents, which contravenes the principle of free preschool education. It is estimated that a parent pays between 300 and 1,000 lei per month for child support in the kindergarten. A possible solution is to institutionalize these payments in order to establish a control over these expenses and to include the financial contributions of parents in the official circuit.

In general, the gross enrollment rate in preschool education has increased with the improvement of the welfare measure of the household, from about 80% for the least insured families to over 85% for the best insured families.¹¹ Thus with the increasing impact of the financial crisis, the number of children for whom kindergarten become inaccessible increases.

Another issue related to the system is the remuneration of auxiliary staff in the domain of preschool education, which directly reflects on the quality of preschool children care.¹²

Even in the period of 2009-2010, preschool education became more accessible to a significant number of children in urban areas, and especially in rural areas; continued efforts are necessary, as is the support of the authorities. Kindergartens in rural areas in particular are faced with insufficient financial resources to meet increasing demand in the system. Another major challenge for the government is to expand alternative services, to include those 25% of children who do not have access to early education. The draft of the new Education Code contains provisions relating to community centers that have to provide official services of education of early education following kindergartens and nurseries, especially in those 230 localities where there is a lack of kindergartens. But as long as the fate of the project is uncertain, the issue remains unresolved. However, before proceeding to system reform, the Government should consider all the shortcomings of the draft Code of

11 The report of the Ministry of Economy for 2009, "Report on poverty and the impact of policies", <http://www.scribd.com/doc/56725795/raport-2009>

12 Remuneration of the kindergarten staff is much lower than the minimum consumption basket and guaranteed monthly average wage in the real sector of economy. It is necessary to revise the pay scales, as to exclude such practices. The paradox of the situation is that the economic agents are forced to pay employees the minimum wages, and the state fail to meet this commitment, http://www.investigatii.md/docs/Hot_cond_salariza_retelei_tarifare_unice.pdf

Education on the pre-school system. The provisions presented in the project could create more confusion and system problems in the future.¹³

9.3. The school and high-school level

The school and high-school educational system in the Republic of Moldova is rigid, keeping the infrastructure of schools from the Soviet period. The existing situation calls for the speeding-up of the reforming process of a system defined by low and unstable wages¹⁴ and by a 25% decrease of pupils compared to the number of children enrolled in 1998 (a situation explained by low birth rates, increasing emigration, poverty, etc.).¹⁵ Otherwise, the government may not achieve its commitments.

9.3.1. Access to education.

The vast majority of school-age children (7-15 years) attend school. Even among older children, school attendance rates are estimated at 77.7% for boys and 89.2% for girls.

According to annual reports submitted by the Ministry of Education, the number of children left out of school has decreased significantly: from 3980 in the academic year 2000/2001 to 28 children in 2008/2009, and in October 2010 identified 130 children were not attending school.¹⁶ But these figures are not correlated with the relatively low rates of enrollment in primary and secondary levels, indicating the absence of effective mechanisms to detect and prevent non-schooling and school dropout. Without such a mechanism, a significant number of children remain out of school. According to UNICEF Moldova estimations, the number of children not attending school varies between 1 and 15 children per school.¹⁷

The phenomenon of school absenteeism has been marked by new trends in recent years, shown by the results of a study by the Institute of Education Sciences of the Republic of Moldova¹⁸ in 2008. According to teaching staff, school non-attendance reasons were: lack of supervision of children when their parents go to work abroad (35.1%), a careless attitude of parents towards children's education (28.1%), a lack of textbooks and school supplies (25, 4%), children's attraction to work (11.4%).¹⁹

The most frequent causes of school dropout are related to the parents' financial conditions. According to estimates, the amount of informal payments in edu-

13 http://www.calm.md/docs/avize/AVIZ_CALM_Codul_Educatiei.pdf

14 For example, the monthly average wage for 2010 received by a teacher was estimated to 2358 lei, while a banking employee was remunerated with about 6500 lei. <http://statbank.statistica.md/pxweb/Dialog/Saveshow.asp>

15 The decline of birth rate and its maintaining at a low level will determine the evolution of school-age population (Green Book of Population, 2009). If in 2008 the population of school and preschool age (3-23 years) was 1113,9 thousand people, then by 2015 (according to the scenario I - Pessimistic) their number will decrease up to 891, 3 thousand in 2020-803,2 thousand, 2030 - 707,8, and by 2050 - 468,2. Reduction in half of the school age population will influence the entire educational system, having major implications for economic and social life.

16 Newspaper Observatorul, October 2010,

<http://observator.md/social/abandonul-scolii-si-scolarizarea-au-fost-reluete-in-vizorul-structurilor-guvernamentale/>

17 Study: „Basic education in the RM in terms of child-friendly school”, <http://www.ipp.md/libview.php?l=ro&id=555&idc=169>

18 The Institute of Sciences of Education of the Republic of Moldova, <http://www.ise.md/news.html>

19 Study elaborated by the Ministry of Education with the financial support and assistance of UNICEF Moldova, 2008, "The basic education in the Republic of Moldova in terms of child-friendly school".

cation made by all parents during the school year is 209 million lei, representing 13.3% of state funds allocated in the same year.²⁰ In such conditions, in low-income families, children are forced to work in farms near the house.²¹ Most boys and girls (83.5% and 88.7%) of school age fulfill household activities. Regardless, amongst children of compulsory school age there are not significant differences in the rates of school attendance between children who work and those who do not work. In the case of older children, grade 10-12, significantly lower rates are recorded (Table 1). It is encouraging that most leaving the educational system completed compulsory education.

Distribution of children in compulsory education according to residence: urban and rural areas, is marked by significant discrepancies. Enrolment rates in primary education in urban areas is 93.6% and these high levels have been recorded for several consecutive years. In rural areas the rate is estimated at 89.4%, and has been decreasing continuously since 2000, when this indicator was 98.3%. In secondary education the situation is similar. In 2009, in urban areas, the enrollment rate was 95.1%, remaining relatively stable. Although somewhat stable, the enrollment rate in secondary education in rural areas was 86.3% in 2009.²²

The evolution of the enrollment rate in compulsory education shows the limited capacity of the government to achieve the Millennium Development Goals for the Republic of Moldova for 2015 (98% of children of school age).

A significant problem is the current mechanism of distributing financial resources to pre-university institutions and the lack of correlation tools with obtained performances. While spending on education increased by 16%, this does not cover the growing needs of the sector. Solutions that could solve the problem involve the creation of an effective mechanism of decentralization (a mechanism otherwise provided for by the draft Education Code) that would streamline the justification of operational costs, and the implicit delegation of more financial skills to district education departments. This means the transformation of public expenditure in public goods.²³

School education in the Republic of Moldova is available in Romanian and Russian (with the exception of three schools serving the following model: schools with instruction in the Russian language, where the Ukrainian, Gagauz and Bulgarian languages are studied as a school subject 3 hours per week, with 1 hour for the new discipline History, culture and traditions of the nations: Russian, respectively Ukrainian, Gagauz, Bulgarian).

Thus, nearly 100,000²⁴ non native language speakers are missing the conditions for studying in their own language. In addition, the teaching level of the Roma-

20 Study "Basic Education in Moldova in terms of child-friendly school", elaborated by the Ministry of Education of the Moldova with the support of UNICEF, 2009.

21 In 2009 the level of poverty in the RM was 26,3%, remained practically at the level of 2008.

22 Raport privind Obiectivele de Dezvoltare ale Mileniului / The Millennium Development Goals Report 2009, http://www.un.org/millenniumgoals/pdf/MDG_Report_2009_ENG.pdf

23 The study „Finanțarea educației preuniversitare” (Financing of undergraduate education), IDIS Viitorul.

24 "Problems of language teaching in schools speakers of other language of the Republic of Moldova", Chisinau, 2009, <http://www.scribd.com/doc/43523112/Studiu-RO>

nian language in public schools for these groups is often very low, which makes it difficult for students to integrate into society, and which leads to further discrimination on the labor market and reduced participation in political life.

The teaching issue in the native language is more complex in the Transnistrian region

De facto the administration of the region promotes a policy of imposing the Russian language and the Russification of non-Russian ethnicity. Although in the region are declared three official languages (Romanian (Moldavian), Russian and Ukrainian), people speaking the Romanian language (Moldavian) and Ukrainian are discriminated against by Russian speakers. The Russian language is dominant in all spheres of political and social life, including education.

In the Transnistrian region of the Republic of Moldova are functioning Moldavian schools and mixed schools of teaching in the Moldavian language based on the Cyrillic alphabet. In 8 schools the process of teaching is accomplished in the Romanian language based on the Latin alphabet, after the programs and textbooks approved by the constitutional authorities of the Republic of Moldova. De facto the Transnistrian administration tried to forbid their activities, but in virtue of involvement of the international structures, have been given the status of „foreign non-state education institutions”.

The ethnic structure of the Transnistrian region is divided almost equally between Moldovans (177 thousand or 31.9%), Russians (168 thousand or 30.4%) and Ukrainians (160 thousand Ukrainians (28.8%)), according to the census data conducted by the administration of the region in 2004. In these demographic conditions, 82% of schools function under a curriculum in the Russian language, 13.5% based on a curriculum in the Romanian language (Moldovan) in Cyrillic script, 3.8% based on a curriculum in the Romanian language with Latin script.²⁵ The distribution of schools according to their language of study is as follows:

- Russian language – 135 institutions (70,3%);
- “Moldovan” (Romanian in the Cyrillic alphabet) – 33 institutions (17,2%);
- Russian language and “Moldovan” – 16 institutions (8,4%);
- Ukrainian language – 2 institutions (1%);
- “Moldovan” (Romanian in the Latin alphabet) – 8 institutions (3,1%) (subordinated to constitutional authorities).

The data indicates a discriminatory attitude towards non-Russian ethnicities. The 8 schools under the jurisdiction of the constitutional authorities of the Republic of Moldova, which teach in Romanian in the Latin script, where about 4 thousand children study, de facto carry their activity in buildings rented from local authorities or economic agents in their localities.

Government efforts to implement education policies for people on the left bank of Transnistria has not reached the expected results. One of the most sensitive political

²⁵ http://www.ipp.md/public/files/Proiecte/blacksee/rom/INVATAMINTUL-IN-TRANSNISTRIA_S-Tiron1.pdf

issues is the equivalence policy of the grades of students who have studied in schools which are subordinated to the regime from Tiraspol. By this policy, if a student scores 5 (very good) in the evaluation system of school achievements in the Transnistrian region, then in the evaluation system in Chisinau the same student will get 9.51.

The situation has caused a chain reaction: students from those 8 schools subordinated to constitutional authorities are discouraged, being in an unfair position compared to students in schools under the control of the Tiraspol regime. At the stage of enrollment in higher education institutions from the constitutional space, after equivalence, students who were taught under the administration of Tiraspol have a higher average. This has led many students of those 8 schools to transfer their studies to schools administered by Tiraspol (often only in 11th grade) to take advantage of budget places in the universities of Chisinau.

The listed aspects are part of a number of issues that severely limit the realization of the right to education in the Transnistrian region of the Republic of Moldova. During the 20 years in which the Transnistrian problem has remained unresolved, the Chisinau authorities have not expressed serious concerns for the creation of minimum conditions of access to the constitutional system of education and of some effective tools to control the „educational system” in the region, which is outside the law and international standards, a fact that affects the rights and freedoms of people in the region.²⁶

The educational system in the Transnistrian region of the Republic of Moldova shapes its own characteristics, absolutely distinct from those of the right bank. The legal framework reproduces the Education law of the Russian Federation in the region.²⁷

The same trend also persists in the higher education system, which, besides the so-called Transnistrian State University, which is declared part of the Russian university area,²⁸ consists of functioning subsidiaries of Russian higher education institutions. This fact imposes serious obstacles in creating a common educational space on the two banks of the Nistru, these structures not being accredited by the relevant Ministry of Chisinau.

Another challenge of the educational system at school and high-school level, which the Government of Moldova has to face, is that of children with disabilities. In the Republic of Moldova about 15,300 children with disabilities are registered, of which only 10-12%²⁹ have access to any training services, including non-residential type services. The lack of special infrastructure for access to institutions, special furniture and educational programs adapted to the special needs of these children significantly limits the right of children with disabilities to education. In the Republic of Moldova there is not even an institution of general education profile (non-specialized) which will have the necessary infrastructure to allow even the access of persons with locomotive disabilities.

26 <http://www.europalibera.org/content/article/2314900.html>

27 Stefan Tiron, Study of public policies "The Education in the Transnistrian region of the Republic of Moldova", Chisinau 2009, http://www.ipp.md/public/files/Proiecte/blacksee/rom/INVATAMINTUL-IN-TRANSNISTRIA_S-Tiron1.pdf

28 Web rage of the Transnistrian State University, <http://www.spsu.ru>

29 <http://www.investigatii.md/index.php?art=403>

General system problems are felt at school and secondary education level. Inefficient distribution of financial resources, and educational institutions' lack of local autonomy worsen the situation of the teaching staff and of the technical condition of schools.³⁰

9.4. The undergraduate and post-graduate level

Government Decision No.434 of 25.04.2006, which set quotas for enrollment in higher education institutions and quotas for students receiving scholarships, had a negative impact on the higher education system in the Republic of Moldova.

Its effects were felt most of all financially, as the decrease of the number of students caused, in only the first three years of the implementation of the Decision, the loss of about 400 million lei. The social effects of this policy, according to some representatives of civil society,³¹ have impacted negatively on the quality of learning and have limited the autonomy of universities. And this is due to an increased share of funding for universities from the state budget from 12% to 21%, which affects the decisional process. Another lesser side is the reduction of the number of students from 34,500 in 2005 to 27,000 in 2006 and 23,000 in 2010.

The draft Education Code provides that the number of students enrolled under contract will decrease; while the number of "state-financed students" will increase by 2013 following the studies under contract totally to be excluded from state universities. It can be said that in future we can expect that the consequences of state policy in the domain that are already felt can be reproduced on a larger scale in the future, affecting long-term the durability of the higher education system in the country, the availability of studies, and hence the realization of the right to education.

Box 4: Higher education (end of 2010):

- ***33 institutions of higher education***
 - o ***19 state institutions***
 - o ***14 private institutions***
- ***23% of the population aged between 18 and 25 years is enrolled in higher education. In European countries like Germany, France or Great Britain, this indicator exceeds 50%, while in the USA 2/3 of young people make higher studies.***
- ***The largest quota of unemployed comes from those who have no training, followed by those with secondary and technical education, and fewer unemployed people are those with higher education*.***

**Dr. Iurie Gotișan: „Evolutions, trends and forecasts regarding the labor market of the Republic of Moldova in proximity to EU standards”, Chișinău, 2007.*

30 About 41% of school buildings need major repairs and only in 11,2% of them can be constructed slopes accessible for children with limited locomotor possibilities. Undoubtedly, under such conditions is very difficult to organize the process of study at submitted requirements towards the child-friendly school.

31 The study: "The impact of policies of central public authorities on the university system of the Moldova", <http://www.viitorul.org/public/2018/ro/STUDIUL%20EDUCATIE.pdf>

Corruption in the higher education system remains another major problem. Although the law provides for the criminal liability of rectors, deans and heads of department for corruption, including extortion and sale of marks, allowing for a fine or a term of imprisonment for a period from 2 to 7 years, this does not apply in case of teachers and lecturers³². At the same time the regulations of the Ministry of Education do not specifically approach the issue of corruption, and the main university regulations do not provide penalties for copying, cheating or bribery.

Although the draft Education Code provides for essential restructuring of the undergraduate and post-graduate system, this is insufficient for an adjustment of the system to international standards of accessibility, independence, quality of education, decision making, financial transparency, integrity and participation. And uncertainty about the adoption of the Code lead us to suppose that in the period 2011-2012 essential changes will be elusive.

Conclusions and recommendations

To meet existing challenges facing education in Moldova, international experts³³ recommended a series of measures to reform the current educational system.

General aspects: The educational system must be accessible to everyone without any discrimination. Conditions must be provided to facilitate access to education for children with special educational needs and children belonging to different ethnic or linguistic minorities. The educational process must be transparent, flexible, and adapted to the needs of each child / youth.

Experts recommend institutionalization of mechanisms that give students the right to choose the study of disciplines related to individual domains of interest, such as topics related to their health, sexual development, professional development, career advancement etc.

Specific aspects: Recommendations of international institutions for the modernization of the education system related to the application of international principles, as by inserting them in the Education Code and other policy documents.

Human rights and non-discrimination are key principles which should focus the educational process and must be promoted and integrated into educational programs so as to be transmitted to new generations as social values. To this end it is proposed to develop a curriculum in the educational sphere for human rights, as well as to include vulnerable groups (disabled and representatives of ethnic minority groups) in the educational system.

A systematic approach towards issues regarding formation of capabilities is also a priority identified by experts. This would include promotion of educational programs adapted to individual needs, an increase in pupil/student mobility and in the mobility of teaching staff, choice diversification of faculty disciplines, and an increased share of practical training within enterprises. It is also necessary to re-

³² The report of the US State Department on human rights (2010), <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154439.htm>

³³ Policy recommendations in educational sphere, formulated by the United Nations Development Program, http://www.undp.md/presscentre/2010/Education_Papers14June/index_rom2.shtml

move existing barriers to the recognition and certification of non-formal education results as well as to expand of opportunities to return to educational institutions after certain periods of employment in the labour field.

Reforming the educational system should assume its decentralization and the autonomy of educational institutions - creating a new structure of the educational system, in which central authorities are only meant to promote policies, while the management of educational institutions are matters for local authorities. In parallel, conditions should be created for every educational institution, regardless of level, to become a legal entity with full rights, including the ability to manage their own financial resources.

Education should be inclusive. Education of persons with disabilities must take place within the general education system and this thing must be expressly provided for by law. The legislation should provide clearly that the role of social workers, psychologists and other professionals, non-teachers, who are involved in the education of children with disabilities, is only to assist and facilitate the general education.

Finally, it is very important to implement management based on results, compared to the current system of management, which is based more on process indicators.

Despite authorities' efforts, supported by development partners, reform of the educational system so as to ensure the right to education at all stages, remains a difficult process that depends on many social and economic factors.

Preschool education has become more accessible, but there are significant gaps that disadvantage rural areas. However, fewer employees and lower wages in this system, as well as the poor infrastructure, have an impact on the quality of care and education. A challenge remains to expand alternative services to include little children who still do not have access to early education.

Although adoption of the Education Code requires key reforms in school and secondary educational system, it will require increased efforts by the authorities to ensure effective distribution of financial resources, local autonomy of educational institutions, improvement of employees' conditions, and the technical conditions of schools. Also, measures must be developed to prevent potential negative consequences of future changes.

The challenges of the undergraduate and post-graduate system will need as much attention, especially in terms of financial sustainability, ensuring access to higher education and quality of study. The efficiency of this educational stage depends on the ability of authorities to approach issues related to academic integrity and resource management. But this aspect is not outlined in the priority list of policy agenda, thus we cannot expect substantial changes in the near future. Substantive reform of the system in accordance with international standards depends more than anything on the political will of the government.

THE RIGHT TO WORK, SOCIAL PROTECTION AND HEALTH CARE

Elena DRAGHICI

In a democratic state, the right to work, to social protection, and to health care, are basic elements of state policies, since their implementation fuels the socio-economic development of the country and improves the quality of life of the population.

This chapter describes the situation in the Republic of Moldova regarding the labour sphere, the social protection of vulnerable groups, as well as of the health care system. This report examines the issues related to the realization of this right, and to present gaps in the legislation.

10.1. The right to work

Social developments, along with the economic and political crises of recent years, have led to some instability in society, which have affected the employment sphere. According to data from the International Labour Office,¹ the number of unemployed began to rise sharply in 2007. In the third quarter of 2010, 85.4 thousand unemployed were registered, representing a growth of 9.2 thousand compared to the same period from 2009.

In 2009-2010, a number of governmental decrees were developed to regulate this sphere, such as: Regulation on income tax withholding from wages and other payments made by the employer for the benefit of employees and forms certifying the withholding of income tax at source of payment;² a Government Decision on the minimum guaranteed wage in the real sector;³ a Government Decision on approving the quantum of the average monthly wage in the economy, forecasted for 2011 at the amount of 3300, lei which is 350 lei more than the average monthly wage in the economy forecasted for 2010.⁴

According to the reports presented by the Ministry of Labor, Social Protection and Families, in 2010⁵ unemployment had the greatest impact on people aged between 30-49 (constituting 46,0% of the population); 16-24 years (21,0% of the population); and 50-65 years (17,7% of the population). From the registered unemployed, 11,0% had worked in agriculture and 10,0% in industry. Short-term unemployment (up to 6 months) registered a share of 58,6%. Long-term unemployment (over 24 months) was 1,3%. The causes of unemployment are different: job cuts, layoffs, lack of well-paid jobs, a general mismatch between education and the quality level in labor market requirements, and gaps in legislation. The most disadvantaged are those who work the land, who are insufficiently protected by the state, especially in the event of certain eventualities, such as natural disasters.

1 <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3187>

2 Published on 26.01.2010 in the Official Gazette No.11-12, art. 53.

3 Published on 12.03.2010 in the Official Gazette No.35, art. 219.

4 Government Decision No.773 from 27.11.2009 on the approving the amount of average monthly wage in the economy, forecasted for 2010, Published on 01.12.2009 in the Official Gazette No.173, art. 854.

5 <http://mpsfc.gov.md/md/rapoarte/>

Young people from the Transnistrian region encountered employment difficulties, whose diplomas, being issued by the administration of the region, either have no legal value – neither on the territory of the Republic of Moldova nor abroad – or require a special procedure to be recognised.

Another problem are the obstacles facing people with disabilities in the workforce,⁶ or seeking work, especially those with disabilities of the 1st and 2nd degree. Most often, employers claim that they lack special work conditions for such people. However, in essence, it is rather a question of mentality, the assumption among employers being that people with disabilities would not meet their requirements.

The law⁷ provides means of social protection for people seeking work, through active measures and passive measures. Active measures include measures of encouragement for labor force mobility.

One of the active measures is labour mediation, a free service offered by the National Employment Agency, which aims to establish an employment relationship between employers and people looking for a place of work. These services can benefit both the unemployed and people who want to change their place of work. Agency data⁸ show that in 2010 there were almost 26 000 beneficiaries of mediation services, with over a thousand more than in 2009 and nearly ten thousand more than in 2008. The disadvantage of these services is that often Agency offers are below the expectations of people looking for a job. In addition, the Agency's services are not available in the Transnistrian region.

Passive measures⁹ include payments in the form of unemployment benefits or allowances for professional integration or reintegration, given for limited periods so as to provide individual support during the search for a job. Data from the National Bureau of Statistics¹⁰ reveal that in 2010, 92 thousand beneficiaries were registered compared with 2009, when there were registered 81 thousand beneficiaries, while in 2008 – 51.7 thousand beneficiaries. The amount of unemployment aid is not able to cover minimum consumption needs. The access of inhabitants of the Transnistrian region to such passive measures of social aid is extremely limited.

Often there are cases of non-compliance with the labour law. According to data from the Ministry of Labour, in 2010 there were nearly 82 thousand violations of labour legislation, of which 36 thousand related to labour relations and 46 thousand related to health and safety in the labour field. Labour inspectors qualified 109 cases as work accidents, of which 48 had fatal consequences. According to unofficial information,¹¹ during the first 11 months of 2010 in the Transnistrian region, 124 violations of labor laws were recorded, of which 5 had fatal consequences. The main causes are failure of safety equipment.

6 http://www.anofm.md/Sites/anofm_md/Uploads/Studiu%20inegrarea%20persoane%20disabilitati.1B126198FAB2457A31269976DDF093F.doc

7 Art. 4 of the Law No.102 -XV from 13.03.2003 on employment and social protection of people looking for a job, Published on: 15.04.2003 in the Official Gazette No.70-72, art.312 effective date 01.07.2003.

8 <http://www.anofm.md/rapstat1>

9 Chapter V of the Law No.102 -XV from 13.03.2003.

10 <http://statbank.statistica.md/pxweb/Dialog/varval.asp?ma=MUN0601&ti=Someri+BIM+dupa+nivelul+de+instruire%2C+durata+somajului%2C+pe+grupe+de+virsta%2C+sexe+si++medii%2C+2000%2D2010&path=../Database/RO/03%20MUN/MUN06/&lang=1>

11 <http://www.tv-pmr.com/news.php?id=10453>

A known phenomenon in the Republic of Moldova is migration. Statistics¹² show that in 2009, nearly 300 thousand people were working or seeking a place of work abroad. With a slight variation, this number remains the same for 2008 and 2010. The share of migrants with general secondary and vocational studies is higher than that with higher and secondary specialized studies.

Broadly, the causes of migration are a lack of jobs and low wages, combined with a rise in prices, a decrease in purchasing power, economic and political instability, and the quality of education in the country.

Migration, like any social phenomenon, presents both positive and negative effects. Due to migration, exchanges of experience take place in various areas, and currency circulation becomes more active, but this cannot hide the negative effects that we see today and we will feel much more intensely in a few years' time: children left without parental care; young people leaving in search of a decent living.

In the employment sphere, protection against unemployment shows a slow but steady evolution. The increased number of people who use Agency services help to increase the possibilities for employment. At present, however, both active measures and passive measures are insufficient.

10.2. The right to social protection

The Constitution of the Republic of Moldova¹³ obliges the state to take measures to ensure that any person has a decent standard of living, and that citizens have the right to insurance in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood as a result of circumstances beyond their control.

The system of social protection includes social insurance, which involves the granting of cash benefits to insured persons (who contributed to the state social insurance budget) and social assistance, which may take the form of social services or non-contributory social payments to individuals after the occurrence of social risks (such as maternity, old age, disability, etc.).

According to data from the National Bureau of Statistics in Moldova, in 2010, there were registered about 3,560,000, almost 4 thousand fewer than in 2009.

Nr. of persons at the beginning of the year										
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
thousand	3,635	3,627	3,618	3,607	3,600	3,589	3,581	3,572	3,567	3,563

Source: National Bureau of Statistics (without the population of the Transnistrian region)

Ministry of Economy data show that in 2009, in the Republic of Moldova, about 26.3% of the population was below the absolute poverty line,¹⁴ and 2.1% below the

12 <http://statbank.statistica.md/pwweb/Dialog/varval.asp?ma=MUN0701&ti=Populatie+de+15+ani+si+peste%2C+aflata+la+lucru+sau+in+cautare+de++lucru%2C+in+strainatate%2C+dupa+nivelul+de+instruire%2C+pe+grupe+de+virsta%2C++sexe%2C+medii+si+rimestre%2C+2000%2D2011+&path=../Database/RO/03%20MUN/MUN07/&lang=1>

13 Art. 47 of the Republic of Moldova Constitution.

14 The limit of absolute poverty – the share of population living below 945,9 lei.

extreme poverty line.¹⁵ Statistics indicate that the size of the minimum subsistence level in 2010 was on average 1373.4 lei per person, an increase by 15,6% compared to 2009.¹⁶

The state offers a number of safe measures to vulnerable groups, both as social benefits and social services.

The inhabitants of the Transnistrian region cannot benefit from social contributions offered by the Moldovan government, as they do not contribute to the State Social Insurance Budget (BASS). The regional administration has created its own system of accumulating and managing monthly contributions paid by citizens. Young families in the region face difficulties in accessing single childbirth allowances and childcare allowances for children aged 1.5-3 years old and those up to 16 years of age.

Legislation disadvantages young families where one spouse is in the military. In such a case, the family benefits from allowances for their child only until the age of 1,5 years, but not the other allowances, as military persons do not contribute monthly by social payments to the BASS.

Another problem is the situation of persons with disabilities, who are stigmatized, isolated, discriminated against, and, unfortunately at present, in a state of total dependence on social benefits.

On July 9 2007, the Republic of Moldova ratified the UN Convention on the Rights of Persons with Disabilities, the aim of which is to promote, protect and ensure the full exercise of all human rights and fundamental freedoms by all persons with disabilities. With a view to implementing the Convention, Parliament adopted the Strategy of Social Inclusion for People with Disabilities (2010–2013). In parallel, two new social services were created: the social service “Protected Home”,¹⁷ for people with mild mental disabilities, and the social service “Community House”,¹⁸ for people with severe mental disabilities.

In 2009 in the Republic of Moldova, 176.7 thousand people were registered as having disabilities,¹⁹ 3.6 thousand more people compared with 2008. Statistics show an annual increase of persons having a degree of disability. According to unofficial data, in the Transnistrian region over 21 thousand such persons are recorded.

The legislation establishes three levels of invalidity (1st degree (the most severe), 2nd degree and 3rd degree). Although people who have a 1st degree of disability benefit from a number of social benefits – an amount which is bigger than for others having any degree of disability – they are actually the most disadvantaged because they are considered “invalid”, so it is difficult to employ them. Most of them are restrained either in a wheelchair or confined to bed, and even if they are not

15 The limit of extreme poverty – the share of population living below 511,5 lei.

16 <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3367>

17 Framework-regulation on organization and functioning of the Social Service „Protected home” and minimum quality standards, approved by the GD No.711 from 09.08.2010, Published on : 17.08.2010 in the Official Gazette No.148-149, art. 810.

18 Framework-regulation on organization and functioning of the social service „Community House” and minimum quality standards, approved by the GD No.936 from 08.10.2010, Published on : 15.10.2010 in the Official Gazette No.202-205, art. No.1030.

19 <http://mpsfc.gov.md/md/rapoarte/>

placed in residential institutions, but live in families, they are isolated from society.

Depending on the degree of a person's disability, their class background, and material and family situation, an individual with a disability can benefit from the following social benefits: disability pension;²⁰ disability allowance;²¹ compensation for travel in inner urban, suburban and interurban transportation²² (except taxis); compensation for travel in public transportation for people with disabilities requiring apparatus (such as wheelchairs);²³ social allowance;²⁴ social aid;²⁵ material aid.²⁶

The mechanism determining the degree of disability is discriminatory for people from the Transnistrian region. To gain access to medical expertise to have their disability assessed, inhabitants of Transnistria are obliged to present medical certificates in the region.²⁷ This requirement violates the right to free choice of a physician and medical institution.

The social benefits mechanism divides people into categories; neglecting the needs they have, such as allowance for care,²⁸ which is granted only to certain categories of people, regardless of whether their medical certificate mentions that the person requires constant care.

Although the Constitution guarantees the right to free movement in the country, this right is de facto limited in the case of disabled people because their physical environment does not match with the technical means that would allow them to move easily everywhere, whether public or private institutions, or even on the street. Although some efforts were made to change this situation, many of the facilities that have been installed are not fitted to the needs of people with motor neurone disabilities.

In the Republic of Moldova a considerable decrease of the population number was registered from 4359.4 thousand inhabitants in 1990²⁹ to 3563.6 thousand inhabitants in 2010. The statistics reveal an aging population, which negatively affects the burden of BASS.

For the pension-insurance system to continue functioning in a stable way, the ratio between the number of employed people and retirees should be maintained at 4:1-5:1, but in 2009 it was 1.9:1. This situation indicates the need for some radical changes in the public system of state social insurance.

In accordance with the Law on state social pension insurance, in the public system state social insurance is granted to the following categories: pensions for a certain age-limit, for invalidity, and descendants' pension. In 2010, 627 thousand³⁰ retirees were registered, compared with 620 thousand in 2009. Among them were

20 Law No.156-XIV from 14.101.1998 on the state social insurance pensions.

21 Law No.499-XIV from 14.07.1999 on the state social allowances for some categories of citizens.

22 Law No.821-XII from 24.12.1991 on social protection of disabled.

23 Government Decision No.1268 from 21.11.2007 on compensation of transport service expenses of persons with disabilities of the locomotor apparatus.

24 Law No.15 from 26.02.2010 on social compensation in the cold season of 2010.

25 Law No.133-XVI from 13.06.2008 on social aid.

26 Law No.827-XIV from 02.2000 on republican fund and local funds for social support of the population.

27 Point. 5, para (2) the Instructions on the determination of disability, approved by GD No.688 from June 20, 2006.

28 Art. 14 of the Law No.499-XIV from 14.07.1999 on the state social allowance for some categories of citizens.

29 Social Report 2009, <http://mpsfc.gov.md/md/rapoarte/>

30 <http://www.cnas.md/libview.php?l=ro&idc=244&id=1276>

460 thousand beneficiaries registered for age-limit pensions, over 130 thousand beneficiaries for disability pensions, and 23 thousand beneficiaries of descendants' pensions. Meanwhile, according to unofficial data,³¹ in the Transnistrian region on December 1st, 2010, 136 thousand retirees were registered .

According to law, for a person to receive an age-limit pension, they must meet the following conditions: they must have reached retirement age (57/62 years) and have accumulated retirement contributions for 30 years. The law on state social insurance pensions allows settlement of the age-limit pension also for those who have not gathered 30 years of work, but not less than 15 years. This suggests that a person, who worked only 14 years and has reached retirement age, will benefit from the age allowance (≈ 100 lei / monthly), without taking into account the fact that this person contributed to the state social insurance budget for 14 years.

The average amount of a pension in the Transnistrian region, according to unofficial data, is 689.60 lei, while for the rest of the country this amount is 810.86 lei.³² But this amount does not cover the minimum subsistence level (calculated at 1197.2 lei).

After reforming the pension system, the period of care for people with disabilities is not calculated as a contribution period. In 2010, there were registered about 13,800³³ people who require constant care. Practice shows that most often this care is given by a family member, and as a result this person is forced to leave the place of work and respectively the possibility of obtaining an assured monthly income. That same person, being unable to pay social insurance contributions, will not benefit from state protection for the occurrence of insured risk.

Socially vulnerable classes have an excessive dependence on social benefits, given from the state budget. This situation requires intervention, so that this passive group of society becomes an active group. The development of social services for their social inclusion represents the solution that should not be delayed.

10.3. The right to health care

The health care system in the R. of Moldova consists of curative and preventive, sanitary prophylactic, and sanitary-epidemiological units.

One of the strategic documents is the Institutional Development Plan for 2009-2011. During the reporting period, a number of regulations were developed, such as: the Government Decision on public-private partnership for the performance of health services; and the Regulation on the purchase of medicines and other medical products needed for the healthcare system.

State guarantee of healthcare, in the first phase is to ensure access to medical services. According to the National Bureau of Statistics,³⁴ those among the poor

31 <http://www.minzdravpmr.org/2009-10-28-08-12-39/977-----2010-----1-2010->

32 <http://www.cnas.md/libview.php?l=ro&idc=244&id=1276>

33 Report on social protection of persons with disabilities and implementation of the Action Plan and Social Inclusion Strategy for persons with disabilities during 2010, <http://mpsfc.gov.md/md/rapoarte/>

34 <http://www.statistica.md/newsview.php?l=ro&idc=168&id=2691>

population (quintile I) approached a physician at a rate of 15.5% versus 30.9% for the population in quintile V. Men, on average, reported more frequent visits to the state medical institutions, with 1.4 percentage points more than women. Women in turn preferred a greater proportion of private medical service institutions, with 6 percentage points more than men.

Despite the fact that citizens, regardless of their own incomes, are offered equal opportunities to obtain health care in the system of mandatory health insurance, for citizens residing in the Transnistrian region this right is limited for several reasons:

1. The patient with the freedom to choose family physicians and primary health care institutions usually receives health care from the medical establishment in the jurisdiction area of their domicile. Here is the barrier, because often physicians in the region recommend that citizens of the Republic of Moldovan go to Ukraine or Russia to have the necessary investigations or to undergo treatment – and this despite the fact that in Chisinau similar services are provided.

2. People in the Transnistrian region do not have health insurance, which does not allow them to receive free medical services indicated in the unique program of mandatory health insurance.

3. Even if the citizens of the region are within the mandatory medical consult, diagnosis, treatment and medical recommendations are not recognized in the region and thus citizens are not treated appropriately.

Under the Law on mandatory health insurance, mandatory health care insurance represents an autonomous system of financial protection of population guaranteed by the state in the health care area through establishing funds foreseen to cover the costs of medical treatment for illness and diseases stipulated by the Law. Health insurance funds are established based on solidarity principles and from the account of medical insurance premiums.

According to the “Report on execution (usage) of mandatory health insurance funds for 2010”,³⁵ in 2010, 2760.6 thousand insured persons were registered, which is 12.7% less compared with 2009.

Legislation in force requires compulsory health insurance for all persons holding residence in the Republic of Moldova, except for those specified in Article 4 paragraph (4) of the Law.

In the case of persons who are employed the medical insurance is calculated as a percentage of their confirmed income. In the case of those unemployed, they have to individually procure/ensure their medical insurance, they have to pay annual insurance premiums regardless of their family or material situation, otherwise penalties are imposed.

The created situation is favorable for the National Health Insurance Company, which manages the financial resources accruing from mandatory health insurance

35 <http://www.cnam.md/?page=48>

premiums, in exchange for a population which is a financial burden, especially for owners of agricultural land, individuals working under contract, who lease or take agricultural land in use, patent holders for the business, especially for the unemployed without income.

According to article 37 of the Law on health care,³⁶ people who have lost their jobs have the guaranteed right by the state to the minimum free health insurance for their health support and health to those supported by the state. The granting of the minimum free medical insurance to the above mentioned persons is made from the funds for the organization of healthcare. In reality, the unemployed can receive free medical care just from the moment of benefiting from unemployment – i.e. 3 months from the date of registration, the period during which the person is not entitled to all services of the unique program of mandatory health insurance.

The health care system is in constant evolution, but many problems remain unresolved. Much of the differences in the healthcare domain identified in the previous report of Promo-Lex remain unresolved.³⁷

The employment, social protection, as well as the health care system continues to be in direct dependence on the standard level of living of the whole population of the Republic of Moldova. Finally, not all citizens have the possibility to enjoy the rights and freedoms enshrined in the Supreme Law, because much of the protection measures are provided within the area of residence. Moldovan authorities have failed to create the necessary conditions for people of the Transnistrian region to have all their constitutional rights.

36 Law No.411-XIII from 28.03.1995 health care, Published on 22.06.1995 in the Official Gazette No.34 art No.373.

37 "Report on Human Rights in the Republic of Moldova for 2007-2008", pp. 75 – 77, <http://www.promolex.md/index.php?module=publications>

Pavel POSTICA

The year 2009 began with a fierce political struggle between the Party of Communists of the Republic of Moldova (PCRM), then in power, and its opponents. The struggle culminated the first time during the elections from 5th of April, 2009 with a victory for the governing party, recognized by international observers, criticized by national observers and challenged by opposition and its campaigners. Announcement of preliminary election data generated turbulence throughout society, led to street violence and destruction of important state buildings. However, the governing party failed to remain on ruling, because of failure to elect the president of the country by the legislative body. And this, in turn, led to a deep political crisis that continues to the time of writing this report.

The political crisis was marked by organizing three national elections: two pre-term elections and a constitutional referendum related to the modification of the procedure to elect the president of the country. On the other hand, the political crisis helped speed up various important amendments to the electoral law, has allowed some evolutions in realizing the right to vote and be elected, but also knew some involutions highlighted by national observers.

According to the Constitution, in Moldova, people's will is the basis of state power. This will is expressed through free elections, which take place periodically through universal, equal, direct, secret and freely expressed vote. Under mentioned conditions, people can achieve the right to vote and be elected in the elections of the Parliament – unicameral legislative body of 101 deputies, authorities of local public administration of two levels and within referendums. Parliament and authorities of local public administration are elected for mandates of four years. The referendum institution is governed by the same general principles as parliamentary and local elections.

Making electoral policy, organization and conduct of elections is ensured especially under the Electoral Code by the system of electoral bodies, consisted of the: Central Election Commission (CEC), the district electoral councils and elective offices of polling stations. Only CEC is a permanent body with a 5-year mandate of the members, other lower hierarchical levels are formed only during elections. Composition of the CEC which activated during the years 2009-2010 was established by Parliament Decision No.290 from 11th of November, 2005. The mandate of respective structure was extended by the law itself, to 90 days, under the Electoral Code, because the mandate expires in election campaign.

11.1. Organization of national polls during the years 2009-2010

From historical point of view, parliamentary and local general elections are carried out every four years, the difference between two of these polls are two years approximately. Latest ordinary parliamentary elections not reflected in this report took place on 6th of March, 2005 and local elections on 3rd of June 2007. How-

ever, in just two years, 2009-2010, in Moldova were organized and conducted four national polls. One, a constitutional referendum and three cycles of parliamentary elections: regular elections on 5th of April 2009 and two pre-term elections. The results of the regular elections of 5th of April, 2009, won by the governing party - the Party of Communists, which obtained 60 seats - have been severely criticized by their opponents and raised a dissatisfaction of masses. These led to violent actions and mass disorder, resulting in hundreds of detainees, at least one confirmed death and two institutions of the state: the Presidency and Parliament - considerably devastated and destroyed.

Both pre-term elections were held due to the inability to elect the President of the country with 3/5 of votes by the Parliament and were held on 29th of July 2009 and 28th of November 2010. The first pre-term poll was held because the Party of Communists (60 seats) fell one vote short of the needed super majority of 61.

Following the pre-term elections of 29th of July 2010, PCRM has obtained the best result, 48 seats, but without a majority in Parliament. Four other parties: Liberal Democratic Party (PLDM) 18 seats, Liberal Party (PL) 15 seats, Democratic Party (PDM) 13 seats and Party Alliance "Our Moldova" (AMN) 7 seats have created a coalition called the Alliance for European Integration (AEI -1) with a simple majority of 53 votes in Parliament.

AEI-1 also failed to convince the opposition to vote for the candidate of the alliance in the position of the President of the state, which led to organizing a constitutional referendum and then dissolution of the Parliament elected on 29th of July 2009, and another pre-term elections. They were held on 28th of November 2010, but have not significantly changed the political scene for the purposes of overcoming the political crisis, indicating only the decrease of popular support for PCRM. However, the latter and three other parties in the composition of the AEI-1 passed the threshold of accession to the Parliament. Thus, the Party of Communists gathered 42 seats, Liberal Democratic Party - 32 seats, Democratic Party - 15 seats and the Liberal Party - 12 seats. The last three parties formed a new coalition of governing, called AEI-2.

On 5th of September 2010, for the first time in the Republic of Moldova, took place a constitutional referendum. The referendum was aimed at modifying the Constitution on the issue of direct election of the President. The referendum was not valid due to the low turnout. Only 30.29% of voters came to vote, of the necessary minimum of 1/3 of persons registered in the electoral lists. Also, within the referendum, for the first time were set up polling stations abroad, outside the diplomatic and consular missions, which resulted in increasing the number of voters who have achieved the right to vote abroad.

On 12th and 26th of December 2010 in the Autonomous Territorial Unit Gagauzia-Yeri (Gagauz) took place the first and second round of poll for the election of the Bashkan (governor) of Gagauzia.

Also during the reporting period were organized and carried out new local elections for mayors in some localities. Among these can be observed the elections

from 15th of November 2009 held in localities Stefanesti and Semionovca from district Stefan Voda, as well as the elections held on 16th of May, 2010 in Sangera, but also in other 15 localities in the country. During these two elections begun the testing of the Electronic Register of Voters, namely in the localities mentioned above. Testing the Electronic Register of voters continued and at the constitutional republican referendum and parliamentary pre-term elections from 28th of November 2010. In both cases, testing was conducted in polling stations opened in the sector Centru of Chisinau city.

11.2. Evolution of the normative framework

During the period 2009-2010, the electoral legislation has undergone significant amendments, mostly related to amending of the Electoral Code. During two years, the Parliament made seven amendments in the Electoral Code. Most of amendments were adopted and entered into force less than a year before the elections, a fact criticized by international observer missions, as contravened the Code of Good Practice in Electoral Matters, adopted by the European Commission for Democracy through Law (Venice Commission) on 18th -19th October 2002.

Following internal and external pressures exerted on the Party of Communists after the elections on 5th of April, 2009 was adopted the Law no.25 from 15th of June, 2009 which lowered the threshold of accession for political parties in Parliament from 6% to 5%. The mentioned law reduced the threshold from 1/2 to 1/3 as to declare elections invalid, and in case of repeated voting, the threshold of 1/3 was excluded in general.

On 7th of December 2007, Parliament adopted the Law No.273 for the amendment and completion of some legislative documents. This law has limited the possibility of people holding dual citizenship to participate in state administration. In particular, was established the obligation to renounce to the second citizenship as for election as deputy in Parliament. By Law no.127 from 23rd of December 2009, was lifted a restriction of participation in elections of persons with dual citizenship. Legislative amendment was prompted by a Decision of the European Court of Human Rights (ECHR). Thus, by decision of the ECHR on cause No.7/08 Tanase and Chirtoaca against Moldova was settled the violation of the right to be elected, of the persons who are holders of dual citizenship. ECHR conclusion was based inter alia by the fact that some citizens holding dual citizenship were not only mentioned with the prohibition to participate actively by holding high positions in state administration, unless they renounce to the other obtained citizenship, and the need to deal with limiting the choice of its representatives in the country's supreme forum. The Court noted that by mentioned restrictions expressed on the one hand through excessive limitations to participate actively in state administration, on the other hand exaggerated limitations to choose its representatives in the administration bodies of the country, bring prejudice to the right to vote, namely, it is violated. Following the Court's decision, the Parliament amended the electoral law, allowing the holders of dual citizenship to run for Parliament; moreover, the Parliament excluded the obligation of the CEC members to renounce the second citizenship, in case they also hold dual citizenship.

Another shortcoming of the electoral processes in the country, according to national and international observers, pointed the imperfect punitive-normative framework for breach of electoral law. Thus, observers have reported numerous cases in which law enforcement bodies have faced difficulties in administrative liability of people who admitted some abuses considered as such in accordance with electoral law, without being foreseen in the rules of administrative law. To address the concerns, the Parliament by Law No.131 from 23rd of December 2009, amended the article that provided details on the procedure for administrative liability for electoral irregularities. In order to simplify the text and unnecessary additional explanations was made express reference to the Contraventional Code. Thus, there was made clarity between the provisions of Electoral and Contraventional Code.

By Law no.16 from 26th of February 2010, there have been made amendments to Article 139 of the Electoral Code, which regulates the situation of new local elections. By these amendments, on one hand was established the obligation of local public administration to communicate in writing to CEC about possible situations generating announcement of new elections. On the other hand more precisely was regulated the term in which CEC is required to determine the date of new elections.

Electoral Code has undergone an important reform on 18th of June 2010, when under the Law No.119 was operated a number of substantive amendments and technical details. It should be noted that this reform was prepared quite thoroughly by a special Parliamentary Commission, with active involvement of civil society and technical assistance from international community. Most of amendments made in the Electoral Code by Law 119 from 18th of June 2010 endorsed the Council of Europe and OSCE recommendations. Approximately 40% of the articles of the electoral law were substantially improved, becoming very permissive. Simultaneously, in the electoral law was introduced a number of some unexpected amendments that have caused adverse interpretations. The disputed amendments related on the redistribution of seats between political parties that exceed the electoral threshold, the method and amount of members appointed by the parliamentary parties in the composition of CEC, and lowering the threshold for validation of the referendum from 3/5 to 1/3. In addition, it was established the possibility of excluding from the electoral race foreign-financed political parties and the possibility for criminal liability of individuals for multiple voting. Electoral candidates were given free airtime on public broadcasters. The amendments envisage creation under aegis of CEC of a continuing education center in the election sphere, so that in the electoral bodies of any level could be assigned only holders of qualified training certificates. CEC also would be responsible for managing the entire electoral lists, based on information provided in the State Register of Population. In order to ensure the exercise of the right to vote by voters being abroad, has been expanded the possibility of opening polling stations abroad outside diplomatic missions and consular offices. On the other hand has been limited the possibility of voters who make great show of the right to require voting in their place of residence, to do so only if there are proper reasons. Was decreased the threshold of accession in the Parliament from 5% to 4% for political parties, from 3% to 2% for independent candidates and was allowed the formation of electoral blocs with specification of the threshold of accession depending on the number of constituting parties.

After the fail of constitutional referendum, in the Electoral Code were made two amendments by Laws No.216 and 220 from 17th of September 2010. It has been changed the way of excluding the electoral candidate from the electoral race depending on the type of elections, was established the obligation of CEC members and the right of electoral candidates to attend the process of manufacturing the mold of ballots, their printing and mold liquidation. Has been allowed the transmission of ballots at polling stations abroad, regardless of the number of voters registered in the basis electoral lists but not more than 3,000 ballots established for a polling station. The most controversial amendment is related to the permission given to students and pupils to vote on supplementary voters' lists in the city where they study. Amendment has been criticized both by opposition parties and civil society, particularly as it affects the quality of basic electoral lists, artificially increasing the number of voters voting on additional lists and provides wider rights to different categories of population in relation to other categories which are in analog situations with students and pupils.

By Law No.220 from 17th from September 2010, was regulated the position of permanent members of the CEC in the hierarchy of civil servants, while CEC was given the right to hire in its staff people under labor contracts during the electoral period, relieving the concerned persons of the duties from the permanent place of work.

All these amendments made in the Electoral Code, have led to amendments of inferior legislative documents, in particular decisions, regulations and guidelines adopted by CEC.

11.3. Electoral disputes

During the mentioned period it is observed a downward tendency in the number of appeals filed by the actors of electoral process against the CEC. Thus, during the parliamentary elections from 6th of March 2005 at CEC were received 175 complaints and appeals; all being reviewed by the CEC, resolved and adopted decisions thereof. Subsequently, 15 decisions on submitted complaints and appeals were challenged in court.

On parliamentary elections from 5th of April, 2009 the CEC received 186 complaints and appeals; all being reviewed by the CEC, resolved and adopted decisions thereof. Subsequently, 24 decisions on submitted complaints and appeals were challenged in court.

On parliamentary elections from 29th of July, 2009 the CEC received 74 complaints and appeals; all being reviewed by the CEC, resolved and adopted decisions thereof. Subsequently, 26 decisions on submitted complaints and appeals were challenged in court.

During the republican constitutional referendum from 5th of September 2010 the CEC received only 10 complaints, all being reviewed by the CEC, resolved and adopted decisions thereof. None has been challenged in court.

The parliamentary elections from 28th of November 2010 the CEC received

82 complaints and appeals; all being reviewed by the CEC, resolved and adopted decisions thereof. Subsequently, 84 of the CEC decisions were challenged in court.

On the other hand, after regular elections of 5th of April 2009 and after the pre-term parliamentary elections of 28th of November 2010, some electoral actors have asked recount of on the whole of the votes in the country. In both cases, recount requests were accepted by law bodies.

Analysis of this information allows us to see that the actors involved in electoral disputes and litigation, make use of this legal mechanism in a greater extent. Thus, in addition to the decreasing number of electoral disputes or complaints filed to the superior hierarchical electoral body, the CEC, it is observed the increased tendency of the number of disputes resolved with the help of the courts.

This fact, in author's opinion, may prejudice the credibility of the electoral process as a whole, being changed the emphases on achieving the right to vote to interpretation of voting rules by the courts. Finally, the voter may have a dilemma: does it make any sense to go to vote, however the solution will be dictated by a judge or a panel of judges.

11.4. Right to vote by distinct categories of voters

Beginning with parliamentary elections from 2005, there was registered a decreased tendency of number of voters participating in national elections. However since the elections of spring 2009 there is a small but steady increase of voters at elections. The only exception is the national referendum, which did not show an increased interest for voters. On the other hand, national observers have repeatedly criticized the authorities for indifference or reluctance to treat certain types of voters. According to observation reports LADOM, Promo-LEX, IDOM and other organizations in Moldova different categories of voters met specific difficulties in achieving the right to vote.

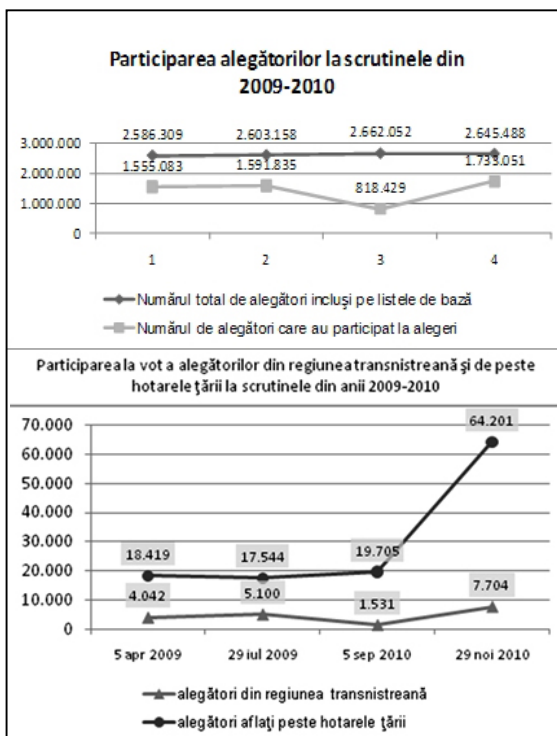
Thus, voters residing abroad and those living in the Transnistrian region faced with the small number of opened polling stations and enormous distance to polling stations. Some convicted people grouped according to severity of incriminated crimes, contrary to recommendations of the Venice Commission, had legal interdictions to exercise the right to vote. People with mental and physical disabilities met difficulties in achieving the right to vote, the most frequently is being invoked the damage in exercising the vote in secret, because most times they were helped from outside to exercise their right to vote. Despite these shortcomings, the authorities have taken some steps to redress the situation.

Thus, for the reporting period, was attested a continuous increase of turnout abroad and those residing regularly in the Transnistrian region. Voters from the Transnistrian region of Moldova constantly participate in elections even though they often face obstacles created by the secessionist authorities.

During the reporting period, there were attested amendments regarding the restrictions on participation in elections. If previously, those sentenced to imprisonment by a final court decision for committing serious or exceptionally grave

crimes could not participate in elections, then now, the list of general restrictions on age and citizenship includes only those who are declared incapable by final court decision. Also, for the general elections are set restrictions related to residence, the right to vote of conscripts and persons being abroad.

During 2009-2010, the CEC has paid a particular attention in achieving the right to vote by persons with disabilities. During each poll, were made press releases to attract special attention as to prepare the polling stations with ramps for people with locomotor deficiencies. Moreover, during the parliamentary elections from 28th of November 2010 in a polling station was decided to test the direct and secret voting for people with disabilities of seeing by using the special envelope - screen printing stencil.



11.5. Procedural aspects of realizing the right to vote

However, during the years 2009-2010, realization of the right to vote and to be elected under the aspect of electoral procedural fairness undergone some deficiencies.

In accordance with the guidelines stipulated in the Code of Good Practice in Electoral Matters, adopted by the Venice Commission on 18-19th of October 2002, is recommended to States, not to operate frequent amendments to electoral law, and especially a year before Election Day. Contrary to these recommendations, Parliament continued to operate amendments to Electoral Code during the pre-electoral period.

Accuracy of voter lists continue to be a problem for the electoral process, especially because they are still drawn up by over 890 actors representing local public administration, which have no direct access to database of the State Register of Population. Thus, in voter lists can be found people who have no residence visa or residence in a particular territory or those who have the said residence, are missing from the basic electoral lists. Moreover, in basic electoral lists were included deceased persons or were wrong written identity data about voters.

According to the reports of national civic observers, especially Promo-LEX

and LADOM, who monitored the elections in the period 2009-2010 but are not still sources of evidence, continues to be registered cases of intimidation or of violence regarding electoral contenders and voters. Use of administrative resources and the massive use of undeclared financial funds in the electoral campaign, continues to be a vicious practice. Unfortunately, it is impossible to quantify such situations, especially, due to the fact that such a statistic is not unfolded by any body of state, and in this way is very hard for observers to prove the electoral character of some interpreted facts.

Another shortcoming of the electoral bodies system is related to the delegation and replacement in elected bodies of members by the political parties represented in parliament. According to national observers, there are shortcomings in the legal interpretation of the concept of “party represented in Parliament at the date of founding” of the elected body. Or in case of the parliamentary elections from 28th of November 2010, at least two political parties represented in Parliament have not delegated members in elected bodies due to this shortcoming in the interpretation of the law. Moreover, parties that have already delegated members in elected bodies make frequent modifications of designated persons. Thus, it is impossible a qualitative training of electoral servants. Apparently, the problem has to be solved by establishing a continuous center for training the electoral servants.

Technical and material support of electoral bodies is mostly the responsibility of local public administration, which has very little financial means. For this reason, at polling stations, counting, processing and transmission of information is done manually, which involves the human factor, that is why multiple errors in the minutes of vote counting are attested. This, among other things, resulted in two elections that from 5th of April, 2009 and 28th of November, 2010 to total organization of ballots recount, being spent considerable financial amounts.

Conclusions and recommendations

Thus, realization of the right to vote and to be elected has seen a continuous improvement in the period of 2009-2010, although there are aspects that will be taken to bring them into line with democratic standards recognized in member countries of the Council of Europe. However, it is necessary to continue the activity of perfecting the State Register of voters and electoral servants, testing nationwide in several polls of voters' lists drawn up under the register, then it is possible the electronic test of this one. It is necessary to review and adjust the system of financing electoral campaigns, to exclude corruption of voters or shadow financing of campaign.

We consider it timely the submission and implementation of the following general recommendations:

- Initiate some public awareness campaigns for electoral candidates and voters on the need of a reciprocal civilized and calm way of conduct, definitive to avoid cases of physical and psychological violence;
- Deepening training in election law domain of all members of the electoral bodies of 1st and 2nd level, by specialists;

- Establish minimum standards regarding technical conditions, logistical planning and insurance of the premises of electoral bodies and their work program. Making financial investments in electoral inventory at the central level;
- Compliance of the term of one year before the elections, recommended by the Venice Commission, during which the authorities are advised not to operate and implement amendments to electoral legislation operated during this period;
- Improve financial reporting mechanism for electoral candidates in order to complete reporting of costs, to improve transparency and create conditions as to increase voter confidence in the electoral process. Establishing a mechanism of financial checking of political parties out of electoral campaigns, by specialized bodies.
- Legal definition of terms “electoral gifts,” “electoral corruption,” “use of administrative resources” and establish a mechanism for sanctioning the use of these faulty practices.

It is, thusly, important to highlight several relevant aspects.

Firstly, political actors and electoral bodies shall take all measures within their power to prevent cases when the decisions on the results of elections are taken by law enforcement agencies or courts of law, instead of electoral bodies, because such shifts of responsibility may affect the credibility of the process and the turnout.

Secondly, simplification of the election procedure is welcome and increases turnout. However, the political stakeholders must take into account that amendments to legislation that introduce such simplifications, must be adopted in accordance with the time limits recommended and recognized by the international bodies, in our case the Venice Commission, and must not be discriminatory or provide exclusive facilities to certain categories of voters while neglecting others who find themselves in similar situations.

Thirdly, the triggered political crisis following the incapacity to elect the President of the country, can not last forever. All the components of Parliament were re-elected, and received the trust of the voters to solve, among other, this particular problem. If politicians cannot find common ground on the matter, it is appropriate for people to solve it through referendum. To this end, politicians should keep in mind that a political issue differs from a mathematical exercise and can have more than one correct solution. There can be multiple solutions and people must be aware of them. Thus, at a referendum, for example, the voters may decide on: introducing the third round of elections, decreasing the number of votes needed to elect President, involving local authorities in electing the President, or, even the abolition the office of President, and other solutions.

*Cornelia COZONAC***12.1. Right to identity**

UN Convention on the Rights of the Child states that every child has the right from birth to a name and the right to acquire a citizenship, the right to know their parents and to be cared for by them. Similar to international rules, Law no.338-XII from 15.12.1994 on the Rights of the Child states that from the moment of birth, the child is entitled to a name and is registered under the provisions of the Family Code. The Republic of Moldova has for several years, a deficiency in this respect. Research from the Center for Investigative Journalism shows that the difference between the number of children born and birth certificates registered in the years 2003 - 2007 is several thousand. The General Prosecutor's Office acknowledges in a report, the existence of the problem of children without identity documents, but at the same time, the number of children identified in 2010 who do not have the Identity Cards is small - 176. However experts say that, although in recent years documents have been concluded of several children whose birth was not recorded on the terms set by law, the number of children who do not have identity documents remains alarmingly high. These children are not included in statistics, have no protection, health and social benefits.¹ However, authorities did not made efforts to identify all children and even adults who do not have certificates of birth and to facilitate their issuance.

In 2010, according to the Ministry of Health, 40,476 children were born and 293 stillborn. Civil Status Service registered 40,766 births in the reference year. The General Prosecutor's Office considers that the difference is the result of birth registration of children born in previous years.

The Law on civil status acts states the registration of the birth within 3 months of the birthday of the child. Despite the legal provisions, territorial prosecutors have found that these rights of new borns are violated, 336 children born in 2010 were registered late, meaning within 4-12 months and 536 - more than one year after birth.

Ombudsman for Children's Rights, Tamara Plamadeala, said that in every district there were between 8 and 50 children without identity papers.² Many families have not acted for three generations in a row: grandmother, mother and niece. And to register and release the child birth certificate is required firstly grandmother and mother need to legalize papers. The big problem, according to the ombudsman, is poverty, lack of information of the population about the rights and obligations, irresponsibility and indifference of parents and local public administration. The problem is more aggravating in communities with a population of Roma ethnicity. In some localities about 20% of children do not have IDs or do not attend the school, according to the ombudsman.

The Director of the National Center of Roma, Nicolae Radita recognizes that

1 <http://www.europalibera.org/content/article/2149913.html>

2 <http://www.investigatii.md/index.php?art=382>

documentation among Roma population is a serious problem and phenomenon grows because there are families where no member is documented or only the father has identity documents and here is the problem of documenting children.³

In the Republic of Moldova the birth certificate is recorded under the confirmation document of the birth issued by the health unit in which the birth took place, the minutes and the certificate stating the child's gender and age – in case of a found child. The medical confirmation document of the birth and medical birth certificate is issued only on presentation by mother of ID. Its absence makes it impossible to issue the certificate and thus lead to non-documentary of the child, a fact recognized by authorities and law enforcement bodies.

We believe that it does not constitute an impediment at the registration of the newborn if mother has no Identity Card, no financial means for conclusion of documents or other reasons due to the legal framework. In such cases, the interests of the child, have to be applied directly to the UN Convention on the Rights of the Child, the task for registration of the child immediately after birth being in responsibility of state by its bodies. These bodies, according to the Law on civil status acts, are civil registry offices and in communes and villages – and city halls of the concerned administrative units. A best practice in this respect has been established by some perinatology centers where in their premises specialists of civil registry office are working, working privately with each woman who has recently been confirmed pregnant, and at the birth day have all the documents required for registration.

The issuance of identity acts in case of home birth is problematic. In 2010, 109 children were born outside medical institutions; both child's and the mother's life is in danger. Although the law states that the birth certificate may be perfected and under the confirmation certificate of the birth issued by the doctor who attended the birth or medical unit in the area where the child was born, many families faced with bureaucratic problems until they managed to register their child. The case of the Fedotov family of Chisinau, although a doctor assisted with the birth at home, the civil registry office did not want to register the child because the birth was not confirmed by a health unit.

Registration of the child's birth certificate is made by joint declaration or of one parent to the body of civil status and is an obligation of parents. If parents have not fulfilled this obligation within the period provided by law (3 months after child-birth), they may be subject to an administrative punishment - a fine of minimum wage. But the law does not establish the body that would oversee such cases.

According to a report of the General Prosecutor's Office on ensuring the rights guaranteed to newborns in late 2010, in Ialoveni district 27 children born between 1996 -2010 were not registered, in Cimislia district- 9 children. Prosecutors have noted that territorial civil registry offices did not announce to police or local administration on the violation deadline for submitting the declaration of birth of the biological parents. For example, the Head of the Civil Status Service of Ciadâr-Lunga said that they gave up the practice of failure to notify police about the child non-registration

3 <http://www.investigatii.md/index.php?art=382>

as to be started under contravention procedure under art.339 Contravention Code, because the court had previously terminated the examination of such procedures on the ground that assessed parents plausible arguments on the causes of declaration of childbirth over time. In the district of Cahul 27 children were detected not registered within the legal period, but the Commissioner of Police has not acted in this regard. The Prosecutor's Office of Drochia district has identified cases of registration of children at the age of 4, 8, 16 and 17 years of age and Falesti district in 2010 14 children born in the years 1998-2009 were registered, the said breaches being neglected by the civil registry office and by the police body. In Floresti district 8 children were identified born unregistered due to the lack of identity of the parents and only during the control of the Prosecutor's Office Floresti, police bodies began to question the parents to elucidate the reasons for non-registration of children and prepare materials for sanctions. At Donduseni, a child born in 2001 and left immediately after birth in its' grandparents' care, as the parents left to work abroad, was registered in 2010 under a court order. In 2010 the police bodies started contravention proceedings concerning 19 persons based on art.339 Contravention Code for failure to comply with the term of submission of the declaration of birth of the child.

In Moldova, in recent years several cases have been attested in which newborn babies were left shortly after being born, found alive or dead in garbage bins. In 2010 immediately after birth in medical institutions 48 children were abandoned, later institutionalized in orphanages for children of a young age, 19 of the children abandoned at birth are from Chisinau, 8 from municipality of Balti, and others - from other districts.

A peculiar situation is attested in the Transnistrian region. Separatist structures refuse to register the birth and to conclude children's identity documents if father or mother have identity documents issued by constitutional authorities. Such a case was monitored by Promo-LEX Association. The parent of a child in Ribnita did not manage to obtain the birth certificate for his child, because he did not had documentary evidence of the self-proclaimed authorities. According to Promo-LEX Association such cases are quite frequent. For these reasons children with documents registered at the constitutional register offices can not go to kindergarten and to school. They do not receive benefits from any constitutional authority nor the administration of the region.

12.2. Payment of single birth allowance

The General Prosecutor's Office checked in 2010 the way in which is meet the requirements of the legislation on the single childbirth allowance payment. Thus, according to state social insurance budget Law for 2010 a unique childbirth allowance amount was 1,700 lei for the first child and 2,000 lei for each child. The Ministry of Labour, Social Protection and Family said that in 2010 single childbirth allowances 12.524 were received from insured persons, including the birth of first child - 6402 persons and following childbirth - 6122 persons. In total for the payment of single allowance 23996,00 thousand lei were allocated. According to information of prosecutors in some localities there was a substantial difference in the number of registered births and the number of applications for receiving the single child-

birth allowance. Thus in 2010 the Territorial Office of Social Insurance (CTAS) Cahul registered 1626 applications for single allowance, but births were 1341. To CTAS Causeni 1195 people requested allowance, births were 864. The CTAS Cimislia 628 applications were submitted for single childbirth allowance, births were registered 370, in Donduseni 437 application, births 281. The difference is because parents have the right to seek single allowance from birth within 12 months after birth.

12.3. Income support for underprivileged families

In order to improve social service delivery system and directing them to people who need them the most in 2010 was adopted the Law no.133-XVI on the income support. According to article 5 of the Law, the right to income support benefit and persons who take care of children under 3 years old. In 2010 59,000 underprivileged families received income support, 81% of these families having at least one child.

12.3.1. The consequences of migration on children

Side effects of massive migration of population are felt in trusteeship and education of children left at home. Attempts by authorities to counter these unintended consequences, remain yet a few steps behind, despite the fact that the Government approved the National Action Plan on protection of children without parental care for 2010-2011. This document recommends local authorities to intensify action to identify and protect children without parental care as to ensure their rights. Financial coverage of the actions included in action plan has been provided within the approved budget allocations structures responsible for their execution, and other sources under the law. The conclusion of several experts from civil society is that this action plan has remained on paper, whereas at the government level in 2010 actions in support of protection of children without parental care as a result of population migration were not made. Trying to persuade the parents to make a declaration before their departure, where to be written with whom they leave the child, had no effect, because it was not a mandatory measure. So far there is no database, promised by the authorities, which shall contain children whose parents are away. Data on the number varies from one ministry to another. The Ministry of Labour and Social Security operates with the figure of 100 thousand children, which have one or both parents working abroad, The Ministry of Internal Affairs states that on 31 December 2010 in the Republic of Moldova were 90.710 children left without parental care, including – 29.681 children without both parents care. Latest estimates of the Center for Information and Documentation on Child Rights (CIDDC) shows that in 2010 about 27% of children in Moldova have one parent left, and 9% - both parents left for working abroad.

Several leaders of nongovernmental organizations specialized in carrying out programs of information on migration indicate both the psycho-emotional consequences caused by the absence of parents, and obvious weakening of children's health. A study made by CIDDC shows changes in the emotional state of children left behind by parents went to work. They are sad and are isolated. In recent years is attested an increasing number of extreme cases of suicide. It is certified and physical health consequences because they are not going to make systematic health controls.

Absence of parents and non-supervision of the way of how they eat. In many cases, teachers attest a lack of interest of migrant children in school and need of higher education, NGOs also state, explaining this by the example set by parents. "Some parents have a faculty, are teachers or doctors, but fail to make their life here, this makes children believe that education is useless," says Cezar Gavriuliuc, director of CIDDC. This state of things is confirmed by Elena Bacalu, head of Cahul Child Protection Directorate, who says that social workers have registered cases where parents left for a long time finally gave up the remaining children in Moldova: "There are many abandoned children by parents who have gone abroad. We try to look for these parents. We have cases when they return and sign a declaration of refusal".⁴

A solution would be parents to establish guardianship of the children at left home because there are many situations where it needs a legal representative in its relations with various institutions. And when parents go without establishing this guardianship, they get left in situations where there is nobody who could enroll the child at school, for example. NGO urges local authorities to identify human resources that would deal with the problems of children with parents abroad. This is because the existing social workers physically unable to serve all beneficiaries in the locality. This might involve the Government in financing such functions.

12.3.2. Repatriation and protection of children abandoned by parents

According to data of the Ministry of Labour and Social Protection, during 2010 were repatriated 66 children - 28 girls and 38 boys. Of these, 33 abandoned children were brought from the Russian Federation, 29 from Ukraine, 2 children from Romania, 1 from Belgium and 1 from Italy. 27 repatriated children in 2010 were reintegrated into biological or extended families, 31 went to temporary placement centers, 3 were adopted. There is a specific case of 2 twin brothers born in 2000 in Tiraspol. Without parental care, the children were initially placed in a social center, and then repatriated from the city of Kharkov, Ukraine. Although at the time of repatriation the children were 11 years old, they neither went to school nor have ever received medical or social benefits. Repatriation mission was organized by the Ministry of Labour, Social Protection and Family (MMPSF) supported by the International Organization for Migration and the Swiss Foundation "Terre des Hommes". The procedure to repatriate victims of trafficking in human beings, illegal trafficking of migrants and unaccompanied children is regulated by Government Decision No.948 from 07.08.2008. According to its provisions, diplomatic and consular missions of the Republic of Moldova, inform MMPSF about unaccompanied identified children in need on the territory of other countries. Then ministry confirms the identity of the child; initiates the procedure for repatriation and determines the appropriate form of protection after their returning home. Here, the competent authorities of the jurisdiction in which the child and his family had the last known domicile makes a social investigation and prepare the individual plan to prepare the socio-familial reintegration of the child. With the completion of the file, the minister inform the authorities of the country of destination on the date of return, accompanying means of transport of the child, border crossings points etc. On arrival in the country, the child is welcomed by parents or

⁴ <http://www.europalibera.org/content/article/3540105.html>

legal representatives. Foundation “Terre des Hommes” Lausanne - Switzerland supports MMPSP in organizing the assisted return of Moldovan unaccompanied identified children on the territory of the Russian Federation and Ukraine. “The repatriation is stressful for the child: leaving the environment that is already known, the interaction with people they do not know, a long way (by plane or other means of transport) including controls also tiring for the child, arrival in the country, and again goes into places with strangers, for a family review, etc.”⁵

Particular attention is paid to repatriation of children from the Transnistrian region. “We placed this totally outside politics and there are intermediaries between the guardianship authorities from Chisinau and that of the region. Often, repatriated children did not attend the school, and having 13 to 14 years can not go either to class, or the sixth or seventh grade”. According to MMPSP Minister, Valentina Buliga, one of the problems facing the ministry is incomplete information about Moldovan children, coming from Moldova embassies and other facilities abroad: “We have a problem with children from the Transnistrian region who are left without parental care and we have difficulty in communicating with the administration of the region”. A problem remains and cooperation with authorities from Russia and Ukraine, which doesn't inform about Moldovan children left without care within their states all the time, said officials from Chisinau.

12.4. Children and Justice

Contact with the justice can negatively affect the child, if the used treatment is not appropriate. The Republic of Moldova, although committed by ratifying several international conventions, to ensure priority interests of the child in court, but does not yet have courts for children, as exist in many European countries and even child-friendly spaces in instances where it could be heard with maximum security and psychological comfort. Often the child reached the court has to stand beside or in front of the aggressor or one who is guilty of certain criminal offences. The child or his legal representative has to be next to the person who committed certain abuses against them. At various stages of the process, children are heard in inappropriate conditions in police stations or Prosecutor's Offices and by people who have no specialized training to interview children. These processes often end with sentences against juveniles as it is not ensured the presence of psychologists or specialized teachers.⁶

Magistrates recognize that any of the judges could deal with processes involving minors and specialization in the field is needed. But the legislation does not allow distribution of files to certain judges, as it violates the principle of distribution of random cases.⁷

Since 2006, National Center for Prevention of Child Abuse (CNPAC) provides to prosecutors and judges a specialized hearing room of child victims and witnesses of abuse. Practice proves that hearing the child in psychological comfort with and

5 <http://www.timpul.md/articol/despre-noi-si-viitor-copiii-repatriati---victimele-parintilor-iresponsabili-22147.html>

6 <http://www.europalibera.org/content/article/2247678.html>

7 <http://www.europalibera.org/content/article/2207667.html>

well-trained persons is effective and thus Moldova fails to protect them. Abroad when interviewing children, whether they are psychologists or investigators, they receive specialized training that lasts at least six months. In Moldova, however, this specialization does not exist and is deemed, any prosecutor, any police officer can interview a child.

In recent years, with the support of UNICEF, Moldova has made progress in reforming the juvenile justice system. Legislation on children in conflict with the law was changed significantly and has impacted on the character of sentences applied to children and on how children are treated during trial cases. However, currently there is no statistical data, even estimative, on the number of children who went through trials and no studies that show the quality of justice towards children.

According to the Ministry of Internal Affairs, in 2010 in 653 criminal cases, compared with 459 in 2009, victims of criminal offences were minors. Most criminal offences in which victims were minors are sexual - 191 cases (in 2009 - 109 cases). Of the total number of child victims of sexual abuse, 33 were without one or both parents care. In 23 cases, 191 criminal cases concerning sexual offenses in which victims are children, they were abused by biological father in the family (6 cases) or stepfather (7 cases), other relatives (10 cases). However, police bodies were notified of 98 cases of family violence of children and 52 cases of violence in schools against students.

According to General Prosecutor's Office report for 2010, prosecutors have adopted 1077 reactionary papers in view of rehabilitation in rights of minors, of which 24 cases criminal proceedings were initiated, 251 complaints and 18 appeals were submitted. In the interests of minors and other social vulnerable people 786 civil actions in excess of 9 074 950 lei have been filed and submitted for review in the courts, of which 442 applications were reviewed and accepted amounting to 2 538 232 lei. Only 73 enforcement titles of about 281 000 lei were implemented.

A problem remains with the quality of forensic and psychiatric expertise that must be initiated in the cases of abused children. A forensic examination is one of the first unpleasant experience, the child must tell exactly they went through. There are no specialized clinics, where only children could be examined, in friendly conditions, as not to be traumatized again. Forensic services are in most districts, a small room, usually dark, only a few square meters. People stand in line under the door for death certificates or documents certifying the body injuries. In these conditions beaten children who have suffered from violence are assessed. The doctor, bound by the duties to cooperate with the police may be called on site, for crimes and then wait can take hours or even days.⁸

12.5. Juvenile delinquency

In the juvenile justice system reform, all categories of children are addressed, such as juvenile victims and children witnesses of criminal offence. Also, primary and secondary mechanisms of prevention of initial committing and repeated of-

8 <http://www.investigatii.md/index.php?art=508>

fenses by minors is developed. Alternative to detention and applicable community services are mediation, probation and work for community service. They are used in case of lighter and less serious offenses, when detention is unavoidable.

According to a UNICEF report of 2010 shows that the number of minors convicted of commitment of criminal offences and number of juveniles deprived of their liberty - in a school of correction, detention center or correction colony - has fallen dramatically. Quality training of prison staff has improved. However, efforts have been made to school children in detention to provide psycho-social services to minors serving sentences.⁹

According to a study of the General Prosecutor's Office, tendencies and the structure of juvenile delinquency shows a constant dynamic in the years 2007-2010, in 2010 a slight increase in the number of criminal cases started being registered, compared with 2009 and a decrease compared with 2007-2008. About 80-85% of criminal offences committed by minors are patrimonial. In a smaller number, are committed murders by minors, bodily injury, rape, hooliganism, drug offenses, etc. According to information provided by the local prosecutor's office in 2010, 2252 criminal cases against minors were started. In indictment court were handed 807 cases, and 1078 cases were discontinued, the majority under the art. 104 CP, with usage of coercive educational measures and under the art. 109 CP, due to the reconciliation of the parties. Courts have examined sentencing of 430 criminal cases of 570 minors. Criminal action in juvenile cases is performed within 3 months, generally respecting the reasonable time to carry out criminal action, although there were cases where the period exceeded 6 months. In 2010, 44 juveniles were detained and arrest was applied to 34 children, decreasing compared to previous years: 67 minors in 2009 and 83 minors in 2008. In other news it should be noted that despite the imperative character of legal rules on pre-application of essential reports on juvenile delinquents, prosecutors have requested such reports in only about 12% of all criminal cases.¹⁰

The data of the Ministry of Internal Affairs show that in 2010 juveniles have committed 1448 criminal offences (+ 21.2%), which is 4.5% of the total number of recorded criminal offences. 1358 cases (93.8%) were finished and sent to prosecutors, 769 (53.1%) criminal cases were sent for examination in court, and 565 which is 39.0%, were discontinued, 22 criminal cases were dismissed and 2 were suspended. In group, by minors and with their participation 260 (+42.1%) criminal offenses, have been committed which constitute 17.9% of those committed by juveniles, 18 (- 25.0%) drunk, 130 (28.7%) criminal offenses were committed repeatedly and 3 within family relations. To commit those 1448 criminal offences, registered in the whole on country, was attended by 1702 juveniles, or 13.1% more than in 2009 and 904 (-18.9%) were held to criminal liability, which is 53.1% of the number of minors, and 50 (+117.4%) were released from criminal responsibility with measures of civic influence.¹¹ 37 sexual offenses were committed by minors against minors. Among the factors that make the crimes committed by juveniles and their participation mentioned, in the report of the Ministry of Internal Affairs:

9 www.unicef.org/moldova/UNICEF_JJ_Moldova_print_RO.pdf

10 <http://www.procuratura.md/md/d2010/>

11 <http://www.mai.gov.md/content/7007>

economic social and financial poor situation of families in the environment where children come; failure to comply with employment for parents, parents' withdrawal from the education, training, care and childcare; leaving one or both parents to work abroad for long periods; absence of moral authority of parents, due to addictions (alcoholism, depression, etc.); inability of parents to provide positive models through its own example of behavior, use of violence in the family and school as educational methods; drinking of one or both parents.

An important role in taking measures to prevent and combat juvenile delinquency, child protection, belongs to the local public administration. Thus, those 903 city halls have created (according to Government Decision No.409 of 09.04.1998) 898 local councils for child protection, including 778 functioning, of which 35 are district councils for child protection.¹²

Although in recent years, with the support of international organizations, progress in the juvenile justice has been made, the detention period being reduced from 72 to 24 hours, the term of penalties can be applied to minors, Moldova continues to be outstanding in this regard. The biggest problems for children in the justice system are the lack of competent lawyers who provide qualified legal assistance; judges and prosecutors still do not know and apply in full the legislation provisions on children. Prison sentences for juveniles are still quite severe, and the alternatives that have better effects on children, yet are rarely applied. UNICEF has promoted in recent years the use of non-confinement sentencing and use of community work as a form of punishment. Among other penalties would be evidentiary hearing for child - a set of measures to help children integrate into society, if convicted. It was found that the trial does not work as punishment on children; conversely children become more difficult to re-socialize. Even if the period of minors being in arrest can not exceed 4 months, there are cases where juveniles are kept in isolation for more than a year. During pre-trial detention minors are detained in separate rooms of the prison for adults, which would be another gap in the juvenile justice system. However, no State or governmental structure of Moldova evaluates the impact that has on minors during detention and sentencing to imprisonment. In late 2010, in prisons of Moldova 68 children: 62 boys and 6 girls were in detention, mostly orphans or abandoned children. Statistics show that 60% of the cases, minors in detention once again end up in prison.¹³

Currently, on police bodies records are 3525 (2009 - 3645) juvenile delinquents and 1009 (2009 - 1031) difficult parents.

The Center for Temporary Placement of Minors in 2010 came in 1313 (2009-1405) children, of which 6 (2009-12) were residents of other states, 18 children were returning from abroad, 486 were cases of repeated placement. From the total number of juveniles placed in CTPM, 263 are boarding students of secondary schools; 924 - general schools, 42 - preschool and 44 child orphans, 126 children were involved in begging. Of the total number of placed children, 694 are educated by a single parent, and 375 are in the category of those who are not involved in study and employment.

¹² <http://www.mai.gov.md/content/7007>

¹³ <http://www.europalibera.org/content/article/2247678.html>

12.6. Child trafficking and illegal removal of children from the country

In 2010 there were 21 cases of child trafficking and 13 cases of illegal removal from the country. Of the cases investigated in the reporting period, criminal cases turned towards child trafficking for sexual exploitation may be mentioned. Thus, within the investigations made by prosecutors in combating human trafficking department of General Police and collaborators of the Center for Combating Trafficking in Human Beings of the Ministry of Internal Affairs found a group of foreigners (in Italy, Greece, etc.) acting together with citizens of Moldova, who recruited by deception male children aged 13-17 years for the purpose of sexual exploitation. 10 cases of child trafficking and 4 on illegal removal of children from the country were sent to court. In 2010 the courts have finished examining the 4 criminal cases of child trafficking of the 5 people (In 2009-4 causes / 4 persons) and 6 cases of illegal removal of children in the country of 9 people (2009-7 cauze/10 people).¹⁴

Prosecutors say that in most cases on the illegal removal of children from the country are surveyed parents, because they have violated the law. There were cases in which third parties, at the request of parents, removed children from the country through various illegal schemes that put life in danger or in cases where children have been abandoned abroad. There were also cases where the child was hidden under the car seat and passed through customs. In most cases false power of attorney or forged documents are drawn up to remove the child from the country. Illegal removing of children from the country or under false documents or abandonment in a foreign country is punished by the Criminal Code with deprivation of freedom from 2 to 6 years.¹⁵

However, some experts and lawyers say that law enforcement bodies sometimes open criminal cases for illegal removal of children from the country for more statistics.

12.7. Right to education

The right to education is guaranteed, regardless of nationality, sex, age, origin and social status, political affiliation or religion, criminal record. The length of compulsory secondary education is 9 years.

Ministry of Education statistics on school dropout are totally different from those presented by the National Bureau of Statistics (NBS) or the General Prosecutor's Office. According to the Ministry, the number of unschooled children is declining - from 721 children in the school year 2004/2005 up to 92 children in 2009/2010. NBS Information shows that in the last four years, enrollment rates in compulsory secondary education institutions is declining - from 95% in 2002 to 90% in 2009. The number of those who do not attend school or attend less often amounts to over 43000 students.¹⁶ According to the 2010 activity report of the General Prosecutor's Office an insufficient state of the children's chapter of the right to education is maintained.

¹⁴ <http://www.procuratura.md/md/d2010/>

¹⁵ <http://www.europalibera.org/content/article/2135692.html>

¹⁶ <http://www.investigatii.md/index.php?art=458>

In 2010 130 pupils remained unschooled. A cause of school dropout is more subject to the precarious financial situation, and the indifference of parents, leaving children without parental supervision and their employment.

Children from a rural environment, children with disabilities and Roma children are enrolled in a lower proportion in compulsory education. Many children are enrolled on the lists of students, but in reality a big part of them are in the field helping parents who struggle with poverty. There is a great difference to the access to education between rural children and the urban. If we compare, in urban society around 96% of children attend school, while in the country the number can rise to 85%.¹⁷ According to Education Law, the obligation to attend school ceases at the end of the school year in which the student reaches the age of 16. At best, those who were absent for several months formally, manage to learn several years and then are free to do whatever they want. Some can not obtain the diploma of secondary studies, without which they can not enroll in a vocational school. The only way for children to complete nine classes is to attend a night school, but there are few institutions in Moldova of this kind. Education legislation contains no provision for school reintegration of those who left school. As age increases, students in this category are a few years elder than their potential classmates and therefore feel embarrassed to come to lessons. To give good statistics, headmasters and local public authorities, with the tacit agreement of competent ministry, stated as a school the children who come to school once a month.¹⁸ This is confirmed by the Prosecutor General's Office report in 2010 stating that not all children taken to school records were enrolled in education process. In order to eliminate these gaps, prosecutors approached the Ministry of Education and Ministry of Labour, Social Protection and Family. Prosecutors have examined and sanctioned in contravention order 1057 parents (art. 63 Contravention Code), for unconscientious fulfilling of parental obligations. Most unschooled children are in villages with Roma ethnicity. According to the Child's Lawyer in some localities more than 60% of children do not attend school. Vulcanesti village of Nisporeni district is populated pro rata 95% of Roma. Most of 1500 inhabitants did not attend the school. Because parents always migrate in search of a job, children are not staying in kindergarten or in school. Although in village for many years a school has been working, Roma children attend most of cases up to sixth grade. There are cases in which they are promoted from one class to another without knowing even to read. Girls are more vulnerable to illiteracy, as most marry early in adolescence.¹⁹ Here, education is seen as fictional, professors and teachers come to school at an interval of 2-3 days a week. Education is done by children; teachers delegate one of present children to deal with the education of colleagues.²⁰

The Ministry of Education with UNICEF Moldova is currently conducting a program of reforming the residential system, which has foreseen the decrease until 2012 by 50% by 2012 the number of children in boarding schools, special schools and auxiliary schools. From 62 residential institutions in 2007, of 53, 23 are auxiliary schools

17 <http://www.investigatii.md/index.php?art=458>

18 <http://www.investigatii.md/index.php?art=457>

19 <http://www.investigatii.md/index.php?art=455>

20 http://www.un.md/news_room/pr/2009/UNFPA_Roma/UNFPA_Comunicat%20Rom_Proiect%20Romi_6%20Noi%202009.pdf

for children with different disabilities. The number of children being in residential system has decreased from 2007 to the end of 2010 from 11500 to 7200.²¹

Many children who come from poor families or were offenders where sent to auxiliary schools for children with mental retardation. In such special institutions healthy children who had to be integrated into community schools have been identified. Regional medico-psycho-pedagogical commissions, at the request of the educational institution where the child can not learn certain disciplines, chose to establish a mental disability of a degree and to send their child to an auxiliary school.²²

In auxiliary schools children are learning from the curriculum of primary classes, plus several disciplines related to agriculture and viticulture. The certificate received after graduation does not allow them to continue their education in high schools, colleges or universities. Graduates can go only to few trade schools, and after their graduation have less chance to find a job. Auxiliary school of Sculeni, Ungheni district has been working for decades, during which time hundreds of students have graduated. Nobody knows exactly how many of them were placed in the institution improperly. After the school entered into a reorganization process, initiated within a project of the Organization "Every Child" and UNICEF, there remained only 21 children. Around 40 pupils were reintegrated into families and schools in their localities. Evaluation results of children showed that only 10% of those who taught here really had some degree of mental retardation; other children were healthy, due to which were committed irreparable acts. Worse is that many parents who agreed to enroll their children in Sculeni did not know that this is an institution for children with the degree of retardation. Even if you accidentally get there, usually children can not transfer in common institutions because their files are no longer reviewed.²³

These schools are an extremely big burden for the budgets of their funding. For example, Ungheni district's annual spending is around 28 thousand lei for each pupil in the school from Sculeni. For comparison, studies of a pupil from the secondary school from Unțești, state expends seven times less as it is 4 thousand lei. Only a small fraction of the money - about 6 thousand lei were direct costs for a child, the remainder being spent on building maintenance and payment of employees. At country level the situation is even worse. The cost of maintaining a child in a residential institution is between 20 and 50 thousand / year.

12.8. Social inclusion

In 2010 the Moldovan Parliament ratified the UN Convention on the Rights of Persons with Disabilities and imposed in an action plan, new standards on access of people with disabilities to information, education, public space, work. Ratifying the UN Convention on disabled people has brought hope to families struggling to obtain for their disabled children the right to a normal life. The authorities have promised to produce by the end of 2010, a new type of service - personal assistance (parents will be employed as a carer for their children and will be paid from state salary). However,

21 <http://www.investigatii.md/index.php?art=492>

22 Idem.

23 Idem.

the problems of children with disabilities and mothers caring for children with special needs, are still unresolved. The “Working day” of a mother raising a child with disabilities is 24 hours long. They have no holidays or days off. While working hard, they are virtually excluded from the welfare system. Neither with a salary, nor hope for a decent pension. When their children turn 18, the state deprives them even of the right to receive health insurance. Usually a mother with a child with disabilities is left by her husband and has by herself to struggle for her child as to create decent conditions. When children come of age, the mothers no longer provide free health care, although they still take care. If you get sick and go to the hospital, families are forced to pay for hospitalization. Another paradox of law is that, often, mothers are forced to give up their degree of disability, and respectively the allowance, because the guardianship of a disabled child is not granted to other disabled people. And if the child is not under guardianship of someone, they do not receive an allowance.²⁴

Recommendations

- Solutions to identify all unregistered children and facilitate the procedures of issuing birth certificates for children whose birth was not legally registered;
- Inauguration of the Police Stations, Prosecutor’s Offices and Courts of special rooms for children’s hearing under friendly witnesses, victims or offenders;
- Conducting a census of all children in the Republic of Moldova, to determine their circumstances and needs, develop child protection policies based on real numbers and to protect every child;
- For smooth operation of the Law on social services it is necessary to adopt new legislative instruments, such as the Law on the assessment, accreditation and supervision of social services and developing criteria for assessing professional competence and ethical conduct of carers;
- Development of a legislative instrument on social adaptation of children post-placement;
- Increased attention from local administration to problems on insurance and financial support for families in difficulty;
- Relevant regulations on informal care of children without parental care;
- Legal regulation of the shape of residential care. Identification of clear criteria to justify the institutionalization of children;
- Consistent and professional evaluation of the child and family situation, including actual and potential capacity of families to take care for children, where the child is in danger;
- Establish the function of assistant for child problems at community level.

²⁴ <http://www.europalibera.org/content/article/2104161.html>

Lilia POTING and Olga MANOLE

According to the latest studies in the field, one in four women in Moldova is a victim of domestic violence, whether it is physical, sexual, psychological or economic. The 2005 Moldova Demographic and Health Survey showed that 24% of married women are subjected to physical violence, 23% to psychological violence, and 4% to sexual violence.¹

Further, in 2010, at an official meeting, Moldova's Deputy Prosecutor-General E. Rusu confirmed that, according to a survey conducted by the prosecution service, 90% of the victims of domestic violence are women.²

Thus, we may conclude that domestic violence in Moldova has a strong gender character and there is even a culture of gender violence, which distorts the perception of future generations about family – the abusive model is transmitted from family to family and from generation to generation. Many of the victims of violence, being educated in families where violence was a real phenomenon, are not aware that there is another way of behavior or other ways to solve conflicts.³

According to a Report by the International Center for Women Rights Protection and Promotion "La Strada" (La Strada), which is based on data gathered from La Strada's "Trust Line for Women", out of 1,099 calls received in one year of operation, 1,000 concerned domestic violence issues, representing 791 cases in total. Most calls from victims were received from women who were subjected to domestic violence by their husbands (66%), by former husbands (10%), children (6%), parents (3%), parents-in-law (2%), lovers (1%), brothers (1%) and other family members (2%).⁴

From the total number of victims, around 45% are from socially vulnerable strata, whilst 40% of victims are in an average financial position and 15% of the victims are in a very good financial position. This data shows that domestic violence is a widespread phenomenon in Moldova and can be found throughout the economic spectrum.

At the same time, the Report also indicates that victims of domestic violence in Moldova have a number of common characteristics: they frequently come from violent families, have been witnesses or victims of violence in their family of origin, have little to no aspirations or future plans, display low self-esteem, and have manifested a high level of victimization in their personalities (through being highly dependent upon the aggressor and therefore being unable to proceed with changes).

Frequent and open manifestations of violence lead to marginalization of women and children. The lack of money, the lack of support from relatives (most often parents are alcohol addicts, abusers) and from the authorities, and the lack of a

1 <http://www.unfpa.md/images/stories/pdf/intrebari%20frecvente%20despre%20violenta%20in%20familie.doc>

2 <http://www.procuratura.md/md/com/1211/1/3941/>

3 The Trust Line for Women: Analytical Operating Report, the International Center "La Strada", http://www.lastrada.md/publicatii/ebook/Raport_linia_fierbinte_2010_EN.pdf

4 Idem.

shelter determine these women to accept the role of a victim. The leading causes that make victims accept further abuses against them include: the lack of dwelling; the fear of not being able to cope financially without a partner; the desire to have a husband; pity for the aggressor; the acknowledgment that the children need a father or that the children are against a divorce; shame; pressure from family or relatives to keep the family united; advanced age; and the hope that the aggressor will change.

There are also women who are ready to break the circle of violence, but they often have no money to initiate divorce proceedings. Or worse, victims are threatened with death or damage to property if they leave the abuser.⁵

Also, according to data from the Ministry of Labor, Social Protection and Family (MLSPF), around 80% of the persons who end up being trafficked have suffered from abuse or violence in the past, including physical, sexual, emotional or economic violence.⁶ Also, there are villages in Moldova whose populations consist of about 70% to 80% men, former aggressors whose wives left the household to escape from continuous violence.⁷

The help sought by the victims of domestic violence is usually psychological and legal assistance. They also often request information on accommodation and temporary shelter, on how to protect the rights of their children, on institutions providing treatment for alcohol addiction, on possibilities of employment and of obtaining welfare.

Most primary legal information offered to women seeking help is related to family law: divorce procedures, division of common property, parental rights, information on how to get a protection order.

13.1 Obligations under International Law

In the 1990s Moldova ratified a number of major international human rights documents, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Under Art.2 of the CEDAW, Moldova has condemned discrimination against women and agreed to “pursue by all means and without delay a policy of eliminating discrimination against women” through undertaking various measures listed in that article. General Recommendation 19 issued by the Committee on the Elimination of Discrimination against Women addresses the issue of violence against women.⁸ It confirms that “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”,⁹ and that the full implementation of CEDAW requires States Parties to take positive measures to eliminate all

5 The Trust Line for Women: Analytical Operating Report, the International Center “La Strada”, http://www.lastrada.md/publicatii/ebook/Raport_linia_fierbinte_2010_EN.pdf

6 <http://unfpa.md/index.php/en/articles/148-violenta-in-familie-ne-cost-milioane-de-lei-.html>

7 GENDER Newsletter, 6th Issue, 2009, http://www.un.md/UNIFEM/news/Gender%20Newsletter%206%20issue_eng.pdf

8 UN Committee on the Elimination of Discrimination against Women, General Recommendation 19: Violence against Women, 11th Session, 1992.

9 Ibid., Para 1.

forms of violence against women.¹⁰ General Recommendation 19 explains that gender-based violence “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”.¹¹ It also clarifies that the obligation of States Parties to protect individuals from gender-based violence is not restricted to protection from violence perpetrated by or on behalf of the Government. States Parties “may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.¹²

General Recommendation 19 provides examples of gender-based violence, among which there is family violence, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes.¹³

In conclusion to General Recommendation 19, the Committee on the Elimination of Discrimination against Women makes a series of specific recommendations, the most relevant being the following:

„(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;

(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. [...];

(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence. [...];

(k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counseling”.¹⁴

13.2 Domestic Law

According to the introductory note to Law 45-XVI on Preventing and Combating Domestic Violence (Law No.45-XVI),¹⁵ which came into force on 18 September 2008, “preventing and combating domestic violence are part of the National Policy for Family Protection and Support and represents a major public health concern”. Law No.45-XVI aims to strengthen, protect and support the family, to ensure respect for fundamental principles of law in the family, and to ensure equal opportunities between women and men in their human right to a life without violence.

10 UN Committee on the Elimination of Discrimination against Women, General Recommendation 19: Violence against Women, 11th Session, 1992, Para. 4.

11 Ibid., Para. 6.

12 Ibid., Para. 9.

13 Ibid., Para. 23.

14 Ibid., Para. 24.

15 Law on Preventing and Combating Family Violence, Law Number 45-XVI of 1 March 2007, Published 18 March 2008 in the Official Monitor Number 55-56/178, Entry into force 18 September 2008.
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327246>

In Article 2 of Law No.45-XVI, family violence is defined as: “any action or deliberate inaction, except for self-defense or defense of others, manifested verbally or physically, by physical, sexual, psychological, spiritual or economic abuse, or by infliction of material or moral damage, committed by a family member on another family member/members, including against children and against the common or personal property”. Article 3 of Law No.45-XVI confirms that the protection from domestic violence provided by this legislation applies as follows:

1. This law applies to: the aggressor and the victim citizens of the Republic of Moldova and to foreign citizens and stateless persons who live in the Republic of Moldova.
2. This law applies:
 - a. In cases of cohabitation – persons in relationship of marriage, divorce, intimate cohabitation, guardianship and tutorship, their direct or collateral relatives, relatives’ spouses, or other persons who are maintained by the such persons;
 - b. In cases of separate habitation – persons in a relationship of marriage; their children, including adopted children; those born outside the marriage; those under guardianship or tutorship; or other persons who are maintained by such persons.

Article 15 of Law No.45-XVI introduced the Protection Order – the legal instrument by which the court can apply measures which offer protection to the victims of domestic violence. Protection Orders aim to provide emergency protection to the victim, such as: (i) ordering the aggressor to leave the shared residence; and/or (ii) prohibiting the aggressor from approaching the victim (including a distance-specific restraining order). Prior to Law No.45-XVI being adopted, the only option available to the victim was to search for refuge, which often forced them to leave their home and children.

However, since its coming into force, Law No.45-XVI on Domestic violence has proved to be somewhat redundant, as there is no mechanism for implementing its requirements. Despite the entry into force of this law, the Criminal Code of the Republic of Moldova still did not include provisions on domestic violence. Domestic violence was interpreted as a private issue, and victims were regarded as “women having family problems”. Such acts of violence were sometimes prosecuted under the general criminal law provisions regarding the infliction of bodily harm or assault, or under administrative law. Depending on the gravity of the harm, however, the aggressor could be punished with only a fee or community service. In many cases, however, spouses would be “reconciled” and the aggressor would escape any punishment at all.

Further, none of the modifications set out in Article 15 of Law No.45-XVI, which included the establishment of a Protection Order regime, have been integrated into civil procedural norms. Consequently, an examining magistrate could refuse to issue a Protection Order for the victim.

Thus, even though Law 45-XVI took effect on 18 September 2008, it was not until 25 September 2009 that the first Protection Order was issued by a Moldovan court. The Protection Order was issued by the Anenii Noi District Court to protect Eugenia P. and her minor son from constant violent behavior of her husband. The 90-day Protection Order required the abuser to immediately leave the house, to stay at least 100 meters away from Eugenia and their child as well as from Eugenia's workplace. The aggressor left the shared residence and eventually they got divorced.¹⁶

13.3 Evolution of Domestic Law

On 3 September 2010, a new Law No.167 entered into force as an amendment to certain other pieces of legislation (including the Criminal Code, the Code of Criminal Procedure and Law No.45-XVI).¹⁷ Law No.167 aimed to solve the problems of non-implementation of Law No.45-XVI. Perhaps most significantly, Law No.167 inserted a new provision in the Criminal Code – Art 211 on domestic violence,¹⁸ according to which domestic violence is established as a criminal offense and is defined as: “[...] intentional action or inaction that is manifested physically or verbally, committed by a family member on another family member, causing physical pain, slight bodily injury, distress, material or moral damage. [...] For family violence causing consequences for the victims’ bodily integrity and health, the aggressor may be subjected to 15 years imprisonment especially if the victim (a) died, (b) attempted suicide (c) or suffered serious bodily harm as a result of the violence.”

Law No.167 also added a new chapter to the Code of Civil Procedure. Chapter XXX¹ was devised to govern the manner of filing applications for protection orders, the content of the application, how applications should be examined, how to issue protection orders, the conditions for extending and lifting protection orders, as well as the ways of challenging decisions to satisfy or reject applications for protection orders.

Thus, a Protection Order for victims of domestic violence can now be issued both in criminal and civil proceedings. Under civil procedure set out in Article 15 of Law No.45-XVI, the court is required to issue a Protection Order within 24 hours of receiving the application. Under the criminal procedure, set out in Art. 2151, investigating body is obliged to submit a request to the judge to examine the application for a Protection Order within 24 hours. Under both procedures, the court may oblige the aggressor: (a) to temporarily leave the shared residence or stay away from the victims residence, without a decision on how common property should be divided; (b) to stay away from the victim’s location; (c) to refrain from contacting the victim, the victim’s children and other dependents; (d) to stay away from the victim’s workplace and residence; (e) to contribute, until the settlement of the case, to the maintenance of common children; (f) to cover damages resulting from

16 For more details on the case, see GENDER Newsletter, 6th Issue, 2009, http://www.un.md/UNIFEM/news/Gender%20Newsletter%206%20issue_eng.pdf

17 Parliament of the Republic of Moldova, Law No.167, (available in Romanian), <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335828>

18 The Criminal Code of the Republic of Moldova, No.985-XV dated 18.04.2002, as amended.

violent acts, including medical costs and expenses related to the replacement or repair of damaged or destroyed property or other assets; (g) limitation of unilateral enjoyment of common property; (h) to attend special treatment or counseling programs if such a measure is deemed by the court to be necessary for the reduction or disappearance of violence; (i) to temporarily abide by a child visitation schedule; (j) and to abstain from keeping and carrying firearms.

The Code of Criminal Procedure also provides for the arrest of the accused or defendant for up to 72 hours if the offense is punishable by imprisonment, as well as for the preliminary detention of the suspect or defendant who violates a domestic violence protection order. As in civil procedure, in criminal proceedings (Art. 215¹) the court may order measures to protect victims of domestic violence for a period of up to 3 months with a potential extension at repeated request, in cases when acts of domestic violence reoccur or when the terms of the protection order are not respected.

In crisis situations, the sibling or other relative of the victim (members of the same family) may also apply for an order of protection. Its issuance can also be requested by officials and professionals who come into contact with the family, the guardianship authority, and also other persons who possess information that a violent act is imminently about to occur or has already occurred.

At the same time, Law No.167 introduced an amendment to Article 171 of the Criminal Code, whereby rape has been recognized as an offense that can occur within the family as well,¹⁹ in other words, recognizing marital rape as a criminal offense in Moldova.

Law 45-XVI defines “sexual violence” as: “any violence of a sexual nature or any illegal sexual conduct within the family or other interpersonal relationships, such as marital rape, prohibiting any methods of contraception, sexual harassment; any unwanted and imposed sexual behaviour; forced prostitution; any illegal sexual conduct in relation with a minor family member, including caresses, kisses and other unwanted touching of a sexual nature; other actions with similar effects”.²⁰

Thus, while Moldova has good laws to combat domestic violence that appear to provide sufficient safeguards, their implementation remains to be problematic and ineffective. The major problems concerning the implementation of protection mechanisms are detailed below.

13.3.1. Implementation of Law 45-XVI on Preventing and Combating Family Violence

According to Article 7 of Law 45-XVI, the authorities and institutions responsible for preventing and combating family violence are the following: (a) central specialized public administration authorities (such as the Ministry of Labor, Social Protection and Family, the Ministry of Education, the Ministry of Healthcare, the Ministry of the Interior, the Ministry of Justice); (b) local specialized public administration authorities, (such as the social assistance and family protection divisions/

¹⁹ Ibid, Article 171 (2)(b²).

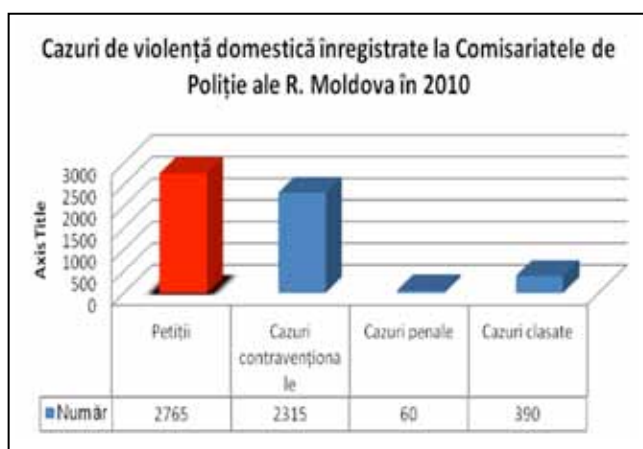
²⁰ Law 45-XVI on Preventing and Combating Family Violence, Article 2.

departments; the general education, youth and sports departments; healthcare agencies; internal affairs agencies); (c) local authority commissions responsible for social matters; (d) centers/services for victim and aggressor rehabilitation; (e) other organizations with specific activities in the field.

13.4. Official Statistics

According to Article 7(2) of Law 45-XVI, the agency responsible for the development and promotion of policies in the areas of preventing and combating domestic violence and for providing social assistance to victims and aggressors is the MLSPF. In this context, the MLSPF's Department for Gender Equality and Domestic Violence is responsible for monitoring the implementation of legal provisions on domestic violence. However, since Law 45-XVI entered into force on 18 September, no monitoring or assessment report on the Law's implementation has been yet published. This means that the authorities have failed so far to present a comprehensive report that would include official information on how the provisions of Law 45-XVI are implemented, on the impact of the Law's implementation at national level and the problematic issues related to its implementation.

According to statistical data provided by the Ministry of Internal Affairs, 2,862 complaints were recorded as cases of domestic violence that were examined by operative police officers in 2009. In 2010, police officers recorded 2,765 such complaints, which resulted in 2,315 sets of administrative offense proceedings and 60 sets of criminal proceedings being initiated; 390 cases were dismissed.



Of the 60 criminal cases, 23 were already initiated under Article 201¹ on domestic violence of the Criminal Code, article which entered into force on 3 September 2010.

According to data provided by police stations in Moldova, eight criminal cases under Article 201¹ were initiated in Ungheni, five in Balti, three in Cahul, two in Drochia and Taraclia and one case in each Chisinau, Stefan Voda and Ocnita.

Sexual offenses represent another form of domestic violence. However, the Moldovan authorities have failed to expressly distinguish between sexual offenses committed within family relationships and other sexual offenses. According to the latest statistics provided by the Ministry of Internal Affairs, in 2010 there were a total of 504 cases of sexual offenses, classified as follows: (i) 323 cases of rape (a 32,4% increase

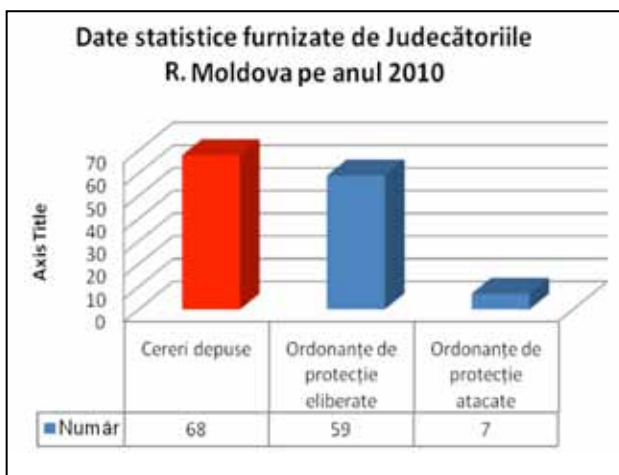
from 2009) and (ii) 181 cases of sexual violence (a 39.2% increase from 2009).²¹ Of the total number of cases, 139 resulted in a cessation of criminal proceedings and 112 remained unresolved or still remain in the process of examination.

According to data presented by the Prosecutor General's Office,²² in the course of 2009 and 9 months of 2010, the territorial prosecution agencies recorded 278 complaints and requests concerning domestic violence. It was found that in an overwhelming majority of cases the complaints were made by victims and family members. These are in particular wives or divorced women that continue to share a home with their ex-husbands or who are financially dependent on the former husband or partner.

Of the total 278 examined complaints, 231 were recognized as warranting intervention. As a result, 24 criminal cases were started, including 5 under Article 145 of the Criminal Code (premeditated murder), 4 under Article 171 of the Criminal Code (rape), 2 under Article 151 of the Criminal Code (intentional severe injury to physical integrity or harm to health), 6 under Article 152 (intentional medium injury to physical integrity or harm to health); 2 under Article 155 (death threat or threat to inflict severe harm or injury), and more recently, with the introduction of Article 201¹ into the Criminal Code (domestic violence), 5 under this Article. Other 186 aggressors got administrative penalties.

At the same time, during this period, prosecutors filed 32 applications for protection orders and remediation of the victims of domestic violence. It should also be noted that most complaints involving acts of domestic violence were recorded in the districts of Edinet – 44 complaints, Cantemir – 26 complaints; Causeni – 24 complaints, Anenii Noi – 12 complaints, Riscani – 9 complaints, Cimislia – 6 complaints, Ungheni, Soldanesti, Glodeni, Straseni – 5 complaints, Soroca, Criuleni – 4 complaints etc. At the same time, no such complaints were registered by the prosecution services in the municipality of Balti, and the districts of Dubasari, Nisporeni, Singerei, Taraclia and Vulcanesti.

Another source at the General Prosecutor's Office indicates that whereas in 2009 prosecutors obtained just one protection order for victims of domestic violence, then in 2010 their number amounted to roughly 100.²³



²¹ Ministry of Internal Affairs, Operative information on the state of crime in Moldova in 2010, <http://www.mai.md/content/6945>

²² <http://www.procuratura.md/md/com/1211/1/3672/>

²³ <http://www.procuratura.md/md/com/1211/1/3941/>

According to data provided by courts in Moldova following an official inquiry, in 2010 there were filed 68 applications for protection orders, 59 of which were satisfied; seven of those protection orders were challenged.

Most protection orders were issued by the Soldanesti District Court, 11 in number, followed by the Floresti District Court, with six protection orders. In 15 out of 41 territorial administrative units no protection orders were issued. Three courts didn't provide any information in response to the inquiry.

13.5 Key Problems in Implementing Law 45-XVI

Law 45-XVI provides for a reversal of the burden of proof, meaning responsibility lies with the aggressor to demonstrate that there hasn't been any act of domestic violence and there is no need to apply protection measures. At the same time, victims of psychological and sexual violence often face difficulties in obtaining a protection order because in such cases there are usually no injuries that can be documented in a medical certificate and subsequently attached as evidence to the case. In such cases, the seriousness of psychological violence and manipulation is underestimated as the statements and complaints by the victims are not appropriately credited, which leaves these victims unprotected.

When victims of domestic violence eventually obtain a protection order, the provisions of these acts are often not followed by the aggressors. Moreover, Moldova faces indifference on the part of law enforcement bodies in such matters.

According to data presented in the Report on the operation of the Trust Line for Women,²⁴ of the total number of 791 registered cases, in 161 cases the beneficiaries experienced difficulties when complaining to the law enforcement bodies: in 93 cases, they were not satisfied with the police intervention which was restricted to reprimanding or imposing a fine on the aggressor (which in many cases ended up being paid by the victims themselves); in 38 cases they were reluctant to turn to the law enforcement bodies for help because they distrusted the system, and in other 45 cases they were afraid that police intervention would make the situation even worse.

In the same context, it should be noted that, based on the Promo-LEX caseload as well as on cases handled by other NGOs and lawyers that provide legal assistance to victims of domestic violence, there are a number of problematic issues related to the protection order:

a. Failure to execute protection orders: One of the most frequently encountered problems in the domestic violence area is the failure to execute the Protection Order by both the aggressor and the authorities, who by law are responsible for its implementation in practice. In most cases the local social worker and the police are unaware of the existence of the Protection Order, let alone have the knowledge of enforcement of the order. Another situation is when the police know about domestic violence and about the Protection Order but limit their involvement to informing the aggressor about its existence, even when the Protection Order text imposes an

24 The Trust Line for Women: Analytical Operating Report, the International Center "La Strada", http://www.lastrada.md/publicatii/ebook/Raport_linia_fierbinte_2010_EN.pdf

obligation on the aggressor to leave the house. The most frequent explanation is the lack of space or alternative accommodation to which the aggressor could move. Thus, the aggressor's right to housing is interpreted as being superior to the right of the victim to live a violence-free life.

In this context, it should be mentioned that the Police Law (No.416-XII of 18 December 1990, republished in Moldova's Official Gazette, 2002, No.17-19, art. 56) was amended through Law No.167. As a result, Article 12 which sets out the responsibilities of the police was supplemented with section 51, which says that the police have a duty "to ensure the protection of victims of domestic violence and supervise the execution of protection orders in conformity with the law". Further, Article 13 was supplemented with section 41, which provides that "in case the victim of domestic violence is in a state of incapability, (the police) shall request the court for a protection order based on the victim's petition or notification on the case".

Thus, we can conclude that police officers, in particular at local level, either neglect or violate, purposefully and blatantly, the provisions of Law 45-XVI concerning the Protection Order.

b. Delayed start of the criminal prosecution by the prosecution: Although since 3 September 2010, domestic violence has been a crime under the Criminal Code, the petitions submitted to the prosecution on behalf of the victims remain unsolved. While many petitions have been filed, the ongoing subjection of the victims to domestic violence continues.

c. Refusal to issue protection orders: There are cases when courts refused to issue protection orders, in particular when the aggressor did not recognize the acts of violence, and also presented witnesses who submitted statements in their favor. In such situations, the statements of the victim are often disregarded. Moreover, despite the provisions of Law 45-XVI which explicitly enumerates a vast range of violent behaviors, including physical, sexual, psychological, spiritual and economic violence, courts often associate domestic violence only with physical violence. Other forms of violence, such as psychological or economic, are perceived as being part of the normal routine of family life. Thus, victims often face a hostile attitude from the court, particularly from judges, which often results in the credibility of the reported offence being further disregarded, and the risk which victims face is not minimized.

d. Delayed issuance of protection orders: Delay in issuing Protection Orders: The essence of the Protection Order is to provide immediate protection for victims of domestic violence, and this is the reason for the 24 hour time-limits imposed under both the civil and criminal procedures. In many cases, delays mean that a Protection Order is not granted until, for example, two weeks after the application is made, which is often too late to prevent the victim from being subjected to further violence.

During 2009-2010 there were numerous cases registered of defective implementation of Law 45-XVI. In this regard, we can refer to the case of Mudric and the case of Eremia.²⁵

²⁵ <http://www.promolex.md/index.php?module=news&item=522>

Case of Mudric

On 18 March 2011, the European Court of Human Rights notified Moldova's Government of the case of *Mudric v Moldova* (application No.74839/10, filed on 21 December 2010) in which the applicant, a victim of domestic violence, complained of state complicity in her ill-treatment, of gender-based discrimination in enjoying legal protection, and of violation of the right to inviolability of the home.

The applicant, 72-year-old Lidia Mudric, had been systematically beaten in the course of 2010 by her ex-husband. Despite divorcing the man 20 years ago, he had illegally entered her house and occupied it without her permission. The applicant was forced to seek refuge at her neighbors and alternatively to even spend the night outdoors. Her numerous complaints to the police and prosecution service didn't bring her the sought protection, and all the protection orders issued by the court (three in number – on June 22, July 17 and December 16, 2010) whereby the aggressor had been ordered to leave her house, remained unexecuted. The police excused their inaction by saying that the aggressor was suffering from a mental illness and therefore could not be held criminally accountable, explaining their refusal to evict the aggressor from the applicant's house on his lack of alternative dwelling. Moreover, eventually the local police stopped reacting to the calls of Mrs. Mudric when she complained about being beaten.

Case of Eremia

On 21 March 2011, the European Court of Human Rights notified Moldova's Government of the case of *Eremia and others v Moldova* (application No.3564/11 lodged on 16 January 2011) in which the applicants, the mother and her minor daughters, victims of domestic violence, complain of state complicity in their ill-treatment and of gender-based discrimination in enjoying legal protection.

Mrs. Eremia had been systematically beaten by her ex-husband. After filing for divorce in July 2010, Mrs. Eremia came to see her ex-husband grow even more aggressive; he continued to beat and insult her, often in the presence of their minor daughters. The numerous complaints to the police, the prosecutors and the Ministry of Internal Affairs, her former husband being a police officer, didn't offer Mrs. Eremia and her daughters the sought protection against domestic violence. Contrarily, a high-ranking police officer tried to put pressure on her and blame her for provoking the violence. The protection order issued on 9 December 2010, by which the aggressor was ordered to leave the domicile and discontinue his violent behavior, was not executed, as the aggressor repeatedly violated it, including by beating Mrs. Eremia and the daughters. She was also harassed in the street, threatened and pressured into taking her complaints back. None of the complaints made to the police emergency helpline 902 or in writing changed the situation.

Later, the prosecutor of Calarasi, in the aggressor's presence, convinced the woman to take the complaints back "in the best interest of the children", under the promise that the ex-husband would never touch her again. On the same night, the aggressor ill-treated Mrs. Eremia for one and a half hour in their common home, where the man had been banned by the protection order from returning for 90 days.

On 14 January 2011, Mrs. Eremia came to the Rehabilitation Center for Do-

mestic Violence Victims with a medical forensic conclusion and on 16 January 2011 an application was lodged with the ECtHR. In examining the case, it was found that the aggressor had been violent only in relation to his wife and daughters, while being generally benevolent in relation to his son. The family suffers from a distorted gender education and this explains why the aggressor has made it an obligation for himself to beat his wife. The violation of the terms of the protection order by the aggressor didn't cease and the applicants' lawyer has requested criminal proceedings for the failure to execute the ordinance. On 14 March 2011 the protection ordinance was renewed after systematical breaches of the previous one. On 1 April 2011, the aggressor admitted guilt and criminal proceedings against him were conditionally suspended for a period of one year. Although this decision was challenged, it remained in force after being upheld by the Calarasi Prosecutor's Office.

13.6. Domestic Violence in the Transnistrian Region

Law 45-XVI does not apply in Moldova's Transnistrian region, whose de facto administration rejects Moldovan jurisdiction. In these circumstances, the victims of domestic violence in that region, while being citizens and residents of the Republic of Moldova, are unable to enjoy protection from the state. They are deprived of any effective remedy from legitimate domestic courts, law enforcement bodies and other relevant institutions. Even if victims would ask legitimate courts for a protection order, it would be impossible to enforce them on the eastern side of the Nistru River due to the lack of effective control.

A survey titled "Reflecting Human Rights Issues in the Mirror of Public Opinion in Transnistria" and conducted in March-June 2009 by the NGO Resonance as part of the project "Opening New Horizons for Women, indicated that one in four women in the region suffered from physical or economic violence in the family. Women are also often subjected to emotional and psychological violence in the form of various threats, intimidation, obscene jokes, victimization, remarks, jealousy, etc.

At the same time, 62.8% of the respondents that took part in the survey expressed their attitude to the problem of domestic violence by stating that "it is necessary to combat it", which inspires optimism with respect to the degree of comprehension of the depth of the problem and the need to take certain actions aimed at minimizing the effects and consequences of this scourge.²⁶

To date not a single protection order has been issued by the legitimate courts of Moldova for a victim of domestic violence living in the Transnistrian region. It also must be noted that the Transnistrian region doesn't have any specific law to protect victims of domestic violence and/or prevent its occurrence.

At the region's level, there are several NGOs that provide assistance to victims of domestic violence, such as Perspectiva, Interaction, Resonance and others. These organizations mainly offer services of psychological and primary legal assistance. Seminars, trainings and roundtables on the topic are periodically organized for both victims and various groups of professionals.

26 GENDER Newsletter, 6th Issue, 2009, http://www.un.md/UNIFEM/news/Gender%20Newsletter%206%20issue_eng.pdf

On 1 April 2009, a Trust Line (0 800 99 800) started to operate under the supervision of the Tiraspol-based NGO Interaction, with support from the International Organization for Migration. The Line receives each month an average of 75-80 calls which mainly concern domestic violence issues. In the period from 1 April 2009 to 31 October 2010, there were registered 972 calls. A statistical analysis of the collected data shows that 54% of the victims were subjected to psychological violence, 35% were subjected to physical violence, 9% to economic violence and 3% to sexual violence.

Victims of domestic violence are offered legal and psychological consultations as well as information of the available social and medical assistance.²⁷

Starting from 2010, the Social Service Agency "Perspectiva", with support from Winrock Int. Moldova, has been implementing the project "The Assistance Center for Women" in Ribnita town. At the Center, victims of domestic violence are offered legal and psychological consultations.²⁸

At the same time, in 2009-2010 there wasn't any rehabilitation center in the region to offer temporary shelter and complex rehabilitation services.

13.7. Rehabilitation of Domestic Violence Victims

Rehabilitating victims of domestic violence is part of the public policy on preventing and combating domestic violence. In this regard, Article 8 of Law 45-XVI defines the responsibilities of central and local authorities on the rehabilitation of both victims and perpetrators of domestic violence.

A rehabilitation center for victims of domestic violence is a specialized establishment that offers to its beneficiaries accommodation, food, legal, social, psychological and primary medical assistance, security and protection, as well as assistance with contacting relatives. Such centers may be created by the authorities, nongovernmental or private organizations, or under joint partnerships among these actors. Such centers offer protection and accommodation to victims until the settlement of their family situation, but no longer than for 3 months.

In 2009-2010, only 3 rehabilitation centers for victims of domestic violence worked in Moldova: two in Chisinau and one in Cahul.

There are also maternal centers which offer psychological assistance and temporary shelter, including to victims of domestic violence.

To ensure that victims of domestic violence receive quality services, Minimum Quality Standards for social services provided to victims of domestic violence were introduced on 23 December 2010 through Government Decision No.1200. The document contains detailed provisions on the principles of providing social services, the beneficiaries of these centers, admission and placement rules, types of provided services, standards for the management and personnel of the centers.

27 <http://ngointeraction.org/main/ru/component/content/article/1-latest-news/139-lmi-na-rasstoyanii-zvonkar-uje-rovno-god-c-pervim-yubileem->

28 <http://www.nr2.ru/266373.html/print/>

Article III of Law No.167 introduced an amendment to Article 90 of the Criminal Code, which requires perpetrators to participate in special treatment or therapy programs to reduce violent behaviors. This means that aggressors are now able to benefit from rehabilitation services and learn how to control their violent conduct.

There is just one Rehabilitation Center in Moldova that provides services to perpetrators and it is located in Drochia. In 2010, the NGO “Artemida”, in cooperation with the Drochia District Council, had the initiative to create the first regional assistance center for domestic aggressors. This rehabilitation center offers psychological and legal counseling, as well as social assistance to perpetrators. The Center also operates a mobile team that is quick to intervene at the scene of domestic violence to provide assistance to both the victim and the abuser.

Conclusions and Recommendations

The central authorities are generally aware of and openly admit the fact that domestic violence represents a social problem for Moldova. To address this issue, amendments were introduced throughout 2009-2010 to the national legislation aimed at preventing and combating domestic violence (particularly, Law No.167). However, we can see that at local level the situation differs significantly. Numerous cases of failure to enforce protection orders by the authorities and to abide by their terms by the aggressors indicate that the problem of domestic violence is dealt with in a superficial and neglectful manner. The fact that around 100 protection orders were issued in 2010 doesn't also mean that they were enforced as prescribed by the law. Thus, in the case of Mudric alone, there were 3 protection orders issued in 2010 that remained unexecuted. Punishing the failure to observe protection orders by the aggressors and to enforce them by the state actors should become a key element in addressing domestic violence.

The lack of a uniform judicial practice at national level adversely influences the implementation of public policies on domestic violence. Specific training for prosecutors and judges could contribute to a more effective implementation of the provisions of Law 45-XVI. Monitoring court proceedings that involve domestic violence issues could help to identify and remove negative practices.

Further, Law 45-XVI explicitly provides that the court may order protection measures for the victims of domestic violence for a period of up to three months. The lower time limit, however, is not determined and this means that protection orders may be issued for just one day as well.

According to data collected by La Strada in the process of operating the Trust Line for Women, many professionals are not familiar with the mechanism of applying protection orders and very few are familiar with the provisions of Law 45-XVI, which points to the inadequate training of professional groups. This affects the quality of actions aimed at preventing and combating domestic violence. Training professional groups in this area should represent an immediate objective both for the relevant authorities and for the NGOs and experts that work in the field and hold relevant expertise.

Creating an adequate number of specialized rehabilitation centers will offer, in the short term, better protection to victims of domestic violence and, in the long term, will help to prevent this phenomenon. It would be commendable if Law 45-XVI is supplemented with an article that specifies clearly who is responsible and has the duty to create rehabilitation centers for perpetrators in every district.

It is a reason for concern that the courts which issue protection orders are mostly located in those jurisdiction where active NGOs in the field are present, which act as catalysts in this process. Conversely, where such NGOs are missing, the situation is different. Another problem is the insufficient competent legal services in such matters. There are very few organizations that offer free legal assistance to victims of domestic violence. At the same time, the available legal services are mostly concentrated in municipalities and major district centers (such as Balti, Chișinău, Căușeni, Cahul), where access is difficult in particular for beneficiaries from rural areas. In this respect, local NGOs need to consolidate their efforts in the area of preventing and combating domestic violence, including by exchanging experience and multiplying positive practices at the national level.

The absence of monitoring and assessment reports as well as comprehensive statistical data on all aspects of implementing public policies on preventing domestic violence makes it very difficult to fully evaluate the impact of Law 45-XVI.

In this regard, it should be remarked that the failure of the authorities to monitor, prevent and penalize domestic violence constitutes a clear form of gender-based ill-treatment.

In their 2009 reports, UN Special Rapporteurs Manfred Novak and Yakin Ertürk highlighted that the failure of the law enforcement bodies in Moldova to respond to allegations of domestic violence discriminates against women in their access to an effective remedy and may constitute complicity in such ill-treatment. In Moldova, crimes of violence against women are not perceived as a problem warranting legal intervention, unless it results in serious injury.²⁹

29 UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak: Mission to the Republic of Moldova, A/HRC/10/44/Add.3, 12 February 2009; UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk: Mission to the Republic of Moldova, A/HRC/11/6/Add.4, 8 May 2009.

Vitalie IORDACHI

The right to respect for private and family life reflects the expectation of each individual to have his or her private, personal and family life protected from outside interference, and the freedom to decide if and when to divulge information about his or her way of life to third parties.¹ It is a concept whose content varies according to the epoch and society in which an individual lives, and according to the social group to which they belong.

Internationally, this right is governed by universal legal instruments - the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, or regional legal instruments such as The Convention on Human Rights and Fundamental Freedoms.

According to the Moldovan Constitution, art.28, "The State respects and protects private and family life". This legal regulation guarantees this as a fundamental right.

Currently, the notion of a private life contains in itself aspects that are "traditional", such as the right to an image, the marital status of person, and their identity, religion, and physical and moral integrity. But it also contains issues considered "modern", such as the protection of personal data in databases, the marketing of personal data, social networks and virtual communities on the Internet, the confidentiality of one's location, and aspects connected to new perceptions in social life.

In Moldova, the novelty of the regulation of certain aspects of social relations connected to the protection of private life, combined with citizens' ignorance of the content of the right to private life and of the mechanisms protecting it, has meant that citizens do not view this right as being particularly important. At the same time, there are also some legislative gaps that relate to the work of the National Center for Personal Data Protection, and deficiencies in the amendment of legislation regarding the interception of telephone conversations, as well as the lack of implementation of good practices by the courts in issuing arrest warrants and their motivation.

But we cannot underestimate the importance of addressing this issue in Moldova. For a start, aspects relating to the right to private life form an important part of the Action Plan adopted by the government on visa liberalization with the European Union. The Republic of Moldova, furthermore, has ratified Convention No.108² in national legislation. And, of course, privacy is a fundamental human right.

14.1. Wiretapping

The possibility of intercepting telephone calls is provided for in practically all European countries. Wiretapping is generally related to the fight against crime, whether

¹ Tessaro T., Trojani F. (2006), *Privacy e accesso ai documenti nell'Ente locale*, Maggioli, p. 56.

² Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, ratified by the Parliament of Moldova No.483 of 02.07.1999.

it be conventional crime, or terrorism. However, any interception system must include established safeguards that are sufficient to protect against possible abuses.

The Republic of Moldova, even after two convictions from the European Court of Human Rights and Fundamental Freedoms (Case *Iordachi and others v. Moldova of 10.02.2009* and *Popescu v. Moldova on 8 June 2010*) has not changed the legislation governing the interception of telephone calls, and the practice of permitting telephone intercepts – and the very high percentage of magistrates' authorizations for wiretaps – continues to this day.

In this context, it is worth mentioning that the amendments proposed by the Ministry of Justice in early 2010 – with a view to complying fully with the general measures arising from the judgment in *Iordachi and others vs. Moldova* – to the Law on Operative Investigation No.45 of 12.04.1994, to the Law on Electronic Communications No.241 of 15.11.2007, and to the Criminal Procedure Code, have not yet been adopted.

Thus, a group of 5 people, members of the organization “Lawyers for Human Rights”, approached the European Court of Human Rights and Fundamental Liberties in 2002. They claimed that because of current legislation, and taking into account their activities, they were exposed to a high risk that their discussions would be intercepted via telephone.

Subsequently, on 17 January 2008, one of the applicants addressed the President of the Supreme Court and requested statistical information on, *inter alia*, the number of applications to courts for wiretapping and the number of permits issued. In a letter of 6 February 2008, the head of the presidential Supreme Court said that in 2005, 2,609 applications were submitted requesting interception, of which 98.81% were approved; in 2006, 1,931 applications were submitted, of which 97.93% were authorized, and in 2007, 2,372 applications were submitted, of which 99.24% were authorized.

The Court examined case materials and legislation since 2003 and distinguished two stages of intercepting telephone conversations: authorizing interceptions and making the interceptions themselves.

Regarding the authorization phase, the Court noted that the Moldovan legislation in force since 2003 seems to be clearer. Namely, it explicitly provides that interception may take place only in cases of serious, particularly serious, or exceptionally serious crime, and that the warrant authorizing the interception is to be issued by the judge.

However, the Court noted that more than half of the offenses contained in the Criminal Code fall under the category of offenses eligible for interception. Moreover, the Court expressed concern about the fact that the law seems not to define clearly the categories of people likely to have their calls intercepted. The Court also noted that the legislation does not provide a clear time limit for the authorization of wiretapping, since, even though the Criminal Procedure Code provides a limit of six months (art.135 (4)), there is no provision that would prohibit prosecutors requesting a new warrant for interception after six months.

On the second stage of the interception of telephone conversations, it was found that the judge has a very limited role. Although he has the function of authorizing telephone intercepts, the Criminal Procedure Code does not provide information to the judge about the results of the interception and he is not required to verify that the legal provisions have been complied with.

On the contrary, the Law on Operative Investigation seems to give to the Office of the Prosecutor a supervisory function, but this only seems to cover the pending criminal proceedings and does not relate to operational activities. The Court also noted the apparent lack of specific regulations on information obtained from interception, along with procedures for maintaining integrity and confidentiality, and for destroying records. According to the Court, the general control of secret surveillance measures is entrusted to Parliament, which exercises it through specialized committees (art.18 of the Law on Operative Investigation). However, how the Parliament make this control is not indicated in law and the Court has not presented evidence to show how a procedure can be regulated by Parliament. Based on its findings, the Court considered that Moldovan legislation does not provide adequate protection against abuse of state power as regards interception of telephone conversations.

Also, according to statistics from examined cases in which telephone interceptions were authorized,

it is clear that the rate of authorizations issued by magistrates is very high,

Year	Submitted Requests	Granted %
2006	1931	97,93 %
2007	2372	99,24 %
2008	2366	99,53 %
2009	3803	98,83 %
2010	3890	99,20 %

indicating that the magistrates do not take into account the obligatory need to justify the authorization of secret surveillance measures and limit themselves to copying texts drawn up superficially by prosecutors. This was also found by the Plenum of the

Supreme Court on 15 November 2010, finding a generalized judicial practice.³

An unusual case was found by the National Center for Personal Data Protection of the Republic of Moldova after the Center was notified by a group of six people who claimed that their privacy rights had been violated by an illegal telephone intercept. The applicants said that during the years 2008 - 2009, when working in the Ministry of Internal Affairs, personal data relating to them was processed by law enforcement officers by means of illegal telephone intercepts, and was also gathered from the electronic communication providers "Orange" and "Moldcell". This wiretapping and erasing of lists of incoming and outgoing calls was possible as a result of official documents being falsified and presented to magistrates with a view to obtaining permission to carry out these actions. Their subscriber numbers had been placed under different names.

Even politicians, according to a press release from the Office of the Prosecutor,⁴

³ Generalization of Court practice on application of legislation governing the authorization of interception of telephone conversations.

⁴ Press release of the Office of the Prosecutor from 30.03.2011.

have been victims of wiretapping.

Thus, the situation of the wiretaps in the period under review remained virtually unchanged compared with 2009. The Parliament is still to adopt amendments to the Law on Operative Investigation No.45 of 12.04.1994, to the Law on Electronic Communications no.241 of 15.11.2007, and to the Code of Criminal Procedure, and the courts are to align the practice of issuing authorizations for the interception of telephone calls to the norms of the European Court for Human Rights and Fundamental Freedoms.

14.2. Confidentiality of medical information

Confidentiality of patient medical data is one of the basic elements of people's right to privacy. Respecting this right is necessary to strengthening the democratic values toward which the Republic of Moldova is working. In this context, there is an obvious need to maintain the strict confidentiality of medical information such as diagnosis, tests, risk behavior connected to multiple partners, commercial sex, drug use, etc.

Law No.263 of 27.10.2005 on patient rights and responsibilities expressly provides that "all data on the identity and condition of the patient, the results of investigations, diagnosis, prognosis, treatment and personal data are confidential and will be protected even after death".

The principle of the confidentiality of medical information is provided for by Law No.185 of 24.05.2001 on reproductive health and family planning, which, in addition to medical data sets, includes the right to recognize as confidential information even the addresses of the institutions concerned with reproductive rights and reproductive health.

National case law is not so extensive that we can draw conclusions about compliance or non-compliance with this law. The case of *L.R. v Moldova* (application No.50073/07) communicated to the Government concerning violations of the right to the confidentiality of medical information, however, demonstrates that medical staff lack the legal knowledge required when customer information is passed on to the authorities.

Thus, in the case *L.R. v Moldova*, the plaintiff was in an institution to undergo a procedure called artificial insemination at a fertility clinic of the Ministry of Health, and as a result became pregnant. In the summer of 2003, the applicant was admitted to hospital because of a risk of losing the pregnancy. The health of the applicant often required her to be absent from work, and in medical certificates it was indicated that her absences were due to pregnancy and the risk of losing it.

In autumn 2003, the employer asked for information on the reasons for the patient's medical leave from the clinic where the applicant received the clinical treatment. Representatives of the clinic informed the applicant's employer that she was pregnant with twins, as a result of artificial insemination, that there was a risk of miscarriage, and that the applicant had hepatitis B. The observation sheet application was attached to the letter.

According to reports made by the applicant, the information provided by clinic staff quickly became known at her work institution. Due to stress, the applicant miscarried a few days later, and her husband, who was also employed by the same institution, was forced to change jobs.

Not only, therefore, does the practical application of legislation entail the danger that confidential medical information may be disclosed, but it has also been shown that there exist certain legal provisions that stand in contradiction to the principle that private life must be respected. The Institute for Human Rights, for instance, filed a complaint with the Human Rights Centre asking the Constitutional Court to check the constitutionality of Annex 8 to Government Decision No.864 of 17.08.2005, which does not ensure the confidentiality of any diagnosis.

Thus, if a person is unfit for military service or is recognized as living with HIV, or has another disease that they do not want to make public, they can be issued a certificate (standard form approved by Annex 8 of Government Decision No.864 of 17.08.2005). Under the heading "theme" on the certificate is an article indicating a medical scale (according to Defense Ministry Order No.177 of 30.06.2003). Thus, anyone who reads the medical certificate can consult Ministry of Defence Order No.177 of 30.06.2003, and can therefore find out why a person has been declared unfit, information which may be personal.

14.3. The right to membership of an ethnic group as part of the right to privacy

By the ruling of the European Court of Human Rights issued in the case *Ciubotaru v Moldova* (application No.27138/04, Judgment of 27 April 2010 (final on July 27, 2010)), the provisions of art.68 of Law No.100 - XV of 26 April 2001 on civil status were classified as incompatible with the European Convention on Human Rights and Fundamental Freedoms, as it creates legal obstacles for people who want to record an ethnicity other than that of their parents. Currently, according to the law on civil status, the nationality of a person is listed as a compulsory element in birth certificates, death certificates, divorce documents, and documents certifying the change of a person's name and/or surname.

However, art.68 of the Law provides that the rectification of parental nationality – on the basis of identification documents, or documents attesting to the marital status of grandparents or other forebears – is inadmissible in children's birth documents if the parents' documents do not show any information relating to the nationality claimed by the applicant.

The Court noted that, given the circumstances of the case, it could not be argued that the whole procedure – established so that the applicant could see their ethnicity amended – was in line with the positive obligations of Moldova to guarantee the applicant's right to privacy.

For the Court, the state's failure consisted in the applicant's inability to have their claim to belong to a distinct ethnic group examined, in terms of objective and corroborative evidence brought to substantiate this claim.

The Court, therefore, concluded that the authorities have not complied with the positive obligation of guaranteeing the applicant's right to privacy. Accordingly, the Court concluded that there was a violation of art.8 of the Convention.

The solution proposed by the Ministry of Justice in order to execute the ECtHR decision in the case *Ciubotari v Moldova* is to grant every individual the right to self-identify. For this, they will sign an affidavit, where they can choose to belong to a particular ethnic group, and that will supersede and alter the birth certificate data.

The Government has drafted the Law on amending and completing Law No.100-XV of 26 April 2001 on civil status, which complements art.29, stating that ethnicity is recorded on the basis of the statement of oath of the parents, or of the person concerned once he/she has reached the age of 16.

14.4. Protection of personal data where processing is necessary in connection with the administration of justice

Benefits of free access to decisions when using new information technologies are obvious, but this also presents some risks that the right to privacy will be violated and that information obtained as a result of computer crime or misuse will be abused. *Data mining, identity theft, harassment, discrimination or excessive negative advertising* are just some of the negative consequences that may arise from access to information using new technologies.

Moreover, if records made available by the courts are accessed and used for inappropriate purposes or in an illicit manner, public confidence in the administration of justice could be affected.

According to art.10 paragraph 4 of the Law on Judicial Organization, decisions of Courts, Courts of Appeal and the Supreme Court shall be published on the Internet, and paragraph 5 provides that the manner of publication of judgments is set by the regulation on the publication of decisions, approved by the Superior Council of Magistracy by decision No.472/21 of 18 December 2008. According to art.6 of the Regulation, all judgments are placed entirely on the website of the court which issued the judgment or the court of appeal in whose jurisdiction they are.

However, the Regulation establishes that the website cannot publish court decisions issued in cases involving minors, or which contain information that constitutes state secrets, commercial secrets, or information whose disclosure is prohibited by law. Nor are decisions on adoption and sentences for sexual offenses to be published.

It should also be remembered that art.6 of Law No.17-XVI of 15 February 2007 on the protection of personal data requires that "personal data processing is only carried out with the consent of the subject of the personal data, except in cases foreseen by law."

Without the consent of the persons concerned, it is necessary that all personal data relating to any person mentioned in the decision be anonymous. Currently, court decisions are published, mostly in full, and do not take into account the neces-

sity of making the data relating to litigants anonymous.

Meanwhile, the making-anonymous of parties' data should not be done automatically. Transparency in the judiciary, assured partly by the publication of judicial acts in their entirety, may prevail over the privacy rights of participants in the process. It is important that, prior to the examination of judicial cases, the list of the cases be published on the court premises and on their websites, including the name and registration number of the litigants in the case. Therefore, after delivery of the solution concerned, anyone interested will be able to find out the name of the parties to the dispute by looking at the case number together with the number of the decision placed on the site.

In this respect, the practice of the European Court of Human Rights and Fundamental Freedoms would be useful. Article 33 of the Rules of Court say that all documents filed at the Registry of the Court in connection with a request - except those that relate to attempts to settle the dispute amicably - are public, hence the name system is that of the plaintiffs. However, the Chairman of the Board hearing the application may allow anonymity in exceptional cases duly justified.

Conclusions

Parliament is to adopt a series of laws that would hold the National Centre for Protection of Personal Data to its responsibilities in their fullness, such as:

- Establish liability for infringement offenses related to personal data protection;
- Holders of personal data are obliged to notify the National Center for the Protection of Personal Data before processing operations of personal data;
- Adoption of the latest version of the Law on personal data protection;
- Modifications to the Law on Operative Investigation No.45 of 12.04.1994, No.241 of 15.11.2007 Law on Electronic Communications and the Code of Criminal Procedure;
- Parliament to adopt a draft law on the amendment of Law No.100-XV of 26 April 2001 on civil status;
- Courts to adjust their practice of permitting the interception of telephone calls to the standards of the European Court for Human Rights and Fundamental Freedoms.

Alexandru ZUBCO

"Members of the armed forces must enjoy the same freedoms and equal protection of the rights and dignity as any other citizen, within the specific requirements imposed by military service".¹

Military rights are discussed more rarely. The last hearing of the Government on the Parliamentary Committee for Human Rights carrying out the National Action Plan on Human Right with the focus on "Ensuring the rights of military service personnel" was held in 2006. Respectively, in the period of 2009-2010 the rights of this large category of people were not in the attention of authorities and public opinion. Delayed development and adoption of national military documents (National Security Strategy, National Military Strategy), ambiguous policy of neutrality, official statements on the failure to defend the country by the National Army, have generated a feeling of insecurity and demoralization in the National Army. Government policies in the military field were more declarative and oriented to reduce the institutional capacity of the Armed Forces (i.e. reducing the military budget), rather than achieving the goals for which it was formed, including, respect of the rights of soldiers.

Meanwhile, the illegal administration from the Eastern part of the country created its own paramilitary structures, where the citizens of Moldova and other countries are subjects to forced conscription. However, the presence of the former 14th Army of the Russian Federation represents the most serious threat to the national security and respect of human rights in the region. Thus, Moldova is unique in Europe: within its territory operate three separate military structures (constitutional military forces, illegal paramilitary structures and a foreign army, stationed on its territory against the will of constitutional authorities and international norms).

This chapter analyzes the situation of military and conscripts, including in the Transnistrian region, in terms of rights and freedoms of citizens with military status and the obligations assumed by Moldova at the international level.

15.1. Military obligation and the rights of conscripts

According to Article 57 of the Constitution, the national armed forces form the framework for performing military service, for national defense, guarding the borders, and maintaining public order under the law.

The State Commission for Conscription is a subject to Government control and is responsible for coordinating the activity of the committee for recruitment-enlistment of conscripts, exercising the control over enlistment of citizens into the military service, including the reduced term service and the civil service (alternative to the military service). The institution also examines the appeals submitted by the citizens.

1

<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10861.htm>

Annually about 5,000 Moldovans are enlisted in the Armed Forces. The recruitment campaign in spring 2009 enlisted 2970 young people from the 21 thousand young people present at the committee for recruitment-enlistment. Typically, over 70% of the conscripts are from rural areas, more than 85% benefit of postponing for further study, over 30% are unable to pass the control due to health issues, another 20% have criminal records, choose alternative service or have reached an age which exempts them from mandatory military service (27 years).²

One of the main problems for military-medical commissions in the Armed Forces is the precarious situation of the health of adolescents. In 2008-2010 383 persons from the National Army troops were released before the term of military service, 168 persons from the Carabineer Troops and 108 military from the Border Guard Service, because of various pre-existing diseases. Medical specialists mention that the most common diseases affecting the ability to perform military service are infectious and parasitic diseases, tuberculosis, digestive problems, osteoarticular system diseases, congenital malformations, affection of the circulatory system, mental disorders and behavioral, endocrine diseases and malnutrition. The number of people with mental and behavioral disorders increased by 8% compared to 2009. Medical specialists also explained the high number of personality disorders and mental retardation between young recruits is caused by superficial selection, also because not all administrative and military departments carry out psychophysiological testing of recruits.³

In 2009, the press published a report about a death of a young man after only four days of staying in the Carabineer Troops Battalion No.3. He was found dead by his colleagues in the military unit. Preliminary results of the autopsy showed that the young man died of cardiac arrest, and one version was that the soldier was asphyxiated. According to the military prosecutor, the young man had weighed less than 40 kg, had passed the last medical examination at the time of his enlistment and his mother had stated that her son did not have health problems. The results of the investigation were not made public.⁴

According to the Ministry of Health, there are 12 Youth Friendly Health Centers in Moldova that provide services for adolescent who have health issues. In 2010, these Health Centers provided the following services: medical information and education, treatment of genital infections / sexually transmitted diseases, family planning and psychological service for approximately 70 000 young people. However, these institutions fail to provide medical services for young people who prepare to perform military service. Therefore, many young men learn about their illnesses only when they pass medical-military commissions. According to the experts, the family physician in liaison with the doctor for teenagers is responsible for youth's preventive medicine, including for youths who plan to perform military service.

² Report of the State Commission for Incorporation, 2009-2010.

³ Idem.

⁴ <http://m.protv.md/stiri/social/un-recrut-a-murit-in-conditii-suspecte-la-4-zile-dupa-ce-s-a-incorporat.html>

15.2. The situation of young recruits from the Transnistrian region

In 2009-2010, within Promo-LEX's activities developed in the Transnistrian region, beneficiaries have requested information on the rights of conscripts and those enlisted in the paramilitary structures. On the territory of Moldova, contrary to the international law and national legislation, young people are forced to swear an "oath" and "serve" to an unconstitutional regime, including a foreign state – Russia.⁵ If they refuse or evade from such military service, they are "condemned" by courts of the Transnistrian region or are "forced enlisted" anyway.⁶ The young people, who intend to leave the region during conscription period, are arrested at the illegally control points, then "escorted" directly to paramilitary structures or they receive criminal sanctions.

Case Study 1, documented by Promo-LEX: A young man from the town Bender was arrested by Transnistrian border guards under the charge of evasion from "military service". Within several hours, he was escorted to a military unit from the region, where he passed the medical- military commission and on the same day he was forced to take a "loyalty oath" to the Tiraspol administration.

Case study 2, documented by Promo-LEX: during summer holidays (period of conscription in the region), a student at university in Chisinau went to visit his parents in the district of Camenca. At the illegal control point, he was accused of evasion from performing "military service" and then was escorted into a "military unit" from the region. His parents found out about the situation of their son and place where he was detained, only after 2 weeks.

According to local regulations, the "enlistment" period in the paramilitary structures in the region occurs twice per year: April 1 to August 10 and October 1 to December 30 (according to Moldovan legislation, enlistment period is the period May 1 to June 30 and November 1 to December 31). Information about the young people who should be recorded or are already military recorded, is sent to "migration service", "border guards" and "militia". These structures are obliged by the regime to refuse the request for change of the official domicile of young "conscripts". In the same circumstances, another of their obligations is to supervise the activity or movement of the young people, later being responsible for their "forced enrollment".⁷

Much of the blame for this situation is clearly on the Government and constitutional authorities, who for almost 20 years, did not produce any mechanisms or effective tools to protect and guarantee human rights and citizens living in this area. Moldova has not created minimum conditions for the youth from the Transnistrian

5 Extract from Law on defense of the *Transnistrian* Moldovan Republic (TRM): "I, (full name), solemnly swear faith my Motherland - TRM. I swear to respect with sanctity the Constitution of TMR, to strictly abide by military regulations and orders of commanders and superiors. I swear to fulfill my military duty with dignity, with courage to defend freedom, independence and constitutional order of Russia and the Motherland".

6 http://www.promolex.md/upload/publications/ro/doc_1268219328.pdf

7 <http://fms45.ru/2008/04/25/migracionnaja-sluzhba-i.html>

region regarding their military records and enlistment, within constitutional structures. According to the Ministry of Defense of Moldova, they can be taken on record by constitutional military authorities, only if they have a visa residence on the territory controlled by them. According to information from beneficiaries, young men, in order to be taken on record by the military structures, they must request their personal file from the separatist regime and bring it to the constitutional authorities. Thus, we find a mass discrimination of people living on the territory, which is under illegal control. We also consider that the use by the constitutional military centers of information and documents developed by the separatist administration is illegal and threatens the freedom and safety of citizens from the region.

Relatives of recruits enrolled in paramilitary structures have complained of mistreatment of young people, extortion of money and goods, involvement in hard and dangerous work, insufficient nourishment, and corporal punishment for violation of “military” discipline. The young soldiers who reported cases of abuse from superiors were convicted for alleged “military crimes”.

I.S. from Dubasari district was performing his “military service” within a “military unit” from the region. Because he denounced the abuses and maltreatment from superiors he was convicted to “four years of prison”.

Parents of a “soldier” from the district of Camenca were sending monthly amounts of between 50-100 USD, sweets and cigarettes, in order to avoid acts of mistreatment from the soldier’s superiors.

A young man from Bender was beaten by a superior with a stool on his legs, especially during the night, because he did not execute their orders. After the young man’s mother expressed her dissatisfaction with this situation, the commander of the military unit told her that her son’s injuries are from a football game in which he participated.

The cases of murder still continue within these illegal structures from the territory of the Republic of Moldova.⁸

One of the cases documented by Promo-LEX, was the death (murder) of Alexander Stomatii, in a “military unit”, from the town of Camenca. Initially, the young man’s death was presented by the “military prosecutors” as a “determination of suicide”. According to forensic evidence, the young man, being in the guard unit, shot himself in the chest and in the neck.⁹ Later, at the persistence of his family, it was found that the victim was shot by another person.

Another serious problem is the recruitment of young men with various health problems. From information provided by some beneficiaries of Promo-LEX, conscripts are intentionally subjected to a superficial medical examination. Every fifth student graduates from school with chronic endocrine diseases and malnutrition. Obviously, they cannot be enlisted, and should be declared unfit for military service, or a proper treatment should be prescribed. However, after being examined by the

⁸ http://www.promolex.md/upload/publications/ro/doc_1268219328.pdf

⁹ http://meridian-info.com/v2/index.php?option=com_content&task=view&id=887&Itemid=1

so-called military-medical commission, only 19-20% of all conscripts are declared unfit to perform the military service.¹⁰

C.S. from Ribnita has kidney problems. Following the medical examination conducted by the local medical commission, he was declared fit for military service and was enlisted in the "Transnistrian army". Efforts of his mother to demonstrate incapacity of her son, failed. The commander of the military unit assured the mother that her son will be released as soon as his health will worsen.¹¹

According to another case, documented by the Promo-LEX, a young man from Ribnita had undergone medical examination by the constitutional authorities. He was declared unfit for military service. Meanwhile, a medical committee from Ribnita recognizes him as fit for military service and sent him a summons for "conscription".

The situation in "the Transnistrian army" and the lack of guarantees from the constitutional authorities, determined conscripts to find alternative measures to avoid the "enlistment" (i.e. bribery, mimicking of a disease, leaving the region, etc.). But the repressive organs from the region quickly reacted and often punished some, in order to intimidate others.

At least 8 young people were wanted by the alleged law enforcement in Tiraspol and another 17 – by "prosecutor's office" from Bender for having evaded conscription. The so-called courts examined in 2009 over 239 criminal cases for military offenses. Annually, more than 400 recruits evade enlistment, choosing to study in Chisinau, stated in a press release the so-called minister of defense of the region.¹²

Due to political uncertainty the inhabitants from the Transnistrian region are victims of various problems and situations faced by people every day in this region. Under these conditions, people who refuse to serve an illegal regime are hunted and persecuted by the administration of the region and constitutional authorities are indifferent to these phenomena, ignoring their positive obligations. Constitutional Armed Forces reservists, residents of the Transnistrian region are forced to get "enlisted" in paramilitary structures. In particular, this refers to young people who have studied in other regions of the country, fulfilled their military service and obtained military service record from the respective educational institutions. To discourage this phenomenon, the region's administration does not accept, but confiscate or destroy military ID issued by legitimate authorities.

In the same time, some employers from the region refuse to contract young people who have military service record issued by the legitimate authorities, and the local administration refuses to acknowledge their domicile. Promo-LEX continued to record such cases during 2009-2010.

¹⁰ <http://tv-pmr.com/news.php?id=11097>

¹¹ A case from Promo-LEX practice.

¹² http://www.prokuror-pmr.org/index.php?option=com_content&task=blogcategory&id=0&Itemid=4636

15.3. Rights of members of armed forces

The National Army continues to be the most credible institution of all state structures, with a confidence of 62.8% of all respondents interviewed.¹³ The explanation is that the National Army had a neutral behavior to political events, and contacts between the society and military environment are very limited under the specific of organization and work of this structure.¹⁴

Meanwhile, the budget approved for 2010 year, for National Army (over 11.7 million euro) was austere (0.4% of GDP, the lowest in Europe and the CIS) and carries a more social character. Most financial resources are directed to pay salaries and partly to cover costs related to the payment of utilities, purchase of food, medical equipment and medical assistance for military.¹⁵

The lack of necessary funding reflects on the Armed Forces capacity management and on the premises of ensuring the rights of their members. The idea of transition to a professional army, based on contract agreement, military involvement and participation in military action under international organizations seems to be achieved due to both, objective and subjective conditions. In fact, military reform has not occurred, because legislative, normative and administrative changes do not affect the essence of the system. The maintenance of the compulsory military service, periodic reduction of the term and military staff does not increase military capacity of the country. Experts say that the establishment of voluntary military service based on contract agreement, though it would require considerable expense, would lead to a real interest in a military career and would allow the creation of mobile and sustainable forces capable of dealing with the immediate tasks of maintaining the security of the state.¹⁶

According to the law, the military personnel benefit of rights and freedoms established by the Constitution, by current legislation and international agreements to which Moldova is party, with restrictions conditioned by the military service specifics.

One of the most violated rights of the military is rights to housing. According to Minister of Defense, Vitalie Marinuta, about 800 military of the National Army troops, needed living space still in 2009. Lack of budget allocations for this purpose resulted in a critical situation in terms of providing housing. Such disputes have arisen between the military, including actions in national courts and ECtHR.¹⁷ Being informed about housing crises in the National Army, in December 2009, Parliament amended Article 21 of Law No.162 on military status, so the task of housing is the job of the Ministry of Defense, Border Guard Service and Carabineer Troops and not in competence of the state budget. Soldiers can claim the housing fund only as long as they perform military service.¹⁸

13 National survey by the Institute for Marketing and Polls IMAS-INC Chisinau.

14 http://www.voceabasarabiei.net/index.php?option=com_content&task=view&id=10444&Itemid=1695

15 <http://www.army.md/?lng=2&action=show&cat=147>

16 <http://www.e-democracy.md/e-journal/20030805/#4>

17 During the reported period, operates 6 enforceable documents by which the Ministry of Defense is obliged to provide soldiers and their families with housing, but due to the lack of financial resources, the Ministry is unable to execute them.

18 From the housing fund of the National Army benefit 10,745 soldiers, 639 military families from the Border Guard Service, and 30 family from Carabineer Troops.

Annually, in the armed forces are identified dozens of crimes, and most refer to irregular relations between military, abuses and excesses of power, corruption, personal injury and physical force. From the total number of crimes recorded in 2008-2010, 49 were committed by the National Army military, 15 (2009-22) by military Carabineer Troops and 14 (2009-11) by Border Guard Service officers, including 43 military offenses (2009-54) and 20 issues of common law (2009-18). Therefore, in 2008-2010, were prosecuted by law 139 military from National Army and 37 military from Carabineer Troops.¹⁹

According to the General Prosecutor's Office, the phenomenon of soldiers' "slavery" grows. Only in 2009 some military command units have involved more than 500 military, including ones who are on the contract base, in works not related to country defense (agricultural, construction, household private, etc.), under the pretext of military-patriotic education, or supplying military units with agricultural products, or even for personal gain. Information on bringing to account those responsible have not been presented.

Also, alarming are the facts of deaths during military service. In 2008-2010 in the National Army were registered two cases of death of military (suicide), in the Border Guard Service has been registered a single case of death (drowning in the river) and within Carabineer Troops have been recorded 5 cases of death. State authorities and the Head of the National Armed Forces should not forget that people, who exercise their military obligations, are in exclusive custody and responsibility of these structures.

15.4. Civil service (alternative)

The civil service is a state service on voluntary base, with social utility, which represent an alternative choice for Moldovan citizens (aged between 18-27 years), who for religious, peaceful, ethical, moral, humanitarian and other similar reasons cannot exercise military service.

Since 2007, citizens can choose the type of civil service based on a grounded request, submitted to territorial representative of the Civil Service. These amendments have excluded the Commission's practice for conscription to require evidence to demonstrate beliefs of the conscripts.

According to Civil Service Center, from 1991 to 2010 in the civil service were involved more than 50745 people. 65% of people enrolled in the civil service held pacifist beliefs, 15% were members of religious organizations whose status does not allow military service, and 20% have moral, ethical and humanitarian beliefs. Most people who prefer alternative service are from urban areas.²⁰

By law, civil service is performed in public institutions or commercial structures. Places of employment, including paid salaries are very small, covering only the minimum needed for existence. For example, in 2008-2009 the average wage offered by employers to persons who performed civil service was about 900 lei, while

19 www.procuratura.md/md/newslist/1211/1/3551/

20 http://csc.md/index.php?option=com_content&view=article&id=76&Itemid=75&lang=ro

military who are on the contract base have monthly salary about 2,300 lei. We note that both these categories, honor their contractual obligations and provide work in the interest of the society.

In Moldova are officially registered and recognized 4 pacifist organizations and 5 religious organizations whose members exercise the civil service. During 2010, in the civil service were incorporated 1153 citizens, and in the state budget was transferred 3702,3 thousand MDL in (2009 – 4647,5 thousands MDL). According to statistics, every year it is observed a decrease of the number of people who are interested to perform the civil service.

Meanwhile, in the Transnistrian region of Moldova, the civil service is prohibited by the local administration. Thus, young people with pacifist beliefs, religious or humanist ideologies are obliged to perform “military service” within an illegal paramilitary structure contrary to their will. If they refuse the “enlistment”, they are fined or “sentenced” to jail, or wanted for “evasion” from military service. In 2009-2010, Promo-LEX assisted several victims whose cases are described below:

B.V. is a young parishioner at a church in Bender. He was fined with 500 USD, for refusing to perform military service in the so-called Transnistrian army.

S.V. from Bender refused to sign the order, according to which he was called for enlistment in the “Transnistrian army” because of his religious beliefs. He was fined for refusing to perform the “military service”, with about 1300 USD.

However, even if they get “criminal punishments” for refusing the enlistment, they still are called repeatedly to “local committees of conscription”. Moreover, “decisions” to convict individuals for refusal to get enlisted on religious grounds or pacifistic beliefs are made public in order to intimidate the rest of the population.²¹

According to the Civil Service Center of Moldova in 2008-2009 only 39 inhabitants from Transnistrian region, received civil service (alternative) record. The Tiraspol administration does not recognize the civil service or service recordings. Therefore, young people who performed already the civil service may be subjected to “recruitment” within the “Transnistrian army”.

Although in the Transnistrian region are registered many religious groups (Orthodox Church, Jehovah’s Witnesses, Lutheran-Evangelical Church, etc.), their members are facing serious problems during conscription period, being forced to perform military service for an illegal regime. Constitutional authorities did not make substantial efforts to defend and protect rights and freedoms of these young people.

Conclusions

In the context of public discussions on the capabilities, role and place of the Moldova Armed Forces, governmental reforms should not affect the national defense system. The implementation of the EU and NATO standards in the military field should also take into account the rights of citizens that perform military exercise. The National Army currently needs financial support and political will to

²¹ <http://www.nr2.ru/pmr/271760.html>

implement the Individual Action Plan (IPAP) signed in 2006 between NATO and Moldova. The Political and economic crisis negatively affects the achievement of this action plan aimed to improve the situation and develop aspirations of the military and defense system. Moldova is still in the process of reforming the Carabineer Troops and the Border Guard Service, the demilitarization of the Ministry of Internal Affairs, supply with arms and modern equipment of the National Army, etc. This requires more active involvement of members of the Parliament in matters related to defense and de-politicization of the Supreme Security Council (from an institution focused on “discussing” problems of society to an institution focused on national security control).

Rights and freedoms of the military should be respected. In order to have a professional army, firstly the social rights of soldiers, especially with respect to housing should be ensured; improvement of the mechanism of recruitment of the young people into the army; the right to freedom of association of the members of the armed forces into trade unions, respect for freedom of expression and right to join political parties and including respect for private and family life, etc. should be guaranteed. At the same time, concrete measures to ensure respect and protection for the rights of people, who live in the Transnistrian region of Moldova should be undertaken.

Iuliana MARCINSCHI

Despite the legal and political commitments of Moldova to align national legislation with international human rights norms and standards, in particular, the IC-CPR, ICESCR, ICRPD the European Convention on the Protection of Human Rights and Fundamental Freedoms, and other international instruments affirming the human rights standards for women, children, refugees, persons with disabilities and national minorities, Moldova still faces major problems such as unemployment, poverty, mass out migration of citizens, corruption, limited freedom of expression and association, discrimination, non-tolerance and exclusion.

Minoritary groups are consciously prejudiced against and certain groups knowingly discriminate against them; members of Moldovan society are unaware that their behaviour and attitudes are discriminatory. This lack of awareness is one of the first hurdles to overcome in the efforts made towards achievement of tolerance, equality, and non-discrimination.

According to a recent sociological study,¹ every third respondent considers that, in the recent five years, discrimination has increased. On the perception level, the respondents considered that most frequently discriminated people in the Republic of Moldova are persons with mental and physical disabilities (68% and 66%), followed by poor people (59%), HIV positive persons (56%), elderly (50%), representatives of gay and lesbian community (40%), Roma (48%) and women (32%).

The present chapter focuses on depicting the phenomenon of discrimination in the Republic of Moldova, the consequent human rights violations of the following groups: persons living with HIV, Roma people, LGBT, women, elderly persons, persons with disabilities, ethnic and religious minorities.

16.1. Anti-Discrimination Legislation

Moldovan legislation includes few provisions prohibiting discrimination in an explicit manner; however, most of them have severe deficiencies in terms of obtaining enjoyment of the rights. Furthermore, the Republic of Moldova has not yet ratified the 12th Protocol to the European Convention on Human Rights of the Council of Europe, which provides a general prohibition of discrimination, on the grounds that ratification cannot be implemented due to lack in the national legislation of a law prohibiting all forms of discrimination.

According to the National Human Rights Action Plan for 2004-2008, Moldova undertook to adopt a law on non-discrimination until 2007, but the law was not adopted. The lack of the Act, inter alia, where any non-discrimination on any grounds, including sexual orientation, as well as a mechanism to combat discrimination would be spelled out, cannot effectively deal with discrimination.

¹ Sociological Study: Perceptions of the Population from the Republic of Moldova on Discrimination, performed by Soros Foundation - Moldova, in 2010, <http://soros.md/files/publications/documents/Studiu%20Sociologic.pdf>

The civil society, along with OSCE experts provided the Ministry of Justice (MoJ) a first draft of the law in 2008. The Government had elaborated a first project of antidiscrimination law (ADL) and approved it in autumn 2009. Despite the cooperation offered by the civil society in terms of expertise in the field of non-discrimination, the MoJ did not include in the draft law all the modifications suggested by the coalition of NGOs. Other modifications have been sent to the MoJ by OSCE and independent experts on non-discrimination, including clear suggestions on the mechanism of implementation and punishment system.

The main reason for the lack of progress of the project during 2008-2010 was the criterion of “sexual orientation” included in the draft law among the protected grounds. Initially, in 2008, the representatives of the MoJ stated that there is no discrimination in Moldova, later the officials repeatedly affirmed that the Republic of Moldova is not ready to adopt a law that would explicitly cover the criteria of sexual orientation. Even in 2010, the representatives of the Ministry of Labour, Social Protection and Family have tried to exclude sexual orientation from the law basing their request to the MoJ on the “Christian family values of the majority of the population” that should not be ignored while amending this law.

16.2. Persons living with HIV

The main human rights violations faced by the people living with HIV/AIDS in the Republic of Moldova are related to:²

Violation of the right to privacy:

- illegal disclosure by doctors to third parties of the data regarding the patients' HIV status;
- coding or otherwise distinguishing with special signs the medical cards and/or medical referral forms of HIV-positive patients by medical personnel;
- marking with similar distinguishing signs the medical cards of the children whose parents are HIV positive by doctors;
- mandatory inclusion of the code of diseases in the official sick leave forms issued by doctors – to be presented to the employer for official records.

Violation of the right to family:

- absolute medical contradiction for persons, also including foreigners, with HIV/AIDS to adopt children³ and also children with HIV/AIDS status adoption process is impeded;⁴
- refusals by the Bureau of Migration and Asylum within the Ministry of Interior to issue immigration certificates to HIV/AIDS positive foreign citi-

2 Findings of the Litigation Program of the Moldovan Institute for Human Rights, based on consultations provided to 142 persons living with HIV/AIDS and 29 litigated strategic cases during 2010; Report of the Litigation Program (January-March 2010), p.5-9, IDOM, <http://aids.md/aids/files/223/idom-report-programme-litigation-january-march-2010-en.pdf>

3 Decision of the Moldovan Government regarding the approval of the list of medical contraindications for persons who intend to adopt children, No.512 of 25 April 2003.

4 Joint Ordinance of the Moldovan Ministry of Education (No.113 of 11 April 1994), Ministry of Health (No.64 of 5 April 1994) and Ministry of Justice (No.47 of 11 April 1994).

zens⁵ already married to Moldovan citizens;

- mandatory medical examination, including testing for HIV/AIDS, for all persons as a precondition for presenting application for marriage.

Discrimination in accessing residential state social institutions with regard to persons in need of special social care:

- refusal by the Social Assistance Office to place a person living with HIV in the residential state social institutions due to the HIV status.⁶

Discrimination and barriers to access employment:

- unjustified practice of mandatory HIV/AIDS medical testing for being employed in a variety of jobs (tattoo specialist, police officer, confectioner, military services).

Recommendations

- Implement concluding observations and recommendations of the UN monitoring bodies (HRC, CESCR, CRC) and eliminate the existing discrepancies between national and international human rights documents;
- Monitor and evaluate the negative practices of breaching the confidentiality in medical institutions and stop breaches of confidentiality and negligent attitude of the medical staff towards people living with HIV/AIDS in order to ensure that people living with HIV have adequate and equal access to quality health care;
- Eliminate the mandatory indication of the disease codes in all medical sick leave forms in the country;
- Introduce and implement human rights courses for medical students and provide human rights trainings for medical staff on patients' rights, human rights and HIV/AIDS;
- Amend the inter-ministerial regulatory framework and the Decision of the Moldovan Government No.512 of 25 April 2003 in order to permit the adoption of children with HIV/AIDS, as well as the adoption of children by persons with HIV/AIDS;
- Improve regulatory framework and practice with regard to mandatory HIV/AIDS testing for being employed, providing a renewed and updated list of jobs for which a medical testing is needed, as well as for ensuring that persons living with HIV/AIDS are not unjustifiably limited to the right to equal job opportunity;
- Eliminate barriers to access residential state social institutions with regard to persons in need of special social care.

⁵ Article 24 of the Law of the Republic of Moldova on prophylaxis of HIV/AIDS infection, No.23-XVI, 16 February 2007.

⁶ Instruction regarding the accommodation into social institutions under the jurisdiction of the Ministry of Labor and Social Protection, adopted on 16 February 2000 between the Ministry of Health and the Ministry of Labor and Social Protection.

16.3. Sexual Minorities / LGBT

According to a recent study on the perceptions of the population from the Republic of Moldova on the phenomenon of discrimination,⁷ over 92% of respondents would not want to have as a neighbour or relative a homosexual person.

Referring to the same study and the cases documented,⁸ the following violations have been identified:

While exercising the **right to work**, if the sexual orientation and gender identity was revealed, LGBTs would be summoned to the superior's office for explanations, questions about personal life, eventually reprimanded for an inappropriate moral conduct and asked to leave the job. In other 3 cases reported during 2006-2010 by community members, the employer sought various unjustified reasons not related to the sexual orientation and gender identity to fire the person.

The **right to healthcare** is constantly infringed due to obsolete medical education of the doctors on matters of sexual orientation and identity.⁹ Homosexual persons are often not consulting specialist doctors, because these specialists are asking questions on their sexual life and have inadequate reactions when they discover the orientation of the patient. They would be directed to psychologists and psychiatrists to undergo treatment of "homosexual pathology or deviation", the gynecologists are trying to convince the patient that the homosexual relation is not healthy, questions are asked and humiliating comments are made on the way of life of a homosexual person. The inappropriate diagnosis of the patients leads not only to a negative progression of the patients' health situation, but also brings moral damage to the person.

Referring to **transsexual persons**, according to letter (c) of article 66 of the Law on the civil status documents, persons that had a gender reassignment surgery can benefit for a change of documents, yet the definition is not precise regarding the moment when the person is considered to have changed his/her sex. Persons in an advanced stage of hormonal therapy, already having the facial and physical traits of the opposite sex, are faced with the non-corresponding of their real image with their documented status. The **right to self-determination** is infringed in these cases because the documents cannot be changed, since the Civil Status Service is requiring the medical certificate of surgical sex correction (wrongfully motivating the need for a certificate issued outside Moldova, without mentioning the format of such a document).¹⁰ Since 2010, a commission has been created within the Ministry of Health in order to examine the problem of transsexual persons who require new identity documents. The first 2 meetings of this commission examined questions on the further work of the commission, but the next meetings could not be convened due to the absence of the head of the commission. Until a final decision of this commission, the procedure of obtaining new documents for the transsexual persons is suspended. With old documents, it is impossible to get employed and in this case

7 "Perceptions of the Population from the Republic of Moldova on the Phenomenon of Discrimination: Sociological Study", performed by Soros Foundation Moldova in 2010.

8 Cases documented during 2006-2011 by GenderDoc-M Information Centre, www.lgbt.md

9 At the State Medical University the homosexual orientation is still taught as a "mental deviation", there are still used manuals edited during USSR.

10 Case N.C. March-July 2009, documented by the GenderDoc-M Information Centre.

personal abilities and professional experience do not matter anymore, consequently violating the **right to work** for this category of citizens.

The **freedom of assembly** has been repeatedly infringed by municipal authorities in cases of GenderDoc-M's attempts to make a public march, undertaken yearly since 2002. Even the new law on assemblies from 2008, stating that a gathering of less than 50 persons does not need an authorization, did not work in favour of the LGBT groups. In May 2008, the bus with 47 participants that arrived one block away from the place of assembly was blocked by aggressive counter protesters and no security was provided by the police infringing the positive obligations of the state in securing the exercise of this right. There have been 5 court cases on the violation of the freedom of assembly, in one case the Supreme Court admitted that the freedom of assembly was violated, but no actions to repair the damage or cease the discriminatory interdictions to hold a public march during the next years was undertaken. Two cases are currently at ECHR for examination.

Of the **freedom of association** could not benefit in 2008 the initiative group for non-discrimination, diversity and social inclusion "HomoDiversus" which encountered during registration unmotivated delays of examination of documents, unmotivated requests of additional documents and refusal on grounds that information on member fees, and Council functions in case of closing of the association were missing. The registration was possible only through the decision of the Supreme Court at the end of 2009.

Disclosure of personal data, is another severe problem of gay persons. Harassment and blackmail are applied at the gay venues by police who use their mandate to interrogate persons who are perceived as gay, take their personal information and threaten on divulging their sexual orientation to family and employers if they do not bring the requested sum of money. Letters have been repeatedly sent by GenderDoc-M to the Ministry of Interior Affairs on these situations, but there have been undertaken no measures to sanction or dismiss the police officers responsible for these violations and inappropriate conduct at work, thus leading to impunity and indirect encouragement to the police officers. As a result, a tragical case happened at the end of 2010, when after an interrogation, pressure and threat to divulge the information to relatives made by two police officers a young gay man committed suicide.

Recommendations

- Increase the juridical culture and the level of education of public servants and police officers on matters of adequate conduct towards LGBT with the support of profile non-governmental organizations.
- The Ministry of Interior Affairs to effectively investigate all cases of harassment and blackmail of LGBT by police officers.
- Train medical professionals in diagnosis and specific treatment of LGBT persons by modifying the current curricula for medical students, and offer in partnership with international structures trainings for doctors on matters concerning transsexual persons.

- The Parliament to adopt and implement efficient anti-discrimination legislation including among the protected grounds sexual orientation and gender identity.
- Elaborate and implement adequate education programs for youth on sexuality and tolerance along with profile NGOs and the Ministry of Education.

16.4. Roma

Roma in Moldova face widespread and systematic discrimination when accessing employment, education, health, and social services. This is due to their under-representation in decision-making as well as low social conditions, high rates of illiteracy, high unemployment¹¹ and the existence of social stigma and negative prejudices, in particular.

The **right to access the labour** market is infringed by employers who usually avoid or directly refuse to employ Roma because of the prejudices and stereotypes¹² they have towards them. The National Roma Centre monitored several cases when Roma have been refused a job due to their ethnicity. According to UNDP report from 2007 18% of Roma are unemployed.¹³

Roma children face serious challenges in **educational services**: teachers have a negative and discriminatory attitude towards Roma children, this reflecting on the quality of studies, and being one of the reasons for school drop-outs among Roma. The whole situation becomes later an obstacle to access the labour market, as there is a lack of qualified Roma. Also Roma face difficulties in accessing higher education, because according to the *Order No.630 from July 7, 2010 on approval of the Regulation on organizing and conducting the admission to Bachelor degree (first cycle) in higher education institutions from Moldova*, there is provided a 15% quota for disadvantaged groups, among which Roma are the last one on the list, thus diminishing their chances to access superior education. Just 4% of Roma have graduated from university.¹⁴

In the field of **healthcare** doctors or medical assistants refuse to consult Roma patients or work in a Roma community. The Arapu case is a tragic example, when a Roma man from a village compactly populated by Roma community, died as the ambulance came one hour later after the call was made.

Because poverty and unemployment are systemic challenges in Roma communities and the cost of health insurances is too high, Roma lack them and cannot access primary health services. Also due to the unemployment of Roma, they cannot obtain the health insurance for free when they reach the age of retirement.

11 UNDP report "Roma in the Republic of Moldova", 2007, p. 9.

<http://undp.md/publications/roma%20report/Roma%20in%20the%20Republic%20of%20Moldova.pdf>

12 SOROS Foundation-Moldova Survey "Perceptions of population of Moldova on the phenomenon of discrimination", p. 53.

13 UNDP report "Roma in Republic of Moldova", 2007.

<http://undp.md/publications/roma%20report/Roma%20in%20the%20Republic%20of%20Moldova.pdf>

14 Roma National Center submission for CERD "Roma situation in republic of Moldova", p. 4, http://www2.ohchr.org/english/bodies/cerd/docs/ngos/RNC_Moldova78.pdf

As for **housing** issues, responsible authorities do not allocate lands for building houses to Roma, even if they are included in the lists to receive the lands, yet the non-Roma on the list do receive the lands.

The misconduct of law enforcement bodies is manifested by a hostile and discriminatory attitude towards Roma, systematic harassment, **ill treatment and torture**, and **failure to investigate** and prosecute adequately the complaints of Roma, on the ground of their ethnicity.

Recommendations

- The state should provide budgetary places for Roma distinct from the 15% quota, increasing their capacity to access higher education, this being an effective affirmative measure.
- The authorities should design methods of facilitating access to health insurances for Roma that are in a vulnerable position and do not fulfil the requirements to obtain free medical insurance.
- The state should ensure participation of Roma in the decision making process by appointing them in decision-making positions and including on the lists of political parties during the electorate, because there are no Roma in the decision making positions, thus being underrepresented;
- The Moldovan Government should adopt a new Action Plan for support of Roma 2011-2014, to allocate financial resources for its implementation and develop a clear mechanism for monitoring and evaluation of implantation of the Plan of Actions in improving Roma situation, jointly with the civil society.

16.5. Women

Participation in the political life and decision making processes.

According to the undertaken commitments under the Millennium Development Goals, Moldova undertook to ensure the representation of women in the government bodies at the minimum level of 25% to 40% by 2015. At this point in Moldova is not being ensured gender equality in neither the local nor national government. Given that women constitute more than 50% of Moldova's population, only about 20% of MPs are women, only 25% of the members of the Permanent Bureau of the Parliament are women, 10% of all the chairmen of the standing parliamentary committees are women and less than 5% of the members of the Cabinet are women. The number of women elected as local and rayon councillors is still low—16.9% of rayon councillors and 28.7% of local councillors are women.¹⁵

There is no effective mechanism to implement the Law on Equal Opportunities for Women and Men (adopted in 2006). This leads to the low representation of women in the government and the lack of access to management and decision-making processes.

¹⁵ Daniela Terzi-Barbarosie, Women's Invisible Violence and Political Participation in Republic of Moldova, 2009, http://www.alegeriprogen.md/files/1592_Violenta_Invizibila.pdf

In early 2011, the Moldovan Government proposed to introduce a 30% quota for women's participation in the electoral lists of political parties. However, without specifying that this 30% minimum must be evenly distributed on the lists of all parties, this initiative has no effect, because the parties continue to place women at the bottom of their lists or appoint them in dependence of their "loyalty" to the party and not by their professional merits.

At the society level every third respondent of a recent sociological study considers that women are not capable and should not be involved in decision making process.¹⁶ Moreover, 50,3% would prefer a man president over 6,4% that would vote for a woman.¹⁷

Employment. In Moldova women are discriminated on the matrimonial status and age basis, as well as because of presumptions regarding the time dedicated to family life. There are cases showing that women are discriminated in the field of employment by receiving lower salaries or even pensions six times lower than men doing the same work,¹⁸ during last years women earned approximately 85% of what men earned for equal work.¹⁹

Domestic violence. Although there are legal provisions to combat domestic violence, this issue continues to be alarming. According to the latest studies in the field, every fourth woman in Moldova is a victim of domestic violence, whether physical, sexual, psychological or economic. Another study in 2008 showed that at least 40% of women across the country were victims of a violent act at least once in their life.²⁰

Despite this finding, unless it causes serious bodily injury, domestic violence is not perceived as a problem requiring legal intervention.²¹

On 3 September 2010, a new law, No.167 entered into force, which serves as amendment to some laws (including Criminal Code, Code of Criminal Procedure and Law No.45-XVI on Preventing and Combating Domestic Violence). Law No.167's goal was to solve the problem of the implementation of Law 45-XVI. Law No.167 introduced a new provision in the Criminal Code - Article 201.1 on domestic violence, giving domestic violence the status of a criminal offense. A protection order can now be issued in both criminal and civil proceedings. According to criminal proceedings, the investigative body is obliged to ask the judge to consider the application for a protection order within 24 hours. Although the Moldovan laws designed to prevent and combat domestic violence seem to offer sufficient protection mechanisms, their application in practice re-

16 Sociological Study: Perceptions of the Population from the Republic of Moldova on Discrimination, performed by Soros Foundation - Moldova, in 2010, p. 6.

17 Daniela Terzi-Barbarosie, Women's Invisible Violence and Political Participation in Republic of Moldova, 2009 http://www.alegeriprogen.md/files/1592_Violenta_Invizibila.pdf

18 Free Europe, Women Discrimination in Pension Calculations, 13th of September 2009, <http://www.europalibera.org/content/article/2156796.html>

19 UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Addendum: Communications to and from Governments, 2 June 2010, <http://www.unhcr.org/refworld/pdfid/4c1b42c32.pdf>

20 Bureau of Democracy, Human Rights, and Labor. 2009 Country Reports on Human Rights Practices. Report. March 11, 2010

21 Yakin Ertürk, Report of the Special Rapporteur on violence against women, its causes and consequences, 8 May 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/131/24/PDF/G0913124.pdf?OpenElement> [accessed 6 March 2011].

mains to be faulty. In this sense, the most problematic aspects of domestic violence against women in Moldova are: failure of the protective order, late prosecution, refusing to issue protection orders, delays in issuing orders of protection, lack of uniform practice this area.

Thus, according to a report by „La Strada” in November 2010, 161 victims of domestic violence faced difficulties when they called the police, and in 93 cases they have remained unsatisfied with the measures taken by the police, often being reduced to warnings or fines, eventually paid by the victims.

In each of their 2009 reports, Manfred Novak (UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment) and Yakin Ertürk (UN Special Rapporteur on Violence against Women) highlighted that the failure of the law enforcement bodies in Moldova to respond to allegations of domestic violence discriminates against women in their access to an effective remedy and may constitute complicity in such ill-treatment.²²

Recommendations

- Establish a functional mechanism for the implementation of Law No.5 on ensuring equal opportunities between women and men;
- Ensuring compliance with the obligations assumed by Moldova in the Millennium Development Goals on the representation of women in public administration at the minimum level of 25-40% by 2015;
- Ministry of Labour and Social Protection should ensure equal treatment of women and men in employment and employment through proper implementation of existing gender policies in the field, including the Law on preventing and combating discrimination, which is to be adopted by Parliament;²³
- General Prosecutor’s Office should develop effective tools for identifying and sanctioning cases of gender discrimination in employment;
- Ministry of Labour and Social Protection in cooperation with the Ministry of Internal Affairs to streamline the implementation of Law 45-XVI on Preventing and Combating Domestic Violence, in particular regarding the implementation of protection orders and their non-punishment. It also recommends appropriate training of representatives of institutions responsible for implementation of Law 45-XVI. Creating a sufficient number of rehabilitation centres for both, victims and abusers;
- Law enforcement bodies must respond promptly and investigate cases of domestic violence and to protect the real victims of domestic violence.

22 UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to the Republic of Moldova, A/HRC/10/44/Add.3, 12 February 2009; UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk: Mission to the Republic of Moldova, A/HRC/11/6/Add.4, 8 May 2009.

23 To ensure the implementation, by the employers, of the Art. 9 Cooperation in ensuring the right to non-discrimination in employment relations.

16.6. Elderly

Inadequate pensions and the right to social security. Moldova has been affected by demographic ageing, generated mainly by a decrease in birth rates and high level of migration of economically active population overseas. The official number of people aged over 60 in Moldova represents approximately 14 per cent of the population²⁴ and that number is predicted to rise to 35 per cent by 2050.²⁵

The average pension in Moldova in 2010 was 837 MDL (\$69) and the minimum constituted 594 MDL (\$49) while the minimum subsistence level was 1368 MDL (\$114), pensions respectively making 60% or 43% of this minimum. Poverty increases with age: 35.5 per cent of people over 65 years old indicate the absolute poverty rate²⁶ and this rises to 43 per cent amongst those between 70 – 75 years old, who are often living alone in urban areas with a pension.²⁷

Annual indexation fails to increase the pension to a level that allows for an adequate standard of living. The average indexation started in 2003 with average indexation level of 20 per cent per year while in 2010 pensions were indexed by only 4.65 per cent.²⁸

The right to social security for migrant workers. Moldova is classified as one of the European countries with phenomenally high level of migration that started in late 90's and rapidly accelerated to unprecedented levels. According to the National Bureau of Statistics 2008, 25 per cent of the economically active population of Moldova have gone overseas to find employment. The lack of bilateral agreements prevents the portability of social insurance such as the old age pension and health insurance, even if the individual has been a "regular" migrant and has contributed to the system in the country of migration.

Medical costs and the right to health. Poor nutrition and cold weather severely impact on the health of older people. Age discrimination in health care provision is widespread; older people note that ambulance services ask for the patient's age and routinely discriminate against people over 60 refusing to come or arrive late. Health care is also unaffordable for many poor older people. The primary health care family medicine (PHC) that was introduced in 2005 annually approves a set of medical services in a single health insurance package as part of compulsory health care insurance. However, this compulsory package is very limited and the list of compensated medicines is very basic and insufficient in the case of serious diseases.

Many older people are also unable to treat their illness above the compulsory package due to high costs of healthcare. Others cannot afford to pay the informal fees asked of them by the doctors and are therefore unable to motivate the health

24 National Bureau of Statistic of Moldova data "Elderly of the Republic of Moldova", 2009.

25 ENPI 08-14 Black Sea Labour Market Reviews, Moldova Country Report, Working Document, 2009.

26 The absolute poverty rate is based on consumption expenditures as a welfare indicator, comprising expenditures for food consumption, non-food items and payment for services. Poverty line defined by the MDGs as €4.3 per capita per day, adjusted for purchasing power parity (2006–2007).

27 Study on Social Protection and Social Inclusion in Moldova 2009-2010, Institute for Development and Social Initiatives "Viitorul", Chisinau, Moldova.

28 Protection of Pensioners: Priorities and Current Debates", Social Monitor, IDIS Viitorul Jan-Feb 2010.

professionals to provide care. Age discrimination, high costs of medicine, negligence of doctors, informal fees and inadequate income through pensions or remittances are major barriers to older people's enjoyment of their right to health.

Recommendations

- The Government should increase the value of the existing contributory pension so that it provides an adequate standard of living for older people and those in their care.
- The Government should ensure that the increasing number of people working in the informal sector today, including migrant workers, have access to social security when they reach old age. The Government should consider wider policy options for non-contributory social security schemes and namely the feasibility of a universal non-contributory pension.

16.7. Persons with disabilities

In Moldova are registered over 170,000 people with disabilities, recognized to be the most vulnerable social group in terms of social exclusion.

Insufficient pensions and social protection. Although the average size of benefits is constantly increasing, it remains still very small and does not cover the minimum necessary to ensure a decent living. Average amount of disability pension, according to figures from the Ministry of Social Protection, Family and Child, in 2008, after indexing, was 545.56 lei (~44\$) putting these persons to the verge of poverty unable to reach the 114\$ minimum subsistence level.

Employment is an almost unattainable for most people with disabilities in Moldova, especially since the current national legislation establishes that they are unable to work. Even if you have some more jobs or higher education diploma, as long as moving with a stroller or have poor eyesight, a person is considered invalid. The legal framework is not aligned to international standards to ensure the rights of persons with disabilities. The Law on social protection of invalids in the Republic of Moldova (1991), provides that every company, institution and organization is required to reserve at least 5% of the total number of places for employment of persons with disabilities. Employers who do not comply with this provision must remit an average annual salary in the unemployment fund for each job uninsured. This provision, however, never worked in Moldova. Although the law provides a mechanism for ensuring the employment of people with disabilities and establishing the responsibilities of various institutions to implement it, so far it lacks a coherent social policy of inclusion of these people into the workforce, according to the Social Inclusion Strategy of people with disabilities for the years 2010-2014. Unlike the positive European experience in the Republic of Moldova no employer is motivated by the state to take people with disabilities for work.

Methods of determining disability. A considerable number of complaints received by the ombudsman are referring to the diminution of the degree of invalidity by the Primary Territorial Councils of Medical Assessment of Vitality. It is

necessary to revise the current definition of disability and the legal concepts related to it, introducing a single definition for persons with disabilities, modifying the methodology for determining the degree of disability, so that these do not exhibit desiderate discriminatory and meet international standards.

Limited access for persons with disabilities in social infrastructure is a result of unsuitable physical environment in terms of architecture. Almost all buildings in Moldova do not have ramps to allow access for persons with disabilities, this is one of the main problems facing this category. Although national legislation requires public authorities to provide physical infrastructure to adapt to the needs of persons with disabilities, currently there are few public institutions adapted to the needs of these people.

Recommendations

- To provide invalidity pensions in accordance to the special needs of the disabled person.
- To set a clear mechanism of implementation to the Law on Social Protection of the Disabled persons.
- To elaborate a new method of assessment of the degree of disability, which would include the capacity to work and the special needs of a person.
- Amend the Law on Prevention and Combating discrimination with the provision of “reasonable accommodation” according to Article 2 of the Convention on the Rights with Persons with Disabilities (CRPD) ratified by the Republic of Moldova in 2010.
- To conduct an informational campaign on combating prejudice towards persons with disabilities in order to stimulate the employers to offer jobs to these persons and contribute to the social inclusion of this category.
- To adapt buildings and public transportation to the needs of the persons with disabilities.

16.8. Ethnic and religious minorities

Although the Law on persons belonging to national minorities and the juridical status of their organisations, Law No.382-XV, from 19-th of July 2001, assures by art. 5 the following: The State obliges itself to contribute to the creation of necessary conditions for protection, development and expression of ethnic, cultural and religious identity to persons belonging to national minorities. In practice, situations and direct actions from the state express the opposite will.

None of the three known **Muslim groups** present on the territory of the Republic of Moldova have obtained registration as a religious cult. Two of them gave up on this idea and have registered as NGOs and the Spiritual Gathering of Muslims group continued to submit their documents for registration, rejected in all cases on technical grounds, undergoing intimidations of members and founding members by police officers, mockery and disrespectful attitudes towards the physical aspect

of the religious leader. Due to the fact that the registration of the cult is not possible, the State does not provide burial places for this group.

Anti-Semitic hate speeches and vandalism are not investigated properly and the aggravating circumstances provided by the Criminal Code, art. 77. are not applied in practice by police and judges. The most contemptible case has happened on the 13-th of December 2009, when an Orthodox priest identified as Br. Anatoliy Cibric²⁹ led a demonstration of about 100 persons on Sunday in the afternoon, during which a Chanukah Menorah was pulled down from the Central Park where it has been installed by the members of the Jewish community during the Hanukah celebration and placed upside down at the feet of a nearby statue of Stephen the Great, the medieval Moldovan king who is also a Moldovan Orthodox saint. In the place of the Menorah, the protesters placed a small Orthodox cross. Mr. Cibric made anti-Semitic public statements during the process, inciting hatred, speaking disrespectfully, using the insulting term of “jid” / “jidov”, a pejorative exonym for the Jewish community. At least 2 police officers were present during the incident, yet no actions to stop the protesters have been undertaken. Cibric Anatoliy was later arrested and after a court hearing, he was punished only with an administrative sanction of ~ 50 USD for “hooliganism” and not for a hate crime.³⁰ Currently, Mr. Cibric Anatoliy has appealed against the first court decision, claiming that his deeds were not hooliganism and that he acted in accordance with his views.

The Adventist church could not benefit of the right to freedom of assembly in the central square of the capital, due to the requests of the Orthodox church not to conduct such a gathering near the Cathedral which is 100m away from the central square. The municipality requested that the organizers of the event hold it in the front yard of the church which is situated at the far end of the city.

Falun Gong has encountered difficulties set by the Ministry of Justice while registering the association on grounds that the association is an extremist one. Also, while organizing a concert with Chinese dancers the theatre rented for this event blocked entrance of the dancers to rehearsals and refused the rental one day before the concert without prior notice or comments. The decision of refusal was a political one, allegedly due to pressures from Chinese Embassy in the Republic of Moldova.

Due to the efficient work of the office of UNHCR in Moldova, the persons having a refugee status confront themselves less with the police officers. However, after obtaining citizenship, the persons who have distinguishable aspect from local population (mainly by the skin colour) can be questioned and harassed with questions as “Where did you get these documents? How much did you pay a bribe for them?” etc.³¹ Foreigners with distinguishable features are exposed to a discriminatory attitude while applying for jobs, renting apartments, they can be harassed; endure mockery and even aggressive behaviour from intolerant undereducated persons.

29 The Priest Cibric is also affiliated with an NGO called “The Orthodox Association Joyous Mother Matron”, which is usually making scandalous, hate-inciting speeches on other subjects like those of sexual minorities in the Republic of Moldova.

30 Criminal Code of the Republic of Moldova, Art.77: “(1) When determining punishment, the following shall be considered as aggravating circumstances: [...], d) the commission of a crime due to social, national, racial, or religious hatred”.

31 Interview with Paknehad Ahmad Djavid, director of Charity Centre for Refugees on 17-th of January 2011.

Recommendations

- To conduct thorough investigations by police of the motives of crimes towards minorities and to apply the criminal code, with aggravating circumstances in cases of discrimination. To report and respectively investigate hate crimes.
- To conduct specific trainings to police officers on matters of adequate conduct towards multicultural and ethnic groups.
- To harmonize the national legislation with the international legislative provisions as so the national minorities fully benefit of religious freedom in its associational dimension as a manifestation of religious beliefs.

General Recommendations

- to adopt a law prohibiting discrimination on the grounds spelled out in the Universal Declaration of Human Rights, including sexual orientation and gender identity;
- to ratify the 12th Protocol to the European Convention on Human Rights, Council of Europe, providing a general prohibition of discrimination;
- to revise and update the national action plan as to implement anti-discrimination policy regarding all discriminated grounds, including sexual orientation and gender identity;
- to develop and implement a national mechanism for combating all forms of discrimination in Moldova and to implement the Law and the Plan of Action for the Elimination of All Forms of Discrimination in the Republic of Moldova, with the participation and close cooperation with civil society;
- to create a favourable climate and promote diversity, tolerance and forbearance in the society by providing continuously adequate information on discrimination and diverse groups present on the territory of the Republic of Moldova.

Promo - LEX



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